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LOCAL RAIL SERVICE ASSISTANCE

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HEARINGS BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 11979

A BILL TO AMEND SECTION 5 OF THE DEPARTMENT OF TRANSPORTATION ACT, RELATING TO LOCAL RAIL SERVICE ASSISTANCE

JULY 12 AND 17, 1978

Serial No. 95-156

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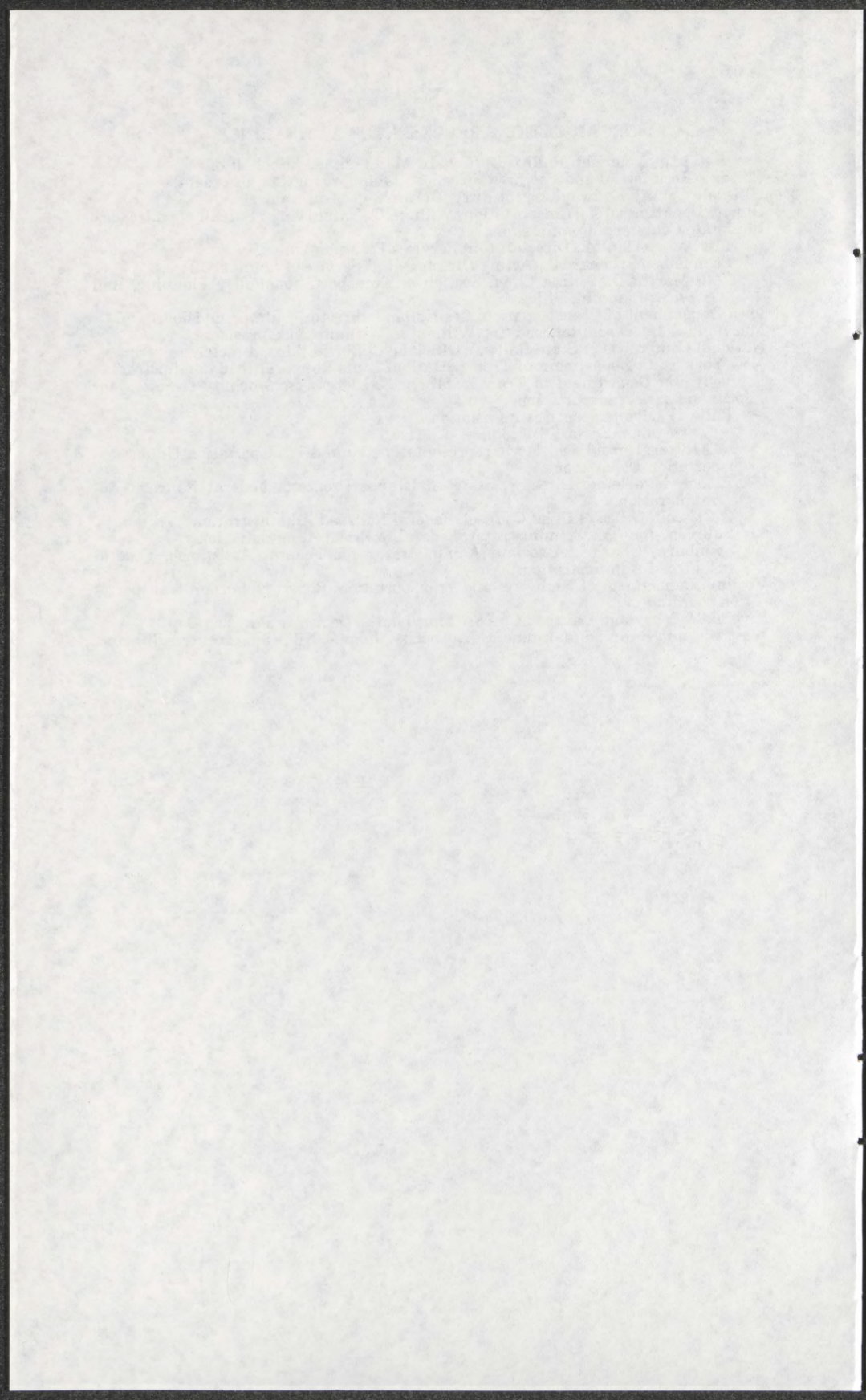
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ORGANIZATIONS REPRESENTED AT HEARINGS

- Association of American Railroads, Richard M. Freeman, on behalf of.
 Chicago, Rock Island and Pacific Railroad Co., John W. Ingram, president.
 Hillsdale County Railway Co., Inc., Eric D. Gerst, general counsel.
 Illinois Department of Transportation, William C. Harsh, chief, bureau of railroads.
 Interstate Commerce Commission:
 Fitzwater, Alan M., Director, Rail Services Planning Office.
 Schiefelbein, Richard J., Acting Director, Rail Services Planning Office.
 Zell, Martin D., Acting Chief, Section of Transportation Policy Planning, Rail Services Planning Office.
 Iowa Department of Transportation, Les Holland, director, railroad division.
 Maryland & Delaware Railroad Co., William L. Withuhn, vice president.
 National Conference of State Railway Officials, Clifford Elkins, director.
 New York State Department of Transportation, Louis Rossi, railroad administrator.
 Pennsylvania Department of Transportation, E. L. Tennyson, deputy secretary for local and area transportation.
 Railway Labor Executives Association:
 Friedman, Edward B., counsel.
 Ritter, Harold, legislative representative, United Transportation Union.
 Transportation Department:
 Bloom, Madeleine, Director, State Assistance Program, Federal Railroad Administration.
 O'Driscoll, Office of Chief Counsel, Federal Railroad Administration.
 Sullivan, John M., Administrator, Federal Railroad Administration.
 Swinburn, Charles, Associate Administrator for Federal Assistance, Federal Railroad Administration.
 Virginia Department of Highways and Transportation, Robert G. Corder, transportation coordinator.
 Virginia & Maryland Railroad Co. (See Maryland & Delaware Railroad Co.)
 West Virginia Railroad Maintenance Authority, John P. Killoran, executive director.



LOCAL RAIL SERVICE ASSISTANCE

WEDNESDAY, JULY 12, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2123, Rayburn House Office Building, Hon. Fred B. Rooney, chairman, presiding.

Mr. ROONEY. This afternoon we are having our first of 2 days of hearings on H.R. 11979, the Local Rail Service Assistance Act of 1978. This bill was introduced at the request of the administration. It is essentially a modification of a number of bills which we considered last fall.

This bill is considered necessary because most of the interested parties believe that the branch line assistance as presently provided in the Railroad Revitalization and Regulatory Reform Act of 1976, is not completely effective. The existing legislation provides that assistance is provided in those instances where the Interstate Commerce Commission has permitted the abandonment of branch lines.

This assistance was originally designed to provide for the social cost during the interim period when alternative means of transportation could be arranged. It is believed, however, that it would be a more prudent use of funds if assistance were granted to rehabilitate lines before they have been approved for abandonment in order that they may again serve a useful purpose to the shippers and the railroads.

In addition to emphasizing rehabilitation over operational subsidies, the bill would make the program permanent, rather than 5 years, as provided in the current legislation. The amount of Federal subsidy would be established at 80 percent. The formula for the allocation of funds would provide that new lines eligible for rehabilitation would receive two-thirds of the available funds, whereas the lines presently eligible for operating subsidy, would receive one-third of the funds. Also, each State would receive a minimum of \$100,000 for planning but the 1-percent minimum entitlement contained in the present legislation would be eliminated.

Without objection the text of H.R. 11979 and agency report thereon will be printed at this point in the record:

[Testimony resumes on p. 19.]

[The text of bill H.R. 11979 and agency report thereon follows:]

95TH CONGRESS
2D SESSION

H. R. 11979

IN THE HOUSE OF REPRESENTATIVES

APRIL 10, 1978

Mr. STAGGERS (for himself and Mr. ROONEY) (by request) introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce

A BILL

To amend section 5 of the Department of Transportation Act, relating to local rail service assistance.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Local Rail
5 Service Assistance Act of 1978".

6 DECLARATION OF PURPOSE AND POLICY

7 SEC. 2. (a) PURPOSE.—It is the purpose of the Con-
8 gress in this Act to amend the local rail service assistance
9 program authorized in section 5 of the Department of Trans-
10 portation Act (49 U.S.C. 1654) to enable the Secretary of
11 Transportation to provide assistance to States for—

I

1 (1) short-term rehabilitation or other assistance
2 which provides tangible economic benefits to the com-
3 munity and which enables the parties involved to con-
4 tinue to provide adequate transportation service without
5 further Federal assistance; and

6 (2) short-term transitional operating subsidies to
7 mitigate the effects of an abandonment while the affected
8 shippers arrange for alternate means of transportation.

9 (b) **POLICY.**—It is declared to be the policy of Congress
10 in this Act that the Federal Government shall assist in the
11 provision of adequate transportation service to shippers and
12 communities now served by light density lines. Federal
13 funds shall only be used to assist transportation services
14 where such assistance provides tangible economic benefits
15 to the affected communities without placing a financial
16 drain on the carriers providing that service. The Congress
17 believes, however, that the parties benefiting from a Federal
18 investment on a light density line must act to preserve the
19 benefits of the Federal investment. Accordingly, the Con-
20 gress expects the States, local communities, shippers, and
21 all elements of the railroad industry to commit themselves
22 to long-term solutions which will enable the continued pro-
23 vision of adequate transportation service after the completion
24 of the federally assisted projects.

EXPANSION OF ASSISTANCE

1
2 SEC. 3. Section 5 (f) of the Department of Transporta-
3 tion Act (49 U.S.C. 1654 (f)) is amended—

4 (1) by inserting immediately before the semicolon
5 at the end of paragraph (1) the following: “which, as
6 determined in accordance with section 1a of the Inter-
7 state Commerce Act (49 U.S.C. 1a) , shall cover the dif-
8 ference between the revenues which are attributable to a
9 line of railroad and the avoidable cost of providing rail
10 freight service on such line, together with a reasonable
11 return on the value of such line”;

12 (2) by striking out “purchasing a line of railroad or
13 other rail properties” in paragraph (2) and inserting in
14 lieu thereof “acquiring, by purchase, lease, or in such
15 other manner as the State considers appropriate, a line
16 of railroad or other rail properties, or any interest there-
17 in”;

18 (3) by striking out “and” at the end of paragraph
19 (3) ;

20 (4) by striking out the period at the end of para-
21 graph (4) and inserting in lieu thereof a semicolon; and

22 (5) by adding at the end thereof the following new
23 paragraphs:

24 “(5) the cost of constructing rail or rail related

1 facilities (including new connections between two or
2 more existing lines of railroad, intermodal freight ter-
3 minals, and sidings) for the purpose of improving the
4 quality and efficiency of local rail freight service; and
5 “(6) the cost of developing, administering, and
6 evaluating innovative experimental programs which are
7 designed to improve the quality and efficiency of service
8 on lines of railroad eligible for assistance under this sec-
9 tion and which involve cooperative action between State
10 and local communities and railroad industry representa-
11 tives or shippers.”

12 COST SHARING

13 SEC. 4. Section 5 (g) of the Department of Transporta-
14 tion Act (49 U.S.C. 1654 (g)) is amended to read as
15 follows:

16 “(g) The Federal share of the costs of any rail service
17 assistance program for any fiscal year shall be 80 per
18 centum. The State share of the costs may be provided in cash
19 or through either of the following benefits, to the extent that
20 such benefits would not otherwise be provided: (1) forgive-
21 ness of taxes imposed on a common carrier by railroad or on
22 its properties; or (2) the provision by the State or by any
23 person or entity on behalf of a State, for use in its rail serv-
24 ice assistance program, of real property or tangible personal
25 property of the kind necessary for the safe and efficient op-

1 eration of rail freight service by the State. If a State provides
2 more than 20 per centum of the cost of its rail service assist-
3 ance program during any fiscal year, the amount in excess of
4 such 20 per centum contribution shall be applied toward such
5 State's share of the costs of its program for subsequent fiscal
6 years."

7 FORMULA ALLOCATION

8 SEC. 5. Section 5 (h) of the Department of Transporta-
9 tion Act (49 U.S.C. 1654(h)) is amended to read as
10 follows:

11 "(h) (1) Each State is entitled annually to a sum from
12 available funds as determined pursuant to this subsection.
13 Available funds are funds appropriated for rail service assist-
14 ance for a fiscal year and any funds to be reallocated for such
15 fiscal year in accordance with paragraph (2) of this sub-
16 section. Subject to the limitations contained in paragraph
17 (3) of this subsection, the Secretary shall calculate each
18 State's entitlement as follows:

19 "(A) Each State is entitled to \$100,000 to be
20 used in accordance with subsection (i) of this section. If
21 available funds are not sufficient to enable each State to
22 receive \$100,000, each State shall receive an equal share
23 of available funds.

24 "(B) Each State is further entitled to an additional
25 amount, from available funds remaining after the com-

1 completion of the calculation under paragraph (1) (A) of
2 this subsection, which shall be used by the State, sub-
3 ject to the requirements of subsection (j) of this section,
4 for any project eligible for assistance under subsection
5 (k) of this section. Such additional amount shall be cal-
6 culated as follows:

7 “(i) Two-thirds of the balance of available
8 funds remaining after the completion of the calcu-
9 lation under paragraph (1) (A) of this subsection
10 multiplied by a fraction, the numerator of which
11 equals the rail mileage in the State which, in ac-
12 cordance with section 1a(5) (a) of the Inter-
13 state Commerce Act (49 U.S.C. 1a(5) (a)), is
14 described as ‘potentially subject to abandonment’
15 or is identified as a line with respect to which a
16 carrier plans to submit, but has not yet submitted,
17 an application for a certificate of abandonment or
18 discontinuance, and the denominator of which
19 equals the total of such rail mileage in all the States.

20 “(ii) One-third of the balance of available funds
21 remaining after the completion of the calculation
22 under paragraph (1) (A) of this subsection multi-
23 plied by a fraction, the numerator of which equals
24 the rail mileage in the State for which the Inter-

1 state Commerce Commission, within two years prior
2 to the first day of the fiscal year for which funds
3 are allocated or reallocated under this section, has
4 found that the public convenience and necessity
5 permit the abandonment of, or the discontinuance
6 of rail service on, the rail mileage (including, until
7 September 30, 1981, the rail mileage in the State
8 which was eligible for assistance under section 402
9 of the Regional Rail Reorganization Act of 1973
10 (45 U.S.C. 762), and the rail mileage in the State
11 which, prior to the enactment of the Local Rail
12 Service Assistance Act of 1978, had been included
13 for formula allocation purposes under this section),
14 and the denominator of which equals the total rail
15 mileage in all the States for which the Interstate
16 Commerce Commission has made such a finding
17 within such two-year period (including, until Sep-
18 tember 30, 1981, the rail mileage in all the States
19 which was eligible for assistance under section 402
20 of the Regional Rail Reorganization Act of 1973,
21 and the rail mileage in all the States which, prior
22 to the enactment of the Local Rail Service Assist-
23 ance Act of 1978, had been included for formula
24 allocation purposes of this section).

1 For purposes of calculations under this paragraph, no rail
2 mileage shall be included more than once in either the
3 numerator or the denominator of a fraction.

4 “(2) For purposes of this subsection, rail mileage shall
5 be measured by the Secretary as of the first day of each fiscal
6 year. Entitlement funds shall be available to a State during
7 the fiscal year for which the funds are appropriated as well as
8 the two fiscal years following the fiscal year for which the
9 funds were appropriated. In accordance with the formula set
10 forth in this subsection, the Secretary shall reallocate to each
11 State a share of any entitlement funds which have not been
12 subject of an executed grant agreement between the Secretary
13 and the State before the end of the second fiscal year follow-
14 ing the fiscal year for which the funds were appropriated.
15 Reallocated funds are available to the State for the same
16 purpose and for the same time period as an original allocation
17 and are subject to reallocation if not made the subject of an
18 executed grant agreement between the Secretary and the
19 State before the end of the second fiscal year following the
20 fiscal year for which the funds were reallocated. No part of
21 the funds available for reallocation shall be subject to transfer
22 to the consolidated planning fund pursuant to paragraph (3)
23 of this section.

24 “(3) If a consolidated planning fund is authorized to
25 be created within the Department of Transportation for the

1 purpose of enabling grants to be made to States and
2 designated metropolitan planning organizations to develop
3 transportation plans and programs under the Urban Mass
4 Transportation Act of 1964 and under title 23 of the United
5 States Code, the Secretary may, in his or her discretion,
6 prior to the calculation of each State's entitlement under
7 this subsection, transfer to the consolidated planning fund
8 not more than 5 per centum of the total amount of the
9 funds appropriated for any fiscal year under subsection
10 (q) of this section. Such transferred funds shall be allo-
11 cated and granted to the States in the same manner and
12 under the same limitations as any other funds in the con-
13 solidated planning fund and shall no longer be subject to
14 the provisions of this section. The Secretary may, in his or
15 her discretion, include in or exclude from a transfer to the
16 consolidated fund the planning entitlement of each State
17 under paragraph (1) (A) of this subsection."

18 PLANNING ASSISTANCE

19 SEC. 6. Section 5 (i) of the Department of Transpor-
20 tation Act (49 U.S.C. 1654 (i)) is amended to read as
21 follows:

22 "(i) During each fiscal year, a State may, regardless
23 of its current eligibility under subsection (j) of this sec-
24 tion, expend its annual entitlement under subsection (h) (1)
25 (A) of this section solely to meet the cost of establishing,

1 implementing, revising, and updating the State rail plan
2 required by subsection (j) of this section, unless the Secre-
3 tary has included such funds in any transfer to the con-
4 solidated planning fund pursuant to subsection (h) (3) of
5 this section.”.

PROJECT ELIGIBILITY

7 SEC. 7. Section 5 (k) of the Department of Transporta-
8 tion Act (49 U.S.C. 1654(k)) is amended to read as
9 follows:

10 “(k) (1) A project is eligible for financial assistance
11 under paragraph (1) of subsection (f) of this section only
12 if—

13 “(A) (i) the Interstate Commerce Commission has
14 found since February 5, 1976, that the public conven-
15 ience and necessity permit the abandonment of, or the
16 discontinuance of rail service on, the line of railroad
17 related to the project; or (ii) the line of railroad or
18 related project was eligible for financial assistance under
19 section 402 of the Regional Rail Reorganization Act of
20 1973 (45 U.S.C. 762), except that a line of railroad
21 or related project which was eligible for financial assist-
22 ance under section 402 of the Regional Rail Reorga-
23 nization Act of 1973 or under this section prior to the
24 enactment of the Local Rail Service Assistance Act of

1 1978 shall be eligible only until September 30, 1981;
2 and

3 “(B) the line of railroad or related project has not
4 previously received financial assistance under paragraph
5 (1) of subsection (f) of this section for more than
6 twenty-four months.

7 “(2) A project is eligible for financial assistance under
8 paragraph (2) of subsection (f) of this section only if—

9 “(A) (i) the Interstate Commerce Commission has
10 found since February 5, 1976, that the public conven-
11 ience and necessity permit the abandonment of, or the
12 discontinuance of rail service on, the line of railroad
13 related to the project; (ii) the line of railroad related to
14 the project is listed for possible inclusion in a rail bank
15 in part III, section C of the Final System Plan issued
16 by the United States Railway Association under section
17 207 of the Regional Rail Reorganization Act of 1973
18 (45 U.S.C. 717) ; or (iii) the line of railroad related to
19 the project was eligible to be acquired under section 402
20 (c) (3) of the Regional Rail Reorganization Act of
21 1973 (45 U.S.C. 762 (c) (3)), except that a line of
22 railroad or related project which was eligible for finan-
23 cial assistance under section 402 or under this section
24 prior to the enactment of the Local Rail Service Assist-

1 ance Act of 1978 shall be eligible only until Septem-
2 ber 30, 1981; and

3 “(B) the Secretary finds that the project satisfies
4 the benefit and cost criteria developed by the Secretary
5 under subsection (o) of this section.

6 “(3) A project is eligible for financial assistance under
7 paragraphs (3) and (5) of subsection (f) of this section
8 only if—

9 “(A) the line of railroad related to the project is,
10 in accordance with section 1a(5)(a) of the Interstate
11 Commerce Act (49 U.S.C. 1a(5)(A)), described as
12 ‘potentially subject to abandonment’, or is identified as
13 a line with respect to which a carrier plans to submit,
14 but has not yet submitted, an application for a certifi-
15 cate of abandonment or discontinuance; and

16 “(B) the Secretary finds that the project satisfies
17 the benefit and cost criteria developed by the Secretary
18 under subsection (o) of this section.

19 “(4) A project is eligible for financial assistance under
20 paragraph (4) of subsection (f) of this section only if—

21 “(A) (i) the Interstate Commerce Commission has
22 found since February 5, 1976, that the public conven-
23 ience and necessity permit the abandonment of, or the
24 discontinuance of rail service on, the line of railroad re-
25 lated to the project; or (ii) the line of railroad or related

1 project was eligible for financial assistance under section
 2 402 of the Regional Rail Reorganization Act of 1973
 3 (45 U.S.C. 762), except that a line of railroad or re-
 4 lated project which was eligible for financial assistance
 5 under section 402 or under this section prior to the enact-
 6 ment of the Local Rail Service Assistance Act of 1978
 7 shall be eligible only until September 30, 1981; and

8 “(B) the Secretary finds that the project satisfies
 9 the benefit and cost criteria developed by the Secretary
 10 under subsection (o) of this section.

11 “(5) A project is eligible for financial assistance under
 12 paragraph (6) of subsection (f) of this section only if—

13 “(A) there is a reasonable likelihood that the proj-
 14 ect will improve the quality and efficiency of local rail
 15 freight service by increasing operating efficiency, reduc-
 16 ing the cross subsidization of unprofitable portions of a
 17 system by profitable portions of a system, or increasing
 18 productivity of workers; and

19 “(B) the project will not exceed eighteen months
 20 in duration.”.

21 TECHNICAL AMENDMENTS

22 SEC. 8. Section 5 of the Department of Transportation
 23 Act (49 U.S.C. 1654) is amended—

24 (1) by redesignating subsection (o) as subsection
 25 (q);

1 (2) in subsection (q), as so redesignated, and in
2 subsections (g) and (m) (1), by striking out "(o)"
3 and inserting in lieu thereof "(q)"; and

4 (3) in the third sentence of subsection (q), as so
5 redesignated, by inserting "and of section 810 of the
6 Railroad Revitalization and Regulatory Reform Act of
7 1976" immediately after "of 1973".

8 BENEFIT-COST CRITERIA

9 SEC. 9. Section 5 of the Department of Transportation
10 Act (49 U.S.C. 1654) is amended by inserting immediately
11 after subsection (n) the following new subsection:

12 "(o) The Secretary, after consultation with representa-
13 tives chosen by the States, shall promulgate regulations es-
14 tablishing criteria to be used by the Secretary to determine
15 the ratio of benefits to costs of proposed projects eligible for
16 financial assistance under paragraphs (2) through (5) of
17 subsection (f) of this section."

18 REHABILITATION ASSISTANCE

19 SEC. 10. Section 5 of the Department of Transportation
20 Act (49 U.S.C. 1654) is amended by inserting immediately
21 after subsection (o), as added by section 9 of this Act, the
22 following new subsection:

23 "(p) A State shall use financial assistance provided
24 under paragraph (3) of subsection (f) of this section as
25 follows:

1 “(1) The funds shall be used to rehabilitate or im-
2 prove rail properties in order to improve local rail freight
3 service within the State.

4 “(2) The State shall, in its discretion, grant or loan
5 funds to the owner of rail properties or operator of rail
6 service related to the project.

7 “(3) The State shall determine all financial terms
8 and conditions of a grant or loan.

9 “(4) The State shall place the Federal share of re-
10 paid funds in an interest-bearing account or, with the ap-
11 proval of the Secretary, permit any borrower to place
12 such funds, for the benefit and use of the State, in a bank
13 which has been designated by the Secretary of the
14 Treasury in accordance with section 10 of the Act of
15 June 11, 1942 (12 U.S.C. 265). The State shall use
16 such funds and all accumulated interest to make further
17 loans or grants under paragraph (3) of subsection (f)
18 of this section in the same manner and under the same
19 conditions as if they were originally granted to the State
20 by the Secretary. The State may, at any time, pay to the
21 Secretary the Federal share of any unused funds and ac-
22 cumulated interest. After the termination of a State's par-
23 ticipation in the local rail service assistance program es-
24 tablished by this section, such State shall pay the Fed-

1 eral share of any unused funds and accumulated interest
2 to the Secretary.”.

3 EFFECTIVE DATE

4 SEC. 11. The provisions of this Act shall take effect on
5 October 1, 1978.



DEPARTMENT OF THE TREASURY
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20220

OCT 5 1978

Dear Mr. Chairman:

This has reference to H.R. 11979, title I of which is to be known as the "Local Rail Service Assistance Act of 1978," which was reported by your Committee on August 11, 1978.

Section 107 contains a provision that could run counter to the Department's cash management program in that paragraph (3) of the proposed new subsection (o) that would be added to section 5 of the Department of Transportation Act would permit States to set the terms and conditions of a grant or loan. Thus, when a State passed Federal grant funds to a secondary recipient it could waive Treasury advance financing regulations in Part 205 of title 31 of the Code of Federal Regulations.

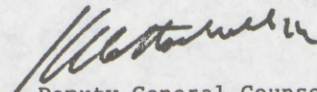
Those regulations cover the Department's letter-of-credit system, designed to prevent the withdrawal of cash from the Treasury until actually needed for the payment of obligations incurred under a specific grant program. In FY 1976, over \$63 billion was disbursed under this system, with the result that we avoided Treasury borrowings of between \$2 and \$3 billion on the average for the entire year.

To avoid any ambiguity over our authority to apply the Part 205 provisions to secondary grantees in the proposed rehabilitation assistance program in the amended section 5, we urge that the bill be amended on the House floor by substituting a comma for the period at the end of subsection (o) (3) and that the following be added thereto "... , except that the timing of all advances with respect to grants in aid under this subsection shall be in accordance with Department of the Treasury regulations."

The Department defers to other interested agencies on other aspects of this bill.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,


Deputy General Counsel

The Honorable
Harley O. Staggers, Chairman
Committee on Interstate
and Foreign Commerce
House of Representatives
Washington, D. C. 20515

Mr. ROONEY. I now recognize my distinguished colleague from the great State of Illinois, Mr. Madigan.

Mr. MADIGAN. Thank you, Mr. Chairman.

Mr. Chairman, as we begin to look at the branch line problem I think it is important to keep a couple of things in mind. First, overall, the branch line problem is the tip of the iceberg when viewing railroad problems in general.

The railroad industry in this country has a rate of return on investment of about 4 percent for the last 21 months. Removing all branch lines from service throughout the country would not affect that return on investment very much at all.

All of the members of the subcommittee realize a number of actions have to be taken in order to strengthen American railroads. I am hopeful that the Department of Transportation will forward to the subcommittee the Executive studies required by section 504 and section 901 of the 4-R Act so that the total capital needs of the railroad system can be intelligently addressed by this Congress.

That report is long overdue and I, for one, regret we have not had the advantage of its findings as we have considered the effects that coal slurry pipelines would have on American railroads.

Second, the branch line problem is but a part of the excess capacity problem which we know adversely affects American railroads. Simply stated, 20 percent of the lines in America are uneconomical and may well be unnecessary. Of that 20 percent, I would estimate there are 30,000 miles of excess light-density lines and 5,000 to 10,000 miles of secondary lines which are unnecessary.

Prior to the 4-R action we virtually locked into place nearly every railroad track in America because of the difficult procedures we have for abandoning railroad lines. Since the 4-R Act the procedure has been made somewhat easier by reason of the fact that title VIII of that act has permitted States to receive operating subsidies for uneconomical branch lines.

Personally, I would like to see greater activity by individual States in assuming the responsibility for railroad lines in which the railroad has no interest, is unable to make a profit on, but in which the State feels would continue to serve a public purpose.

There are many areas where State government is in a much better position to evaluate the railroad transportation needs of their citizens. In the State of Illinois, we have become acutely aware of the need for transportation problems, policies which are balanced between highway and waterway and rail transportation systems.

In its final form, I am hopeful this bill will take into account the fact that States exercise a greater role in providing branch line service where they only seem to think it should continue to exist.

While the branch line problem is not in my judgment the heart of the railroad problem, it is nevertheless an area which is of vital importance to shippers and the American public and this bill can be improved so as to materially assist both urban and rural America in the development of a more efficient railroad system.

Thank you, Mr. Chairman.

Mr. ROONEY. Thank you, Mr. Madigan, for a very fine statement.

Now, the committee will open with a panel of our distinguished colleagues of the House of Representatives. I would appreciate very much if you introduce yourselves for the record.

STATEMENTS OF HON. MICHAEL T. BLOUIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA; HON. CHARLES E. GRASSLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA; HON. JIM LEACH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA; HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA; HON. JAMES ABDNOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA; AND HON. NEAL SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BLOUIN. Mr. Chairman, I am Congressman Blouin from Iowa. I will open with a brief statement and then yield to my colleagues in the order that they have come in.

I would like to first precede that by submitting for the record seven statements by 7 of the 13 House Members who could not be here but who very much want their supportive views submitted for the record. With that, I ask that it be submitted.

Mr. ROONEY. Without objection, the statements will become part of the record.

[See p. 31.]

Mr. ROONEY. I would appreciate if you would introduce your colleagues.

Mr. BLOUIN. On my left is Congressman Jim Leach from Iowa. On my right, my near right, is Congressman Grassley from Iowa and next to him is Congressman Berkley Bedell from Iowa. This, Mr. Chairman, is not intended to be the Iowa hour. If you will look through the list of—

Mr. ROONEY. It is a little overbalanced.

Mr. BLOUIN. We do have colleagues from Maine, from Pennsylvania, from Wisconsin, from West Virginia, and South Dakota, who will either be stopping in or submitting testimony with us to show the breadth and scope of not just the geographic support for this problem and the solution to the problem but for the bipartisan support with which we are approaching this subject, nor is it meant to be an hour. We hope very much to hold our comments down so that we do not approach the hour length.

With that, Mr. Chairman, I would like to state that we do appreciate very much this opportunity to be here and we very much would like to compliment you and the other members of the subcommittee for holding these 2 days of hearings on local railroad service assistance programs.

A number of my colleagues from the House are joining with me today to demonstrate strong nonpartisan support that exists for flexibility in eligibility criteria within the local rail service program. Last month, I sponsored a conference on The Future of Railroads in Iowa.

At this point, I would like to mention your staff director, Mr. Druhan, was there at your request and I want to acknowledge first our appreciation for his presence and second commend him for the

quality of the presentation he made and the expertise that he demonstrated in this area.

If he is indicative of the staff that you as a subcommittee work with, we feel confident that you are going to come to grips with this problem with the proper solution. That conference was well attended by civic, business, railroad, and transportation officials throughout my district. Out of the discussion that took place at the conference came the need for the establishment of a strong branch line assistance program.

As you are aware, Mr. Chairman, the Iowa Department of Transportation has taken the lead among the States in branch line rehabilitation. At this point I would like to acknowledge Les Holland, director of the railroad division of the Iowa Department of Transportation. He is here to help answer any technical questions the subcommittee may have.

There are presently 14 rehabilitation projects embodying 718 miles of branch line under contract in cost-sharing ventures by the Iowa DOT, shippers and the railroads. The total cost of the 4-year program is \$21.5 million.

A small portion of a 242-mile rehabilitation program is taking place in my district from Monona to Lawlor, Iowa. The need for this rehabilitation project cannot be underestimated.

From 1965-1976, there were five derailments on this line. Since that portion of the line has been rehabilitated, no derailments have occurred. The rehabilitation of this line will mean quicker service for farmers and shippers from elevator to terminal and it will also mean a better utilization and turnaround of railroad cars.

In a recently completed Iowa State rail system plan, 1,200 miles of track on 30 branch lines were identified as priority projects for branch line assistance. The price tag for the needed repairs is estimated to be \$52 million but virtually all are presently ineligible and would be ineligible under H.R. 11979 for Federal branch line assistance because the rail companies have not filed for abandonment under the Interstate Commerce Commission's category 1 or 2. Many of these branch lines are essential to the local economies.

States, and in some instances local communities working through the State, should be given the leeway to apply for Federal assistance for lines that they have identified as priority projects in their rail plans.

Allowing lines which carry 5 million annual gross tons to be eligible for assistance would give States the necessary leeway. The 5 million gross ton figure is an easily referenced statistic as railroads submit data to the ICC on lines of 1 million and 5 million annual gross tons.

I urge you to support changes in project eligibility criteria that will allow branch line assistance for lines which carry up to 5 million gross tons annually. States should be given the flexibility to undertake rehabilitation of troubled lines in a timely planned manner rather than waiting until after they have been abandoned.

Mr. Chairman, that completes my statement. I would also like to introduce the two additional colleagues that have come. On my far right now is Congressman Neal Smith, also from Iowa, and just to prove we have let someone other than Iowa testify, Jim Abdnor from South Dakota is here as well.

Mr. ROONEY. Is Iowa close to South Dakota?

Mr. BLOUIN. It is a little closer to South Dakota. We would be a lot closer to Pennsylvania with a good railroad network. Mr. Chairman, with that, I will yield to my colleague, Congressman Chuck Grassley.

STATEMENT OF HON. CHARLES E. GRASSLEY

Mr. GRASSLEY. Thank you, Mr. Chairman, members of the committee. My reason for being here today is to indicate my strong support for permitting Federal funds to be used to upgrade and otherwise improve rail lines and tracks prior to the beginning of the abandonment process.

In Mr. Madigan's opening statement, he called for a greater role for the States in this process. I think Mr. Blouin, in his opening remarks, showed how Iowa has a very good program that follows along the suggestion of Mr. Madigan.

The States ought to play a greater role in this process. But that in and of itself will not be the total solution to the rail problems. The State of Iowa, in cooperation with shipper and railroad companies, has already embarked on a program to upgrade certain branch lines in the States. This partnership is working very well and it would seem appropriate at this time for the Federal Government to join in the effort.

The Railroad Revitalization Rehabilitation Act of 1976 limits Federal aid to those lines abandoned. I think that changes in the law should be made. Federal funds ought to be used to assist those lines which can be made economically viable.

A little more flexibility would be appropriate under these circumstances. I thank you for this opportunity to be here today. I think the number of my colleagues here in submitting testimony today indicate our interest in this matter and our willingness to work for legislation which would assist the transport of commodities and manufactured goods.

If the State of Iowa with State money can be successfully saving railroads, surely considering the massive resources of the Federal Government, with the Iowa experiment blazing the trail, we ought to transform railroads in America into a viable mode of transportation.

Mr. ROONEY. Thank you, Mr. Grassley.

Mr. BLOUIN. Our next panelist is Congressman Jim Leach, to my left.

STATEMENT OF HON. JIM LEACH

Mr. LEACH. Thank you, Mike, and I certainly appreciate your leadership in bringing us together to appear before you, Mr. Chairman.

I am pleased to have the opportunity to offer a brief statement today in support of legislation to expand Federal assistance to rail lines prior to abandonment. The rail transportation needs of the Nation, as well as my own State of Iowa, would be well served by the enactment of this vital legislation.

Provisions in section 803 of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210, limit financial as-

sistance to projects involving rail lines abandoned since February 5, 1976 when the 4-R Act was signed into law.

However, as our State transportation officials in Iowa have pointed out, the Federal law of "abandonment to improve" is inherently inconsistent with the national policy and goal of rail system revitalization.

Iowa's State DOT has, instead, taken exemplary initiative to establish a program for upgrading economically viable branch lines demonstrating benefit-cost ratios higher than most of those slated for abandonment in rail company abandonment plans.

Iowa State officials hold that it would be against the best interests of the State and the Nation to invest public moneys in these lines which according to the benefit-cost ratios, have outlived their usefulness or demonstrate marginal utility.

Iowa's State plan for upgrading branch lines recognizes the critical need for a system which will deliver our grain to market. Through a joint effort by the State government, shippers, and railroad companies, a total of \$21.5 million has already been committed to rail improvements over a 4-year period, with 14 projects, involving a total of 718 miles, already under contract for upgrading.

Of that total, 453 miles have been completed, enabling shippers, using these rail lines, to move their grain to market at twice the previous speed and at a cost savings of an estimated 1.8 cents per bushel.

A recent survey conducted by the Iowa Department of Transportation indicated that the percentage of grain shipped by rail increased 29 percent after the upgrading, with an accompanying loss in motor carrier share of grain shipments. Total estimated savings, over 1 year resulting from the upgrading projects, is \$3 million.

Mr. Chairman, I draw attention to these facts to highlight the substantial efforts being made at the State level to improve essential branch lines. Federal assistance, under the current provisions of the 4-R Act, does not extend to many of the projects which State authorities have determined to be of high priority.

In this respect, I would also like to urge your consideration of amendatory language to S. 2931, which would permit the use of funds for lines which carry up to 5 million gross tons per year.

The condition of our railway system has been of growing concern to me. In part, this concern stems from delays which have occurred over the past 2 years in the release of funds authorized by the Congress under the 4-R Act. Poor track conditions and slow turnaround time for rail cars impact heavily on the ability of Midwestern farmers to move their grain to market. I believe the existing authorizations in the 4-R Act, as improved by the legislation before you are adequate to provide the necessary relief and should be administered in an expeditious fashion. I commend you Mr. Chairman for holding his hearing and urge your continuing attention to and support for this important legislation.

Thank you.

Mr. BLOUIN. Our next panelist is Congressman Berkley Bedell.

STATEMENT OF HON. BERKLEY BEDELL

Mr. BEDELL. Thank you.

I have a prepared statement I ask to be entered in the record.
Mr. ROONEY. Without objection.

Mr. BEDELL. I would like to speak extemporaneously if I might in regard to the concerns that I have.

First of all, it is obvious that the committee has sought to improve the current situation by expanding somewhat the eligibility criteria for funding of branch lines other than only those lines that were to be abandoned.

This expansion of scope would make eligible both category one and category two lines. In my own State of Iowa, this would only mean help for 75 miles of lines out of the total rail system. As you know, category one lines are those which the carrier estimates to be the target of abandonment within 3 years and category two are those under study by the carriers as being potentially abandoned.

It is our belief—and here we echo what Mr. Madigan said—that we should give maximum flexibility to the States to determine where this money can best be invested. We are not asking for extra money. All we are asking is for the States to have the flexibility to use the knowledge which they have in order to help improve the rail lines in their jurisdiction.

At this point, I might mention, for the benefit of those who are not aware of it, that Iowa has a rail rehabilitation plan that has been a tremendous success. In its simplest form, it is a plan wherein the railroad puts up roughly one-third of the money for improvement of the track, the State one-third and the shipper one-third. Then, the shipper gets a credit for every car he ships until his total commitment has been repaid after which the State is reimbursed.

So, under this plan, the State is repaid for its investment. What we are really talking about in the Iowa plan is a loan which helps the railroads to get on their feet and which, also gives the shipper the incentive to ship by rail at every opportunity. It seems to me that this plan is worthy of being expanded to the other States as well because of the good economic sense it makes.

But, before this plan can be expanded, the restrictions on branch line funding eligibility to only category 1 and 2 lines must be lifted. I have had tentative language drafted which would expand the fund eligibility criteria to those lines which carry up to 5 million gross ton miles annually. I am hopeful that the subcommittee will give serious consideration to this concept as it deliberates on the bill.

[Mr. Bedell's prepared statement follows:]

STATEMENT OF HON. BERKLEY BEDELL, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF IOWA

Mr. Chairman, I would first like to commend you and the other members of the Transportation and Commerce Subcommittee for taking the time to hold these very important hearings today. It is imperative that we reverse the long-standing policy of "benign neglect" that has brought the U.S. rail transportation system to the brink of economic collapse. That is why I welcome this opportunity to make known my views with respect to H.R. 11979, the "Local Rail Service Assistance Act of 1978".

H.R. 11979 would provide for a number of badly-needed changes in existing law. These changes include: streamlining the procedures by which States receive federal funding for railroad branch line rehabilitation; giving the States more flexibility in allocating these funds to prioritized projects by minimizing federal involvement; and allowing the distressed lines to remain under private ownership.

As you know, Mr. Chairman, I represent a district whose economic vitality is in large part a function of the vitality of the rail lines that serve it. My farmers and elevator operators, in particular, have suffered a great deal in recent years because of the deterioration of rail branch lines and services. However, I know that I do not need to remind the members of this subcommittee that every American has a stake in the rehabilitation of our troubled rail transportation system.

That is why I feel so strongly about the need for enacting sound legislation at this time. Currently, only branch lines that are in an advanced stage of deterioration can receive federal assistance. The more economically viable lines are often allowed to gradually deteriorate due

to the lack of available private capital. In the final analysis, this approach has resulted in the misapplication of millions of taxpayers' dollars by assisting many lines that had little prospect of generating enough returns to justify the costs.

The measure being considered here today would modify this inefficient method of allocating funds so as to allow States to make grants or loans for branch line rehabilitation before the lines have deteriorated to such an extent that the ICC has given its permission to allow their abandonment. Under this proposal, lines that would be eligible for assistance are any of the so-called category one and two lines. Category one lines are those which the carrier estimates to be the target of abandonment within three years. Category two lines are those which are under study by the carrier as being potential abandonment cases. Thus, states would be allowed to channel assistance to lines that are not in such advanced stages of deterioration as that required by current law. The change is a significant step in the right direction, and I support it as far as it goes.

Unfortunately, H.R. 11979 does not contain sufficiently broad project eligibility criteria, with the result that much of its significant potential for improvement of rail services may not be realized. That is why many of us believe that H.R. 11979 should be amended so as to broaden the scope of this eligibility criteria further in order to allow a State to rehabilitate those branch lines that carry up to 5 million gross ton miles. If project eligibility were extended to branch lines that carry up to 5 million gross ton miles per year, States could use funds to rehabilitate lines before they reached the point of such acute economic deterioration that an inordinate amount of capital is required to salvage them. In this way, States would be given more leeway in prioritizing projects that would promote efficiency and would prove most cost effective.

I think that my own state of Iowa is a good example of why this amend-

ment is so badly needed. While Iowa has received a fair share of the available funds with which to rehabilitate branch lines, there will be very few projects on which to spend that allocation unless project eligibility is expanded to those lines that carry up to 5 million gross ton miles.

This lack of eligible projects is certainly not due to a lack of need for the funds. The Iowa State Rail System Plan has identified thirty branch lines with over 1200 miles of track as priority projects in need of rehabilitation. However, while these lines are in need of rehabilitation, they have benefit/cost ratios of 0.5 and up and have not been earmarked by rail companies as liable to be abandoned. Therefore, these projects would not be eligible for funding under H.R. 11979 as it now reads, and the State could not use the funds that have already been allocated to it. It would cost the state of Iowa over \$50 million to upgrade these lines, a burden which is beyond its reach to assume alone. Yet, these lines are vital and it would make far more sense to invest in their rehabilitation before they suffered total collapse.

I hope, Mr. Chairman, that I have managed to convey the message that H.R. 11979 as it now stands would not represent an improvement over existing law for Iowa and other states like it unless the criteria for project eligibility are expanded to include those branch lines that carry up to 5 million gross ton miles. The basic thrust of H.R. 11979 is to give States enhanced flexibility in apportioning their allotted rail line rehabilitation funds; thus, amending it to provide for the expanded scope of eligible projects would not detract from, but augment, its objectives. A rational, cost/benefit analysis of the implications of restricting States to only apportioning funds to lines already abandoned or earmarked for abandonment underlines the necessity for making the change that we are advocating.

Mr. Chairman, expanding the scope of project eligibility does not carry with it any hidden obstacles. It is a routine process for a determination to be made as to how many gross ton miles a branch line carries in a year. States would still be required to adhere to the established procedures for the formulation of rail system plans and to defend the selections on the basis of benefit/cost considerations. And, of course, the proposed change would in no way effect the amount of money that a State will receive, only the manner in which a State may choose to dispense its allocation.

For purposes of discussion and use as a point of reference, I have prepared amendment language which would address this problem. The subcommittee will likely want to make some changes in construction to reflect its understanding of the situation. Of course, if my office can be of any assistance as you continue to deliberate on this legislation, please feel free to call. Once again, I would like to thank you, Chairman Rooney, and all the members of this subcommittee, for your efforts in getting this vital legislation considered and acted on.

Mr. ROONEY. Thank you.
Mr. Abdnor.

STATEMENT OF HON. JAMES ABDNOR

Mr. ABDNOR. Thank you, Mr. Chairman. I too want to thank Mike for arranging this appearance and for letting South Dakota join Iowa. We have mutual problems, I assure you, when it comes to railroads.

I would like also to commend the subcommittee for holding these hearings and giving us consideration of our railroads as we are affected in rural areas just like you are in the urban areas, but speaking—

Mr. ROONEY. I do not live in an urban area. I live in Pennsylvania, but it compares to South Dakota.

Mr. ABDNOR. Then, I am happy to hear you have this fresh air and open country and can see for miles around.

Getting back to the point, Federal assistance is vital in maintaining branch line railroad service. You recognized this when considering the Railroad Revitalization and Regulatory Reform legislation.

In order to maximize the benefits accrued from the 4-R Act, more flexibility is needed to allow States to funnel these funds into lines they deem as top priority. I am proud to note that my home State of South Dakota was the first State in the Nation to complete its State rail plan, thereby being able to carry out this program.

However, unless this policy of increased flexibility is instituted, South Dakota's efforts, along with those of other affected States, will be hampered unnecessarily due to the current law.

Only 2 weeks ago the Milwaukee Railroad filed to abandon nearly 200 miles of its line in South Dakota. If a more flexible program had been in effect, perhaps this line could have been salvaged.

Altogether, over 50 percent of the rail lines in my State are classified as potentially subject to abandonment. These lines need assistance now, not after they have been abandoned.

Mr. Chairman, we must provide States with the necessary arsenal in order to combat the closing of branch lines. Economic assistance must be provided early enough to avoid deterioration of service which usually occurs on pre-abandoned lines.

As a result, railroads will continue to provide a fast, economical and energy-efficient method of transportation. Mr. Chairman, I just want to point out that a number of people where this 200 miles of line is being abandoned keep reminding me—and I know because I too am a farmer—that it will cost them over 20 cents a bushel more to ship their grain and produce to market at some of the exchanges in the country.

Railroads are vitally important. They have had a difficult time, but we do think by having the funds early enough in a plan, some of these could be salvaged and be of a tremendous benefit to our society.

Thank you very much. I shall bear in mind that Pennsylvania does have rural areas, I assure you.

Mr. BLOUIN. Our last panelist with us so far is Neal Smith, our colleague.

STATEMENT OF HON. NEAL SMITH

Mr. SMITH. Thank you, Mr. Chairman, members of the subcommittee, I am pleased to have this opportunity to appear before you this afternoon. You are to be commended for holding these hearings on this very vital subject of local rail assistance.

Under present law, States can use Federal rail branch line improvement subsidies only on those lines that have already been abandoned. I feel very strongly that H.R. 11979 must be amended so as to also permit Iowa and other States to spend these Federal funds on the economically viable and essential branch lines which carry less than 5 million gross tons annually and are good candidates for abandonment.

The State of Iowa has 1,200 miles of track on 30 branch lines with a benefit-cost ratio of 0.5 and which have been identified as priority projects for branch line rehabilitation under their rail system plan.

Almost all of these projects are at present ineligible for Federal assistance unless the above-mentioned change is made in the present law. It is just as important and less costly to save a line from being abandoned as it is to rebuild one that has already been abandoned.

I urge that the subcommittee give this bill and amendment favorable consideration as soon as possible in order that the States

will be able to get some construction work under way this calendar year and not lose 1 year's allocation.

Mr. ROONEY. Thank you, Mr. Smith.

Mr. BLOUIN. Mr. Chairman, the one member who has not shown up and we do not as yet have a copy of his testimony is Nick Rahall from West Virginia. I ask the record be kept open.

Mr. ROONEY. I spoke to Mr. Rahall. He has another commitment. I assured him his statement will become part of the record. I know his great concern in West Virginia.

[The material requested was not available to the subcommittee at the time of printing.]

Mr. BLOUIN. That was my request. Remember, we appreciate that.

[Testimony resumes on p. 40.]

[The following Congressmen who were unable to attend the hearing have submitted statements for the record:]

STATEMENT OF HON. THOMAS B. EVANS, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF DELAWARE

H.R. 11979, LOCAL RAIL SERVICE ASSISTANCE ACT OF 1978

Mr. Chairman, I want to join with my two colleagues from the Delmarva Peninsula, Mr. Bauman and Mr. Tribble, in urging this Subcommittee's close attention to the effects of H.R. 11979 on rail service in our region.

As I have previously pointed out in hearings before this Committee, the maintenance of adequate rail service on the Delmarva Peninsula is one of the most important economic factors facing the citizens of our three states. The main stem travels the length of Delaware and then crosses through Maryland and down the eastern shore of Virginia to cross the carfloat at the mouth of the Chesapeake Bay and then on to Norfolk and points south. What happens in Virginia or Maryland directly affects shippers and industries in Delaware. It is for that reason that we feel so strongly that rail problems must be met and solved on a regional basis, and I would hope that any legislation passed by the Congress would recognize the regional nature of the problem and its potential solutions.

As you may know, ConRail owns and operates the lines from Wilmington south to Pocomoke City, Maryland. At that point, the shortline carrier picks up traffic and carries it from Pocomoke to Norfolk. According to figures compiled by the shortline operators, some 12,000 to 15,000 cars pass through Delaware as a result of the shortline operation. Hence, Delaware has a vital stake in the future success of the shortline operator.

Since April 1, 1977, the Maryland and Delaware Railroad and the Maryland and Virginia Railroad have made tremendous strides in providing good rail service to Delmarva. 45,000 ties have been installed; the carfloat operations have been improved; and improved working relationships have resulted with ConRail and the four large connecting carriers in Norfolk. In fact, some have said that the Virginia and Maryland Railroad has become a national model for other shortline operators.

However, the formula proposed in this legislation would severely impact on the operations of the shortline, and thus upon on all rail operations on the Delmarva Peninsula. The legislation will mean that track rehabilitation efforts will fall far short of our class two objective below Pocomoke. I would urge that the existing allocation formula be maintained. In addition, any formula should allow the possibility for states to provide excess funds to a neighboring state for the improvement of the region. As I said before, the railroad problems of Virginia and of Maryland are by definition the problems of Delaware. If Delaware has the good fortune to have excess federal funds available, then it should have the opportunity to transfer those funds to eligible rail projects in the other two states. A chain is only as strong as its weakest link and states ought to have the opportunity of working together to make all their links equally strong.

STATEMENT OF HON. TOM HARKIN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF IOWA

Mr. Chairman and members of the Committee, I appreciate having the opportunity to appear before you today with a number of our colleagues to share with you our views concerning the need to make an important change in the local rail service assistance program.

As you know, I have joined several of my colleagues in recommending that H.R. 11979 be amended to permit the states to utilize federal funds on branch lines that are economically viable and have not gone through abandonment or have been classified under Category 1 and Category 2 of the System Diagram Map.

Rather than adhering to the present eligibility criteria under which the Department of Transportation Act authorizes assistance to branch lines only after they have been abandoned, we are suggesting that the states be permitted some latitude to apply for federal assistance for the lines they have identified as "priority projects" in their state rail plans. Specifically, we recommend allowing lines which carry 5 million annual gross tons to be eligible for assistance.

Support for this change in the law which has been expressed to you by my colleagues in the Iowa Congressional delegation acknowledges the lead taken by the Iowa Department of Transportation among the states in branch line rehabilitation. At the present time we have 14 rehabilitation projects involving over 700 miles of branch lines under contract in cost share programs through the Iowa DOT, shippers and the railroads. The total

cost of this 4 year program is \$21.5 million. In the process of reexamining our branch line service and its importance to local economies we have found that once railroad companies decide to shut down certain lines it is almost always too late to save them at that point. Under the current requirement of prior abandonment most of the priority projects, as identified in Iowa's rail plan, will be ineligible for federal assistance unless the criteria is changed to allow branch lines with a density of 5 million gross tons annually to be eligible.

Again, citing the State of Iowa as an example of the present inflexibility of the law, the price tag for needed repairs on lines identified by the Iowa rail plan as priority projects for rehabilitation is estimated at \$52 million. Virtually all of these projects are presently ineligible for federal branch line assistance because the rail companies have not filed for abandonment under ICC Category 1 or 2. Yet many of these branch lines are essential to local economies and offer public benefits which we should consider carefully, in determining how we direct federal financial assistance.

In requesting this change in the law, we are not asking for increased funding for the program, but rather increased flexibility with which rail officials in the states can undertake rehabilitation of priority branch lines in a timely, planned manner rather than having to wait until the line is actually abandoned.

Mr. Chairman, I therefore urge you to support the change that we have recommended in project eligibility criteria to allow branch line assistance to lines which carry up to 5 million gross tons annually.

Thank you.

STATEMENT OF HON. WILLIAM S. COHEN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MAINE

CHAIRMAN ROONEY AND MEMBERS OF THE SUBCOMMITTEE ON INTERSTATE AND FOREIGN COMMERCE, AS YOU ADDRESS THE PROBLEM OF RAILROAD ABANDONMENT, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO SHARE MY THOUGHTS ON THIS SUBJECT WITH YOU. THE DEPARTMENT OF TRANSPORTATION ACT AMENDMENTS OF 1978, H.R. 11979, PROVIDE FEDERAL ASSISTANCE TO UPGRADE LIGHT DENSITY BRANCH LINES, ENABLING THE CONTINUED SERVICE OF THESE LINES WITHOUT FURTHER FEDERAL ASSISTANCE. I BELIEVE THAT IT IS IMPORTANT FOR US TO RECOGNIZE THIS MATTER AS NOT ONLY A CONCERN OF THE RAIL INDUSTRY, RAIL LABOR, AND THE TRANSPORTATION SYSTEM OF THE UNITED STATES, BUT AS A CONCERN OF OUR STATE AND NATIONAL ECONOMIES AS WELL.

I SUPPORT LEGISLATION ALLOWING STATES TO MAINTAIN LIGHT DENSITY BRANCH LINES HAULING 5 MILLION TONS OR LESS WHICH ARE DETERIORATING AND THUS APPROACHING ABANDONMENT STATUS. AT PRESENT, FEDERAL MONIES ARE AVAILABLE ONLY TO THOSE RAILROADS WHICH HAVE BEEN DECLARED "ABANDONED." ALTHOUGH MANY LINES INDICATE PROMISE OF FUTURE VIABILITY IF THEY ARE REHABILITATED, OWNERS OFTEN LACK THE NECESSARY RESOURCES TO PERFORM THE NEEDED MAINTENANCE. MOREOVER, THE SYSTEM DIAGRAM PROCESS IS INADEQUATE IN THAT SOME RAILROADS DO NOT PUT LINES INTO ICC ABANDONMENT CATEGORIES FOR FEAR OF IMPAIRING SHIPPER CONFIDENCE. UNDER THE PROPOSED LEGISLATION, THE TIMELY USE OF REHABILITATION MONIES

WOULD SERVE AS A POSITIVE INCENTIVE TO AVERT ABANDONMENT AND CONTINUE RAIL SERVICE.

I BELIEVE THAT BY SUPPORTING SUCH LEGISLATION WE CAN SERVE THE PUBLIC INTEREST BY ASSISTING THESE VALUABLE BRANCH LINES WHICH ARE OWNED AND OPERATED BY RAILROADS AND DECLINE BECAUSE THEY ARE NOT PROFITABLE ENOUGH TO ATTRACT PRIVATE CAPITAL FOR THEIR IMPROVEMENT. IN AROOSTOOK COUNTY IN THE STATE OF MAINE, THREE LINES ON THE BANGOR-AROOSTOOK RAILROAD WHICH HAUL PAPER, WOOD FIBER, PETROLEUM, CHEMICALS AND FOOD AND PROVIDE ESSENTIAL SERVICE TO THE NORTHERN THIRD OF THE STATE WOULD BE ELIGIBLE TO RECEIVE PRE-ABANDONMENT ASSISTANCE. THESE LINES INCLUDE THOSE GOING FROM: LIMESTONE TO CARIBOU; FORT FAIRFIELD TO PRESQUE ISLE; STOCKHOLM TO CARIBOU.

LASTLY, I AM IMPRESSED BY THE OVERALL PURPOSE OF SUCH LEGISLATION. THE PROBLEM OF RAILROAD ABANDONMENT IS BEING REMEDIED BY A SENSIBLE, RATIONAL REALLOCATION OF OUR FEDERAL FUNDS. THE PROPOSED PROGRAM REPRESENTS AN APPROPRIATE USE OF FEDERAL MONIES IN THAT NOW FUNDS ARE BEING CHANNELLED TO AN AREA WHERE BOTH THE BENEFITS AS WELL AS THE NEED ARE THE GREATEST AND THE COST IS AT A MINIMUM. I AM CERTAIN THAT MAINE AND THE NATION WOULD MAKE USE OF THIS FLEXIBILITY TO MAINTAIN AND IMPROVE THEIR RAIL SERVICE.

THANK YOU FOR ALLOWING ME TO SHARE IN THESE DELIBERATIONS.

STATEMENT OF HON. JOSEPH M. MCDADE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF PENNSYLVANIA

MR. CHAIRMAN, I THANK YOU FOR HOLDING THESE HEARINGS ON RAIL BRANCH LINE LEGISLATION WHICH IS SO IMPORTANT TO OUR STATE AND TO OUR NATION. I AM PARTICULARLY IMPRESSED BY THE PROVISION WHICH PROVIDES FOR CHANGES IN CURRENT LAW THAT ALLOWS REHABILITATION AND AVOIDABLE COST REIMBURSEMENT FUNDS TO BE USED FOR THE BENEFIT OF SHIPPERS ON LINES NOT YET ABANDONED. ADDITIONALLY, I FAVOR AN INCREASE FROM ONE MILLION GROSS TONS TO FIVE MILLION GROSS TONS AS THE USE LEVEL FOR FUNDING ACCEPTABILITY.

I THINK THIS PROPOSAL MAKES SENSE FOR EVERYONE. IT MAKES IT POSSIBLE TO PREVENT MAJOR DISLOCATIONS OF RAIL USERS INSTEAD OF THE CURRENT APPROACH WHICH ONLY HELPS AFTER THE FACT. IT PREVENTS THE LOSS OF SHIPPER TRAFFIC TO ALTERNATE MODES OF TRANSPORTATION AND THEREBY, AT LEAST IN THE NORTHEAST, HELPS TO RESTORE SOME OF CONRAIL'S LOST MARKET SHARE. IT ALSO PREVENT MISUSE OF FEDERAL FUNDS BY ALLOWING EXPENDITURES BEFORE A BRANCH LINE BECOME UNSALVAGEABLE BECAUSE OF NON-UTILIZATION BY CONRAIL.

I AM CONCERNED, MR CHAIRMAN, ABOUT THE EXTENT TO WHICH REHABILITATION FUNDS HAVE BEEN EXPENDED IN RELATION TO THE AMOUNTS AUTHORIZED AND APPROPRIATED BY THIS CONGRESS. IT APPEARS THAT THE 1981 CUTOFF DATE FOR EXPENDITURES MAY EFFECTIVELY PREVENT USE OF THE FUNDS WE CONSIDERED SO NECESSARY TO PRESERVE LOCAL RAIL TRANSPORTATION. THIS PROBLEM, COUPLED WITH THE FAILURE OF THE DEPARTMENT OF TRANSPORTATION TO CREATE A FOSSEL FUEL RAIL BANK PLAN, LEADS ME TO BELIEVE THAT A CAREFUL EXAMINATION OF THESE QUESTIONS SHOULD SOON BEGIN.

MR. CHAIRMAN, I THANK YOU AND YOUR ABLE SUBCOMMITTEE FOR THE OPPORTUNITY TO APPEAR.

STATEMENT OF HON. LES ASPIN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WISCONSIN

I want personally to support and associate myself with Rep. Michael Blouin's remarks concerning the "Local Rail Service Assistance Act of 1978" (H.R. 11979), at today's hearings of the Interstate and Foreign Commerce Subcommittee.

The bill makes a good beginning with its provision for preabandonment assistance. Since Wisconsin ranks third in the nation, as measured by rail miles being considered for abandonment, the provision is of crucial interest to us.

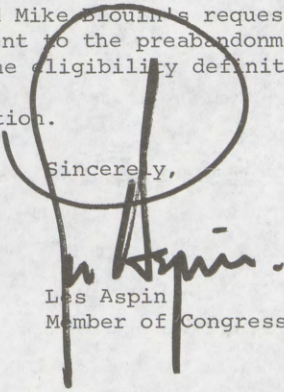
Unfortunately the present definition of who qualifies for preabandonment assistance is so narrowly conceived as to reduce considerably the probable impact of the program. The use of the suggested ICC classification (1 and 2) would have the assistance delivered to rail areas at a point which may be too late to do any good.

Thus, the eligibility definition in the preabandonment provision of the Act, needs to be broadened so as to enhance flexibility and increase effectiveness by the timely provision of assistance.

I therefore support my friend Mike Blouin's request that there be a technical adjustment to the preabandonment provision in the Act broadening the eligibility definition.

I am grateful for your attention.

Sincerely,



Les Aspin
Member of Congress

LA/gcw

STATEMENT OF HON. DAVID R. OBEY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WISCONSIN

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM PLEASED TO SEE THAT THIS COMMITTEE HAS TAKEN THE INITIATIVE TO ORGANIZE A NEW RAIL PLAN THAT WILL GIVE STATES A CHANCE TO BEGIN REHABILITATION OF SUBSTANDARD TRACK BEFORE CONDITIONS DETERIORATE TO THE POINT WHERE ABANDONMENT IS THE ONLY ALTERNATIVE. IT IS CRUCIAL THAT WE DO SOMETHING TO SLOW THE DETERIORATION OF OUR RAILROADS NOW.

TRANSPORTATION ANALYSTS AGREE THAT TRAINS COULD BE THE MOST ENERGY-EFFICIENT MOVERS OF LARGE VOLUME LOADS IN THE U.S.-- BUT THE RAIL TRANSPORT SYSTEM CAN HARDLY BE CALLED EFFICIENT TODAY WHEN UNREPAIRED TRACK OFTEN LIMITS RAIL TRAFFIC SPEEDS TO LESS THAN 20 M.P.H. UNLESS WE MAKE FUNDS AVAILABLE TO REPAIR THE TRACK WHILE IT IS STILL REASONABLY FUNCTIONAL, RAIL TRAFFIC WILL COME TO A COMPLETE STOP.

A FEW WEEKS AGO, THE WISCONSIN SECRETARY OF TRANSPORTATION POINTED OUT TO ME THAT IF FEDERAL FUNDS FOR RAILROAD REHABILITATION WERE MADE AVAILABLE EARLIER--BEFORE ABANDONMENT--THE NECESSARY REPAIRS WOULD BE FEWER, COSTS WOULD BE LOWER, AND ALREADY SHORT FEDERAL FUNDING WOULD GO FARTHER. WISCONSIN'S GOVERNOR MARTIN SCHREIBER ALSO STRESSED THE IMPORTANCE OF TRYING TO SAVE TRACKAGE "BEFORE ABANDONMENT RAISES ITS UGLY HEAD" WHEN HE TESTIFIED BEFORE THE SENATE SURFACE TRANSPORTATION SUBCOMMITTEE ON THIS SUBJECT.

I ALSO SPOKE WITH THE WISCONSIN REPRESENTATIVE FROM THE NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS. HE ENDORSED THIS PROPOSAL AND ALSO EXPRESSED AGREEMENT WITH ANOTHER OF YOUR PROPOSED AMENDMENTS THAT WOULD ALLOW STATES TO APPLY FOR FEDERAL ASSISTANCE ON LINES WHICH CARRY FIVE MILLION ANNUAL GROSS TONS. THIS WILL GIVE STATES SUCH AS WISCONSIN MORE LEEWAY TO REHABILITATE SMALL BUT CRUCIAL BRANCH LINES. WISCONSIN RAIL OFFICIALS ALSO SUPPORT THE CONTINUED USE OF SYSTEM DIAGRAM MAP MILEAGES AS THE BASIS OF FEDERAL REHABILITATION ALLOCATIONS. THIS METHOD OF DISTRIBUTING MONIES TO THE STATES ENSURES THAT FUNDS GO WHERE THE NEED IS GREATEST.

I WHOLEHEARTEDLY SUPPORT YOUR AMENDMENT FOR A BRANCH LINE PRESERVATION PROGRAM THAT WOULD AUTHORIZE GRANTING OF FEDERAL-STATE AIDS FOR REHABILITATION OF LINES LIKELY TO BE AUTHORIZED FOR ABANDONMENT. IF WE ARE TO STOP THE RASH OF DERAILMENTS CAUSED BY FAULTY TRACK AND START TO PUT TRAINS BACK TO WORK FOR THIS COUNTRY, WE HAVE TO BEGIN WORKING ON THE RAILROAD AGAIN.

Mr. ROONEY. I can refer this question to any of the panelists. I have heard of the Iowa plan for branch lines since we first considered the assistance act under the 4-R Act. How large is the program now?

Mr. GRASSLEY. It is \$11 million. That is the State's share of it. Total \$23 million, including the shippers and railroads.

Mr. ROONEY. The last I heard it had \$3 million and repayment by shippers and railroads was current, is that correct?

Mr. GRASSLEY. Yes. That \$3 million was the first year's appropriation. I think 1974 was the first year.

Mr. ROONEY. Regarding the suggestion for 5 gross ton miles or less per year, how many additional miles of branch lines would become eligible for assistance under your suggestion?

Mr. BLOUIN. Nationwide or in the State of Iowa?

Mr. ROONEY. Iowa.

Mr. BLOUIN. 1,275 of which are eligible right now.

Mr. ROONEY. I recognize the gentleman from Illinois, Mr. Madigan.

Mr. MADIGAN. Thank you, Mr. Chairman. I, like the chairman, can address this question to any member of the panel who wishes to respond, but I would like to have some indication from every member of the panel as to whether or not they could support what I would like to suggest.

As you are no doubt aware, under the present law in order for a State to actually gain possession of a branch line, the railroad must go through the abandonment process with the Interstate Commerce

Commission and the abandonment must be approved by the ICC before the State can take over the line.

One of the effects of that is that during that process the line continues to deteriorate even further than it is at the point the railroad decides it no longer wants it. We are considering asking the chairman to add to this bill a provision that would allow a railroad and a State to agree on the State taking over a line without any abandonment procedure, without any involvement at all on the part of the Interstate Commerce Commission, just a transfer directly from the railroad to the State.

I would be interested in knowing how the panel feels about that proposal. Mr. Bedell, I would be happy to have your response.

MR. BEDELL. I think the more flexibility we give, the better, and if the State and railroad both agreed that they wanted to do that, I see no reason that Congress should not make it possible for them to do so.

I happen to personally think the Iowa plan where it can be instituted—which still leaves the railroad with the line and gives the financial help in terms of a loan to get on its feet—is the preferable manner to go but if the state and the railroad both agree that they want to go the other way, it seems to me the more flexibility you give at the lower level to do whatever seems to be in the best interest to the people who are closest to the problem, the better the legislation is.

MR. MADIGAN. Does anybody else have anything?

MR. BLOUIN. I would not disagree with anything Berkley has said. I think flexibility is the key option. What is good for Iowa may not be good for Illinois even though only a river divides us. Our approach to transportation may put more emphasis on rail than trucks compared to Illinois.

That is something that the State and local community should work out and the law itself should not have walls in front of the determination of what is a priority.

In other words, priorities ought not be set on the basis of what dollars we can get our hands on but what the transportation needs really are of a given area of the country. And from that, I think flexibility should come.

I have no objection at all to what you are saying. As a matter of fact, I think it makes a lot of sense in some instances to go even below that, to plug not just States into being able preabandonment to take over an actual track change, but to allow a couple of local communities and the shippers along the way to find some way of plugging into the program, to maintain a branch line or a spur that gets them into a main route.

As a last alternative to losing any form of railroad connection, I think it makes a lot of sense.

MR. MADIGAN. I would also like to ask—I am making an assumption that the hopper-car situation is as terrible in Iowa as it is in Illinois.

MR. GRASSLEY. Worse. Illinois Central keeps more of their cars in Illinois than in Iowa.

MR. MADIGAN. You will not find many country elevator operators in Illinois that will agree with that. Maybe we are dealing with a railroad that does not have any hopper cars. We just started think-

ing about this—trying to find some way for the Government through this bill to become involved in helping to create a company, a quasi-government entity, that would exist for the purpose of acquiring new covered hopper cars and would then make those hopper cars available to railroads on a lease basis.

Is that the kind of thing that you gentlemen would be interested in supporting?

Mr. BEDELL. If you do that I would hope you would also make it possible for that group to repair cars at this time. Part of the problem is that there is a large number of boxcars today which are not being repaired to go back into service and I was told that we can anticipate 20,000 boxcars per year being taken out of service.

There are a number of my elevators which cannot handle hopper cars and have to have the boxcars in order to be serviced and one of the big problems I found in our hearings was the present rules only allow 98 cents per diem payment to the owners of those boxcars that have depreciated off because of the years, their value.

So, that for them to pay \$7,000 to repair them and then have to turn them over to other lines and get back 98 cents a day does not make very much sense. The ICC has indicated an interest in the possibility they will increase that per diem rate so there would be somewhat more incentive. But I would hope that more than just buying boxcars—I mean hopper cars—because the cases I have are the hopper cars that are produced are going to be purchased—if you would go that way you would also provide some opportunity for financing in some manner of the repair of cars that are now abandoned and not being put into use.

Mr. SMITH. Mr. Madigan, I just think that you are on the right track. It is very difficult to think that we are going to just continue to pour Government dollars into railroads that are in all other kinds of businesses. You mentioned Illinois Central. They are in a conglomerate that has, I think, 40 or 50 subsidiaries. They are building apartment houses in Chicago now.

There is every incentive to spin off any property they can and to invest in something more lucrative than the railroad business. I think we have to face it sometime or another. We have to have probably some tracks as well as a lot of equipment that is financed by the Government.

Perhaps and hopefully, we can get the money back by charging for the use of it but I think you are on the right track.

Mr. GRASSLEY. Let me reemphasize a statement Berkley made, that this should not be looked upon as the final solution to any one of these problems. It is going to have to be coupled with a better management and trafficking of existing cars. And what we need to work toward is greater efficiency of the capital investment we already have, maybe coupled with or obviously coupled with more cars, your route or any other route.

But, that in and of itself, from hearings that Berkley and I and other Iowa Congressmen have had, is not going to be the simple answer to the question. It is very short term.

Mr. BLOUIN. Mr. Chairman, if there is no objection, Iowa Department of Transportation has asked to comment on this, if I could bring Les Holland, director of the railroad division, up.

**STATEMENT OF LES HOLLAND, DIRECTOR, RAILROAD
DIVISION, IOWA DEPARTMENT OF TRANSPORTATION**

Mr. HOLLAND. Mr. Chairman, I appreciate the opportunity to just say a couple of words on this point because it is something the Iowa legislature has been dealing with. As a matter of fact, they have a \$50,000 study proposed which we are to conduct between now and January of 1979 regarding this question of whether or not the State should get in the business of acquiring flatcars, jumbo hoppers and turning around and leasing them to shippers.

We have not made a decision. We do feel that it is something that a lot of people feel is the solution. We just came from the Senate Subcommittee on Transportation an hour ago under Senator Long's chairmanship and testified that we did not feel that acquiring additional cars is going to take care of these peak demands.

Perhaps it could but the question is whether the railroads could afford or anyone could afford to put that kind of money, \$35,000 or \$40,000, in the type of shortage you are talking about.

You are looking at some 30,000 cars to meet that peak demand. Can you really afford it and then let them sit there for 6 months to 1½ years? If you had that type of program, who is going to be the first to be dropped when there is no demand for those cars?

Certainly, they are going to continue to use the railroad cars and they are going to continue to use the leased cars. These are some things that need to be looked at and studied before too much is done in this particular area because it is a substantial investment.

Mr. ROONEY. Let me ask you a question. I understand that last year they did not like the price of the crops that were yielded. As I understand it they might have shipped the two seasons crops at one point and did not, is that true?

Mr. HOLLAND. Yes, that is true.

Mr. ROONEY. I want to assure you gentlemen that regarding the discussion on car utilizations, this committee is going to hold hearings on the 25th and 26th of July on this very subject because it is a subject that is of great concern to me.

Mr. BEDELL. I think that statement is only partly correct. Sure, they ship more this year for a number of reasons but I really think to say we ship 2 years' crops in 1 year would be a misstatement. And I think for us to plan accordingly would be a misstatement.

The fact is that we have some elevators that are even out of service today because of explosions down in the port area and what we can ship is greatly dependent on how much we cancel and how much we can load in terms of export shipments and at least the information that I have obtained in the hearings I have had is that we can expect our needs for cars to increase over the next 5 years.

It is not a case where this year was a double year and then we can expect it to drop back.

Mr. MADIGAN. If the chairman would yield.

Mr. ROONEY. It is your time.

Mr. MADIGAN. No, it is your time.

Every year under normal circumstances, under what you would call a normal harvest and a normal movement of that normal harvest, the problem with transportation has become worse each year, is that not correct?

Mr. BEDELL. That is correct.

Mr. ABDNOR. Mr. Chairman, South Dakota's problems are much like Iowa's and probably the situations are to be found on the same subjects that we have been talking about. I might say, Mr. Madi-gan, someone must lease cars already.

I do not know who. My local elevators in my little town leased four or five over 1 year ago. I do not know who they leased them from. I know that is the only way they could get them. Boxcars are the premium. The worst part about it, the solutions, whatever they are to be, cannot be put off forever.

Each month goes by, more lines are dropped that might be salvaged, and the energy crisis, and what we have facing us in the future—it is necessary we get on with the show here. We appreciate your forward thinking on some of these problems.

Mr. HOLLAND. Would I be in order to add a comment? Under Title V of the 4-R Act, there is money available to the railroads under two programs, one of which they can use to acquire cars, so you have already provided that ability to them if the FRA approves their application.

A number of the railroads have made applications. They have had approval also. The ability is there to acquire cars utilizing Federal funds. We feel that the leasing companies and the railroads can, if there is a demand and there is a market there. They can fill that void except in these peak situations.

And the last thing I want to say in our testimony is that this morning, we did urge Senator Long's committee to consider a better way of trying to keep track of our—not keep track but to forecast when these shortages will come about. This is not the first time, as you know.

Every 3 or 4 years we have this peak situation come up and everybody comes running in. We are suggesting they take a look and consider implementing a simulation model which will help forecast these things and to help address the problem before it happens.

Now, the ICC addresses the problem after it has happened by issuing service orders which they readily admit they do not know what the impact will be as far as helping the situation. They cannot follow up to find out whether or not their service orders helped the situation.

We feel very strongly not just to look back and continue to do the same thing but let's look ahead and try to come up with something that will be workable, that will help us forecast and address the problem before it is with us. We have this model before the Department of Agriculture, ICC, committee staffs and others to review and carefully examine.

We think it has merit and we think that is the way to go. Thank you.

Mr. ROONEY. The gentleman from New York is recognized.

Mr. MURPHY. No questions.

Mr. ROONEY. Thank you very much, gentlemen.

Our next panel will be headed by Robert E. Bauman, State of Maryland, and Mr. Paul Tribble of Virginia.

STATEMENTS OF HON. ROBERT E. BAUMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND; AND HON. PAUL S. TRIBLE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. BAUMAN. Mr. Chairman, thank you very much for permitting us to appear this afternoon. We are glad to be back before your subcommittee.

I would have to reserve judgment to see the final product of your labors but I think the subcommittee well knows the interest of the three members of the House from Delmarva in any Federal legislation dealing with what was once the Penn-Central line.

And since our economic stability and well being depends very much on the rail service provided to that area, I would like to address myself briefly, I have submitted a statement [see p. 47] to the specifics of the legislation before us and also to offer a word of caution to the subcommittee to take into account the impact that this legislation may have on specific areas of the United States such as Delmarva Peninsula, albeit, unintended by the authors of the legislation.

As you know, the majority of rail service provided in my congressional district is dependent upon a short line operator, the Maryland & Delaware Railroad and this short line connection is with the main ConRail service provided from Wilmington, Del., to Pocomoke City, Md., at the Virginia-Maryland line.

Below that a sister company, the Virginia & Maryland Railroad, provides service through my colleague, Mr. Tribble's, district and the entire rail system is an entity which in order to survive must be treated in a regional concept.

So, we have ConRail as well as private short lines operating under the existing law and subsidized in part by local shippers, the Federal Government and the State government. The short line operation has had a very difficult time because of 20 years of neglect on repair work by the Penn-Central.

As I noted, a large part of the cost of operation now is being borne by the State and local interests and this will, of course, increase. Only recently, we faced a crisis in my own district; there was a possibility that several of the lines might be terminated as the FRA takes a close look at the problems.

I have to emphasize to you today—and I know my colleague from Virginia will also—that although I am here pleading for service in my district and Maryland and the impact your bill will have on that, without that Virginia connection, the service from the Maryland State line south being provided by the other short line operator, on Delmarva, rail service could well collapse because the alternate north-south route to the Washington-Fredericksburg-Richmond service on the western side of the bay is through Delmarva, including the car float that runs from Cape Charles to Little Creek. If this is in fact lost as a result of the changes that your legislation may make, all of the service will probably suffer and eventually we may well lose not only the short lines in Maryland but a good portion of the service in lower Delaware as well.

So, you can see the scope of the problem that we face. I would like to comment on the funding formula in the bill. The provision which allocates the two-thirds of the appropriated funds for assist-

ing those lines which have potential for abandonment obviously to us does not address the problems of the short line operators already existing.

One-third of the funds, as I understand, would be reserved for those lines already operating and providing these needed services. It seems to us that the percentages should be reversed rather than allocating—the majority of the funds to an unknown amount of trackage.

We know the problems we have with existing short line operations. I also understand that if the bill as presently drafted goes into operation, there would be a substantial amount of money lost for the Virginia & Maryland Railroad operating the segment in Virginia and although the Maryland Department of Transportation is now assessing this there could be a significant loss of assistance to the Maryland lines as well.

I would like to add one other point and that is that a need for rehabilitation on those lines is acute. We have faced the situation in recent weeks where the Federal Government has proposed a fine against the short line operators because of the condition of the rails over which they have no responsibility.

The State has been slow in getting Federal funding and literally, if this new legislation changes the formula, it could be disastrous.

I would like very much to commend to you the testimony you will hear this afternoon, from Mr. William Withuhn. He is vice president of both of our short line operations on the Delmarva Peninsula and he can give you a much more detailed assessment of the economic impact that the bill now written will have. It could be very disastrous.

[Mr. Bauman's prepared statement follows:]

STATEMENT BY THE HONORABLE ROBERT E. BAUMAN BEFORE THE HOUSE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE IN REFERENCE TO
H.R. 11979, LOCAL RAIL ASSISTANCE ACT OF 1978 ON JULY 12, 1978.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to share with you my thoughts on H.R. 11979, the Local Rail Service Assistance Act of 1978. Any legislation of this nature is of vital interest to me since the majority of rail service in my congressional district is provided by a private shortline operator that came into existence under the provisions of the 3R and 4R Acts after the exclusion of nearly all of the rail lines from the Consolidated Rail Corporation plan. Without this shortline operator, the Maryland and Delaware Railroad, a significant number of businesses in my district would be without rail service and the economic life of many people and many small communities would suffer considerably.

The Shortline operation has had a difficult time due in large measure to the condition of the track that was the legacy of twenty years of neglect by the Penn Central. Under the original diminishing subsidy arrangement from the federal government, local units of government, joined by shippers, have had to bear a significant cost for rail service, much of it below Class I standards. Only as a result of the serious threat of the complete loss of this rail service on several lines has the State of Maryland and the Federal Railroad Administration taken a more critical look at the importance of this rail service.

Due to the geography of the Delmarva Peninsula, the rail

problem must be viewed in a regional context. Without the north-south through route across the Chesapeake Bay in Virginia, rail service will not survive on the Peninsula. As a result, the "Virginia connection" is absolutely essential to a viable rail system. Without it Delmarva rail service will collapse. Under the provisions of this bill, Virginia stands to lose considerably if the allocation formula in this bill is not adjusted. The Virginia and Maryland Railroad, sister of the Maryland and Delaware, had made considerable progress in the level of service it is providing but much remains to be done in the area of rehabilitation. As I understand it, Maryland shortlines would also lose money.

Without commenting further on the complicated funding formula structure of the bill, the provision which allocates the two-thirds of the appropriated funds for assisting those lines which have potential abandonment does not address the problems of those shortlines already operating. One-third of the funds would be reserved for those lines already operating and providing the needed services. It would seem to me the percentages need to be reversed, rather than allocating the majority of funds to an unknown.

Rehabilitation has been the key to success for the shortline operator and the lack of rehabilitation has been the source of much of the problem in the past several years. The condition of the track was much worse than originally thought and the past several hard winters have seriously aggravated the problem. The section of the bill on rehabilitation is, at best, ambiguous

and specific provisions are needed in the bill to insure that this critical factor in the rail problem in the East is adequately addressed.

You will be hearing testimony from officials of the V & M and the M & D later in the hearings. Their assessment of the problem is invaluable as they are best able to elaborate on the day to day operations of the railroad and the factors that will contribute to their success or failure. They are to be commended for the dedication and public spirit that has been demonstrated in attempting to provide rail service under the most adverse conditions, for which they had no responsibility. The railroads need help and it is my feeling the shortline operators can best determine what that help is.

I plead with the committee not to adopt any legislation that will only aggravate the situation and unless this bill is drastically amended in many respects that is exactly what will happen.

STATEMENT OF HON. PAUL S. TRIBLE, JR.

Mr. TRIBLE. Mr. Chairman, I thank you for the opportunity to testify along with my colleague, Congressman Bauman, from Maryland. Part of my district in eastern Virginia includes the eastern shore of Virginia through which an important railroad artery runs that serves the districts of Delaware, Maryland, and Virginia. And service in any one of those component parts is absolutely necessary to the whole.

Rail service in my own congressional district in Virginia is provided by private short line operators, the Virginia & Maryland Railroad, which came into existence under the provisions of the 3-R and 4-R Acts.

Without these short line operators a significant number of businesses in my district would be without rail service and the life of my constituents would be adversely affected.

The proposed allocation formula in the legislation presents serious problems for some of the States such as Virginia, who are struggling to "turn around" lines which are in the abandoned category. The immediate problem which Virginia and other States have is with lines which have been declared eligible for abandonment and not with lines which may become abandoned at some future date.

Although authorizing funds to be used on lines declared "potentially abandonable" is laudatory, the emphasis is reversed. The two-thirds factor should be applied toward those lines for which abandonment applications have been filed rather than toward lines "potentially abandonable." The remaining one-third factor could then be applied to those lines which may or may not at some

future date be a candidate for abandonment. Such action would establish the proper order of priorities.

I would ask the committee to closely review the areas of concern that we have sketched here today and I would ask the committee to pay special attention to the testimony of Mr. Withuhn, who is the president of the short line operators that operate in Virginia and in Maryland.

And, again, let me thank you for the opportunity to testify here today.

Mr. ROONEY. Thank you, Mr. Bauman and Mr. Tribble. I yield to the gentlelady from Maryland who is very much concerned about the Delmarva area.

Ms. MIKULSKI. Thank you, Mr. Chairman. First, I would like to clarify a point, Mr. Bauman, made in terms of the fines that you just said had been placed on a railroad. Could you tell me who has been fined, and by whom?

Mr. BAUMAN. The Maryland and Delaware short line operator has been assessed a \$12,500 fine, I believe, for carrying hazardous substances over a spur line which is not up to the condition required for that kind of commodity to be transported. It is a "Catch-22" situation. The short line operator is the lessee under the Federal law. He is not required to do the rehabilitation as I understand it.

The State of Maryland is supposed to provide that funding. They have not provided it. So, here is the lessee caught in a situation.

Ms. MIKULSKI. But by whom are they fined?

Mr. BAUMAN. Federal Railway Administration.

Ms. MIKULSKI. That is something which I would like to followup on with Mr. Sullivan later on. When we talk about the short line railroad in the Delmarva Peninsula, how dependent is that Delmarva economy on the continuation of that branch line? Can you place any kind of dollar value on that or estimate the number of businesses that are affected?

Mr. BAUMAN. I would say to my colleague, I am sure Mr. Withuhn could give you the dollar value, but I can tell you for the shipment of bulk commodities, which are badly needed, including fertilizer for the agriculture community, one of the largest commodities in amounts shipped, it is essentially to have this service and a number of businesses would indeed have to close their doors if in fact this rail service is cut off.

Of the three spurs operated in my district, one of them is economically viable. The other two are not, but they probably will be when they are raised to a higher class and the speed is raised to 25 miles an hour. But it would be very disastrous for a number of industries.

Ms. MIKULSKI. Do you have any idea how close the Delmarva short line railroads are to being self sustaining?

Mr. BAUMAN. As I understand it, Mr. Withuhn can comment on that. The Virginia and Maryland segment in Mr. Tribble's district has broken even or made a slight profit in the last 2 months for the first time, an unheard of fact, something Penn-Central has not done for two decades.

I do not believe any of the three Maryland spurs have reached that category yet but with improved trackage and rehabilitation

that potential does exist and more shippers will use it with reliability and faster speeds.

I would tell my colleague from Baltimore, I had occasion to ride from Federalsburg to Hurlock—she will appreciate that—and a distance on the short line a few months ago. At my request, I rode in the cab of the train, the first time I had ever done that and realized a lifelong ambition.

I do not think it took more than an hour to go the 18 miles that was covered, 18 or 20 miles, mainly because of the condition of the track and the speed that was required.

Ms. MIKULSKI. What you are saying is the railroads are either breaking even or they are on the verge of it. With this type of funding formula that would adversely affect the short lines in the Delmarva area, we really would adversely affect the rail improvements already made.

Mr. BAUMAN. It would completely destroy the development already made because none of the short line operations will be viable if the formula is changed in the manner proposed in the bill and, further, it will certainly waste the money that ConRail has proposed to spend in rehabilitating the last section of trackage which they have guaranteed me they will do this fall from the Delaware line down to the Virginia line.

All of that will be lost.

Ms. MIKULSKI. Mr. Tribble and Mr. Bauman, do you feel if we inserted a grandfather clause in these proposed formula changes, for the Delmarva railroad, would that meet your concerns?

Mr. BAUMAN. I am not about to recommend to the committee with their staff of experts what exact formula ought to be applied. My main purpose in coming was to suggest the formula in your bill does have to be changed to meet the situations which were not perhaps in mind when the bill was drafted. The effect would be drastic on our area.

Ms. MIKULSKI. So, your biggest concerns would be with the formula as stated. You feel that it provides funds at the wrong end of the stick, as Congressman Tribble has outlined.

Mr. BAUMAN. Yes.

Mr. TRIBLE. I think the point, my colleague, is that these railroads have gone a long way to becoming self-sustaining and if the rug is pulled out from under them today, they will never reach that objective. But with some additional assistance, they will soon reach that objective and that is important to the lives and the fortunes of our constituents.

Ms. MIKULSKI. I have no further questions.

Mr. ROONEY. Mr. Madigan.

Mr. MADIGAN. No questions.

Mr. ROONEY. Mr. Murphy.

Mr. MURPHY. No questions.

Mr. FLORIO. To lift the discussion out of the realm of your own particular concern, I think there is much to commend with this formula. If we are interested—and I assume we are all interested—in maximum benefit to Federal tax dollars, waiting until a railroad line has been totally abandoned, until the shippers have gone off and found alternative modes of transportation, and then putting money into trying to bring the line back does not make as much

sense as isolating those lines that are potentially able to be abandoned or going to be abandoned.

Getting the money in early on, before the line totally falls apart, while you still have shippers there, and rehabilitating those lines before they go under does make an awful lot of sense.

So, I can appreciate your concern with regard to your own specific interests, but I think there is an awful lot of merit to the approach the bill has taken in the allocation of resources.

Mr. BAUMAN. I would say to my colleague from New York I do not disagree with what you say and, again, I just point out no one even conceived of the particular problem the formula presents to our area. But there should be, as the gentlelady from Maryland has suggested, I would hope, some provision for an area such as ours.

Perhaps there are other short line private operators in similar circumstances in other parts of the country. I am not sure that there are many. But in our area, it would be disastrous because of the loss of funds and we would lose all of the investment made over the past 2 years.

Mr. FLORIO. You are concluding that this is going to adversely affect you. I am wondering if you have any specific information that would insure that. You are still going to have one-third of the funding. I am sure your applications—hopefully, if this railroad has merit—they would be looked upon with favor by the administering agency. So it seems to me that there is no guarantee that you are going to lose money.

You are just concerned about the fact that you will be competing with other railroads for a lesser amount, I suppose.

Mr. BAUMAN. I am not the one who has to look at the balance sheet of the books of the V. & M. or M. & D., but Mr. Withuhn is here. I have read his statement and he will give it to you in detail.

He has taken the bill and laid it up against the problems they face and what they now have as a right to expect under Federal law and millions of dollars are going to be lost to his operation. He will be put out of business. It is that simple.

Mr. FLORIO. I look forward to hearing from Mr. Withuhn.

Mr. ROONEY. Thank you very much.

Next, the Administrator of the FRA, Hon. John Sullivan. Mr. Sullivan.

STATEMENT OF JOHN M. SULLIVAN, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY CHARLES SWINBURN, ASSOCIATE ADMINISTRATOR FOR FEDERAL ASSISTANCE; MADELEINE BLOOM, DIRECTOR, STATE ASSISTANCE PROGRAM; AND PATRICK O'DRISCOLL, ASSISTANT CHIEF COUNSEL, STATE RAIL AND PASSENGER PROGRAMS DIVISION

Mr. SULLIVAN. Mr. Chairman, I have with me Mr. Charles Swinburn who is my Associate Administrator for Federal assistance and with your permission, I would like to add Madeleine Bloom who is our Director of the State assistance program, since we apparently will get into the specifics of some of those programs which she does direct.

Mr. Chairman, it is my pleasure to appear today in support of H.R. 11979 and H.R. 11981. I believe that the objectives of these pieces of legislation are shared in large part by the Congress, the States, and the railroad industry.

Passage of these bills will improve local rail freight service and aid in the restructuring of the Nation's rail system contemplated in the 4-R Act. They will enable the States to deal with marginal branch lines that are deteriorating toward total abandonment but which still provide essential local rail freight service. Although many of these lines show the promise of future viability if rehabilitated, their owners do not have the resources to perform the maintenance required to turn the lines around.

H.R. 11979 will provide one-time public assistance to rehabilitate the lines, but the lines will remain in the private sector where operation and maintenance will be the responsibility of the railroad owners. It will contribute to the States' overall ability to address local freight problems irrespective of mode, whether to make rail or highway improvements will become a meaningful choice.

The bill will also provide tools which, when used in concert with our 4-R Act, section 401 restructuring powers and our Title V financial assistance authority, as amended by H.R. 11981, will assist our efforts to alleviate the railroad problems of the Midwest.

As to changes to the branch line program, the present branch line program limits Federal assistance to branch lines which have been abandoned, either under authority of the final system plan or after the ICC has found that the public convenience and necessity no longer require their operation.

These lines are generally in very poor physical condition and carry only a minute portion of the Nation's rail freight traffic. In many cases their continued operation beyond the time needed for shippers to seek alternate transportation serves no valid purposes.

We believe that the public interest would be better served if the program were aimed at assisting the more valuable branch lines which are still owned and operated by the railroads but which continue to deteriorate because they are not profitable enough to attract private capital for their improvement.

H.R. 11979 meets this problem. It will permit States to assist lines not yet abandoned that are included in State rail plans and that can satisfy public sector benefit-cost criteria established by DOT after consultation with the States.

I would like to add to my prepared testimony that we have from day one consulted with the States regarding the proposed legislation. We have made a great effort to solicit State opinions and have gotten good response in talking to the various State transportation officials and we think this bill represents a fairly good consensus. I will address this point in questions and answers, but I do wish to state that this bill is a joint effort.

Federal assistance would be available for rehabilitation or for construction of alternate facilities on lines which the railroads have indicated they either plan to seek permission from the ICC to abandon or intend to study for future abandonment. The railroads would be required to maintain the rehabilitated line for the useful life of the improvement.

On the other hand, only lines which the ICC has permitted a railroad to abandon would be eligible for operating subsidies and such assistance could continue for only 2 years. All presently eligible lines would remain eligible for operating subsidy assistance until September 30, 1981. This includes the former title IV lines under the 3-R Act and those which have become eligible as a result of ICC action between February 5, 1976, and the date of enactment of this amendment. The new program itself, however, would not end in 1981 but would be an ongoing Federal-State transportation effort.

Under the existing program, the Federal share declines over 4 years from 100 percent to 70 percent. As part of the Department's effort to set a uniform Federal share for State transportation programs to induce rational allocation of scarce resources, the bill would set the Federal share at 80 percent for the life of the program.

The 20 percent non-Federal share could be provided through "in-kind" benefits, which, however, would be limited to forgiveness of taxes or the provision of real property or tangible personal property for use in the program. These benefits could be provided by the State or by others, such as shippers or localities, on the State's behalf.

The formula used to allocate funds among the States would be revised to reflect the proposed change in program emphasis. The revised formula would give eligible lines in the private sector two-thirds of the formula weight while lines eligible for post-abandonment aid would be weighted at one-third.

The present 1 percent minimum entitlement for each State would be eliminated and instead a minimum grant of \$100,000 for planning purposes only would be provided.

I should note that we have received a number of comments from individual States on the elimination of the minimum entitlement. We proposed this change on the basis of the earlier recommendation by the National Conference of State Railway Officials. Some of the States have apparently reconsidered the earlier position and have decided that it could result in their receiving insufficient funds for project purposes.

We would not object to a minimum percentage entitlement if it were small enough, for example, one-quarter of 1 percent, so that we do not waste money by sending it to States with no branch line problems. A portion of any guaranteed State grant should continue to be earmarked for planning.

I might add to that, Mr. Chairman, that on planning, I would even prefer a set dollar amount. Basically, we are talking about funding for a few individuals to plan rail service for a State. The danger of percentages is that a State could get as much as \$500,000 or \$1 million for planning when \$100,000 or a little more might be adequate.

Several States also have expressed concern that the consolidated planning provision of the bill would result in money for branch line planning, a basically rural issue, being made directly available to metropolitan planning organizations which operate in urban areas.

We agree that rail planning can generally be performed more effectively at the State level. Under our consolidated planning fund proposals, the major portion of funds now allocated to States for rail planning would remain with the States for multimodal transportation planning, including rail planning.

States also will be able to use money now earmarked for highway and mass transit planning for rail planning if they so choose. We firmly believe that States and metropolitan planning organizations should have the flexibility to use their planning resources on priority needs, regardless of mode.

Another important provision of the bill is section 10. It would give States the option, in connection with the rehabilitation or improvement of eligible lines, to provide funds to the carrier in the form of either a grant or a loan.

If funds were loaned, the State would establish all of the financial terms, including the interest rate, if any, and the conditions for repayment, without Federal control. Repaid funds, together with any interest earned, would remain in the program to be used for further program loans or grants. Funds remaining at the end of any State loan program would be returned to the Government.

We believe the requirement that the Secretary, in consultation with the States, develop a public sector benefit-cost methodology for use in evaluating capital projects is a very important feature of the bill.

If I might add, Mr. Chairman, I am very pleased to see the extent of the interest from the members here. I did not hear anyone that did not refer to economic benefits. I really think that the purpose of this program is to provide economic benefits to localities. That is why we feel so strongly about the need for an economic cost-benefit analysis.

It not only will insure uniform treatment of all State applications but it will also guarantee that the funds invested in private corporations provide public benefits and do not simply increase railroad profits.

We intend that the criteria will address tangible quantifiable public benefits, including benefits to the local economy such as added or retained employment, and will not be limited to savings to the railroads.

We view the criteria as a way of increasing program efficiency similar to the approach utilized by the State of Iowa in that State's own railroad rehabilitation program.

I must emphasize the importance of this bill in dealing with the severe railroad problems we are facing in the Midwest. Our ongoing discussions in that area under the authority of section 401 of the 4-R Act have emphasized the need for active State participation in the railroad restructuring process.

The expanded branch line program will go hand-in-hand with the Midwestern railroad restructuring process. By giving the States a role in determining which rail services are essential and, therefore, should be retained, the combined process will insure the best expenditure of private and public funds.

It may be possible to give the States an even greater role in the restructuring process through the use of program funds for projects

which will facilitate a merger, consolidation, or coordination proposal of mutual benefit to the carriers and the public.

I would like to report to you on our progress in implementing section 401 and title V of the 4-R Act. A significant amount of activity is underway and a lot is about to happen. Minor changes to our title V programs are included in H.R. 11981.

We must understand that dealing with uneconomical rail branch lines falls short of solving the serious problems which affect the railroad industry. One way to improve the industry's cost structure is to restructure the system. Section 401 of the 4-R Act encourages solutions to the basic problems of the railroad industry by allowing the Secretary of Transportation to assist the industry in self-help measures.

The section permits the Secretary to foster communication, both public and private, between railroads, shippers, public officials, and other interested parties in order to achieve the objectives of the section.

After the Milwaukee Railroad bankruptcy in December, Secretary Adams initiated a 401 conference to address some of the problems which have caused two Midwestern railroads to go bankrupt. In the last 6 months, extensive communication between interested parties, including railroads, State and local officials, shippers, and rail labor has occurred.

We have discussed the problems besetting the railroads serving the Midwest, and we have jointly considered the range of possible solutions. The single most frequently cited problem has been the overbuilding of the rail network in that region of the country. We are investigating changes such as coordinated main line operations, new trackage rights agreements, coordinated yard and terminal operations, and coordinated abandonments.

We feel these are all appropriate ways of reducing duplicate rail facilities while still providing essential rail service.

In June, the Secretary announced tentative agreements, reached under the 401 process, between the Chicago & North Western Transportation Co. (C. & N.W.) and the Milwaukee Road. The subjects of the agreements are projects involving the withdrawal of one of the two carriers from certain markets where there is insufficient traffic to support the economic operation of both railroads and a trackage-rights agreement which will permit the Milwaukee Road to abandon a section of track without abandoning service to its shippers.

The C. & N.W. will withdraw from Dubuque, Iowa, and Red Wing, Minn. The Milwaukee will operate over the North Western's lines between Green Bay and Marinette, Wis., and the Milwaukee will withdraw from Rapid City, S. Dak.

The benefits from these projects will be substantial. Nearly 330 miles of track can be abandoned, saving \$42 million in prospective rehabilitation costs and \$2 million in excess annual maintenance and operating expenses. At the same time, shippers in the affected communities will be served by lines in better financial condition.

This may seem like a small project but I believe that the elimination of the need to commit \$42 million to those areas is a very significant saving and shows the kinds of savings that we can achieve through efforts of this kind.

While these projects by themselves might not be of startling magnitude, they break new ground in addressing critical issues which face the railroad industry. I believe that the planning process we have undertaken in the Midwest can and will succeed in dealing effectively with the need to reduce redundant facilities through decisions made in the private sector while providing improved railroad service to this important area of our country.

I would also like to report to you on the progress which has been made in the title V programs for financial assistance to the railroads. To date, \$62 million has been obligated under section 505, the low-cost preference share program, and \$42 million has been obligated in loan guarantees.

We are close to approving several new agreements which will amount to more than \$250 million. These funds will be used to start some new projects and to continue track work which was begun in 1977. By the end of the calendar year, we anticipate signing additional agreements which will bring total obligations to over \$450 million.

Railroads which have received assistance are the Missouri-Kansas-Texas, the Milwaukee, the Illinois Central Gulf (ICG), the C. & N.W., the Columbus & Greenville, the Delaware, and the Hudson.

Additional requests are pending from the Milwaukee, the Boston and Maine, (B. & M.) the C. & N.W., the ICG and the Rock Island. In addition, the Louisville & Nashville Railway has advised FRA that it is considering the filing of an application for track rehabilitation assistance after October 1.

Mr. FLORIO. How much money was available totally? You say you anticipate obligating \$450 million if everything goes well.

Mr. SULLIVAN. About \$920 million.

Mr. FLORIO. So you have had this program in operation for 2 years?

Mr. SULLIVAN. Just about 1 year ago our regulations became final on title V assistance. The authorization legislation goes back 2 years.

Mr. FLORIO. Thank you.

Mr. SULLIVAN. The C. & N.W. project will be especially important to our restructuring effort because it will combine the benefits of a major rehabilitation of an important east-west mainline system with savings to be generated by separate coordinations with two other railroads.

The project will involve traffic coordination and track consolidations with the Milwaukee Railroad over a 135-mile stretch between Clinton and Tama, Iowa, and with the ICG between Council Bluffs and Denison, Iowa. The lines will carry substantial traffic density and will result in significant service improvements and cost savings for the three railroads involved. The C. & N.W. has actually started work on the project under an arrangement which permits certain costs now being incurred to be reimbursed once a formal agreement has been signed.

We are also in the final stages of detailed project-specific negotiations with the B. & M. Railroad. The ICC's recent decision on B. & M.'s plan to reduce its debt through a \$33 million tender offer will

enable us to resolve any question of adequate security. We expect to sign an agreement shortly.

I am pleased to say we have also reached agreement in principle with the Milwaukee on \$50 million for car and locomotive repair and track rehabilitation. The trustee received the approval of the reorganization court on July 7, and has begun incurring certain costs which will be reimbursed after the signing of the formal agreement this month.

Processing of the ICG application for major track rehabilitation is following slightly behind the others but we hope to sign an agreement with that railroad by the end of the fiscal year. The agreement will provide funding over the next 2 years to continue the track rehabilitation work which we are funding during this work season.

In addition to these agreements and pending applications, we have offered the Rock Island \$33.5 million for equipment rehabilitation and anticipate that a loan guarantee agreement will be consummated soon after a July 17 court hearing. The Rock Island's trustee is also discussing with us his application for up to \$50 million of track work to stimulate a major trackage consolidation and those discussions are continuing.

In the latter regard, we have sought to develop a security arrangement with the Rock Island which will protect the Federal Government and will also be acceptable to the bankruptcy court.

Because of anticipated continuing annual deficits, we thought it necessary to propose a special approach to the security problem. One of the options we have proposed to the trustee is that segments of the Rock Island's track system linking Kansas City and the Quad Cities and possibly other properties be separated from the estate into a new corporation. This would facilitate the consolidation of the operation of two or three railroads into a single rehabilitated trackage system.

It may still be possible to find a way to reach an agreement with the Rock Island within the statutory requisites of the title V program and we are working with Rock Island management toward that end.

We believe it is important to have a rehabilitated line linking the grain belt and the Chicago Gateway with Kansas City, but we must continue to insist on adequate security for the Government's investment, as required by the 4-R Act.

It is also essential that a rehabilitated property in this market be open to use by other carriers operating in the area. I am increasingly convinced that consolidated and improved yards at Des Moines and Kansas City should be part of a rehabilitation plan.

Track consolidation and traffic coordination projects such as those I have just discussed are one facet of our total rail assistance effort. The title V programs, the section 401 restructuring authority and the expanded branch line program proposed in the bill before this committee are complementary.

Each will contribute to the physical restructuring of the rail industry and thus serve the goal of safe, efficient, and profitable rail service in the private sector. The branch line assistance program, in particular, should provide the flexibility needed by State

governments to aid the rehabilitation of valuable local freight lines before they deteriorate to the point of abandonment.

Careful selection of lines to be upgraded on the one hand, coupled with abandonment of nonessential lines on the other, will be an important part of future rail restructuring efforts.

This concludes my prepared statement, Mr. Chairman. I would be pleased to answer any questions.

Mr. ROONEY. Thank you very much, Mr. Sullivan, and I would like to commend you for the excellent job you are doing as the Administrator of the Federal Railroad Administration.

I receive nothing but high praise for your efforts. In the past there have been many admonishments of this office and I hope you continue your good efforts.

Mr. Sullivan, tomorrow a colleague will propose a change whereby assistance could be provided not only for rehabilitation of a line but also for the relocation of a line and I wonder what the Department's position would be on this provision?

Mr. SULLIVAN. Actually, we encourage flexibility, Mr. Chairman, provided that we review the project and determine that it satisfies a benefit-cost test. So, I do not see anything that would prohibit such projects.

Mr. ROONEY. On page 8 of your statement, which to Mr. Florio's question you say "to date, \$62 million has been obligated under section 505, low cost preference share program and \$42 million has been obligated in loan guarantees."

It seems to me those are the same two figures you furnished the subcommittee many months ago and I wonder if you could indicate for the committee what amounts have been obligated in 1978. Also what actions do you recommend Congress should take to speed up the obligation of these funds?

Mr. SULLIVAN. I would like Mr. Swinburn to comment on that, Mr. Chairman.

Mr. SWINBURN. You are correct, Mr. Chairman. Those are only slightly increased over the last time we provided you with any numbers on the program. I am not sure of the exact date we testified before you last but perhaps \$12 million has been obligated since then, if my recollection of dates is correct.

As Mr. Sullivan indicated in his testimony, we now have three railroads working under what we call letters of no prejudice and we are about to add a fourth. We agree to go back and pick up the funding when a formal agreement is signed. In all four of those cases, we are negotiating the legal details necessary to signing an agreement.

We anticipate signing those agreements shortly. Actually, we fully expect that that \$450 million will be obligated before the end of the year. Most of that is preference share money. We expect to fully obligate all appropriations under the preference share program.

Mr. ROONEY. How about the loan guarantees? You talked about the Rock Island; that is just a drop in the bucket. I understand you have gotten almost \$1 billion in loan guarantees. Why can't you give these railroads that are on the brink of bankruptcy these loan guarantees before they go bankrupt?

Mr. SWINBURN. The primary barrier to loan guarantee funds flowing in any significant volume is clearly the reluctance of the railroads to come in and apply for loan guarantees. In part, that can be attributed to the fact that they would rather get the preference share money, which is extremely cheap, first. In part, it can be attributed to the fact that under a loan guarantee we do not provide very much in the way of interest savings over what they can get in the commercial market, particularly for equipment-related purposes.

Mr. ROONEY. They cannot get it in the commercial market. I understand, Rock Island could not get it under the commercial market.

Mr. SULLIVAN. If I may address that. We have offered to guarantee for the Rock Island, I believe, \$33 million in loans and I think in the case where the Rock Island is concerned, we, at our own expense, had a highly respected financial analyst go out there and help them in gathering together all the figures we needed to sustain a forecast and to make the findings that we did to guarantee the loan that we have.

I guess our posture is that under the law in making guarantees we have to expect repayment so that when you analyze a property and find out that your very best projection of their future is continuing high losses, you then have no choice but to comply with the law by only guaranteeing what you can anticipate they will pay back.

Mr. SWINBURN. The loan guarantees we have been making have been going at interest rates of about 8.5 percent recently. Most of your marginal carriers just simply cannot afford to pay that interest rate on any significant amount of money. The Rock Island applications for loan guarantees are for car rehabilitation which have high internal rates of return.

Very few carriers would want to use loan guarantee money for track rehabilitation projects, for example, which do not have those kinds of rates of return.

Mr. SULLIVAN. If I may, Mr. Chairman, I would like to make another comment.

I think I have said to you before that I have come out of a business background and there is nothing in the title V program that tells me that if we either lend or buy preference shares to put x amount of dollars into a given railroad property that that does anything on their profit and loss statement at all.

It does not guarantee they are going to get enough revenue. It does not guarantee lowered operating cost to them so that I think there is perhaps a misperception that title V funds in themselves are going to keep railroads out of bankruptcy or keep railroads from failing.

If you are in business you need adequate revenue to cover your costs and leave something over to take home to your family. That simply is not happening in the railroad industry. I think that the last year industry showed a return on investment of only 1.2 percent.

We are talking about an industry that is a \$20 billion a year industry with a capital—that is working capital position at the end

of the year—of minus \$40 million, and which in the first quarter of this year lost \$158 million.

So, any thought that title V funds alone are going to cure the railroads' problems is, I think, a mistake and I certainly would not want to encourage it.

Mr. FLORIO. Would the gentleman yield?

Mr. ROONEY. Just one question and then I will yield to the gentleman from New York.

Mr. Swinburn, where is the capital need program report that was due to this committee several months ago? Whatever happened to it? Is it still forthcoming?

Mr. SULLIVAN. If I may, Mr. Chairman.

That report, I believe, has been signed off by the Secretary, is under review by other agencies in the Administration and I would expect would be public in the very near future.

Mr. ROONEY. Why does it have to go through so many bureaucracies? This is a part of the Department of Transportation. Why does everybody else have to review it?

Mr. SULLIVAN. Perhaps Madeleine would like to answer that question. I would suspect as we comment on things in the agricultural areas the Department of Agriculture might want to say something also.

Mr. ROONEY. We will have a 10-minute intermission for the purpose of voting on the proposed export of uranium to India.

[Brief recess.]

Mr. ROONEY. Mr. Sullivan, you state on page 2 of your statement that the criteria for the eligibility for assistance would be lines which the railroads have indicated that either plan to seek permission from the ICC to abandon or intend to study for future abandonment. We have just heard from a panel of distinguished colleagues of mine who believe that the criteria should be liberalized even further whereby it would be based on 5 million gross tons of miles or less per year.

This criteria would give the States greater flexibility in selecting the lines that are to be rehabilitated. I wonder if you could comment or one of your colleagues might comment on this criteria.

Mr. SULLIVAN. I think that is an accurate observation, Mr. Chairman. We have to be candid and say we are expressing a budgetary limitation in suggesting the categories as we have and we certainly recognize that going to the A and B formula would enlarge the horizon to a point that may prove to be desirable if there were actually a cost-benefit analysis as part of this.

However, considering the budgetary limitations, we felt going for category 1 and 2 would enable some of the moneys to go for rehabilitation of lines before abandonment, and this was a step in the right direction.

I might say that the difference in the horizon in our proposal would have something like 30,000 miles of line available for rehabilitation and the A and B addition to that would bring that up to 100,000 miles.

So, in effect, you are more than doubling the possible budgetary demands and I think we would want to avoid that. In other words, Mr. Chairman, if you include A and B, that is half the railroads of the country.

Mr. ROONEY. On page 3 you state that the present 1 percent minimum entitlement for each State would be eliminated. Then, you go on to state that you would not object to reinstating a minimum, for example, one-quarter of 1 percent so we do not waste money by spending it to States which have no branch line problem.

Since the money, in any event, must be used for branch lines meeting the overall criteria, would you consider it a waste of money by allocating a certain amount to each State?

Mr. SULLIVAN. We would not. We would like it tied to the need. I cannot see putting several million dollars of branch funds into a State that has no lines that are eligible. I think what I was trying to say is that only a certain amount of money is needed for planning.

We see it as around \$100,000 a year, and we would like to avoid blowing that up by directing funds into areas that are not necessary.

Mr. ROONEY. Mr. Skubitz.

Mr. SKUBITZ. Would you explain in more detail what you mean when you say:

We believe that the public interest would be better served if the program were aimed at assisting the more available branch lines which are still owned and operated by the railroads but which can only deteriorate because they are not profitable enough to attract private capital for their improvement.

Before you answer that question, am I to understand that what you are saying first is that branch lines just cannot hack it; that is, just let them go out of business and use the money to take care of other lines? Is that what you are saying?

Mr. SULLIVAN. No, sir.

The program as it is now enacted directs our abilities to assist the worst possible cases, namely, lines that have already been abandoned through the private sector decisions of the operating railroads.

So, in effect, by suggesting that this assistance be directed into lines that are categories 1 and 2, we are, in effect, saying, why wait until they are going to be abandoned? There may be some useful—in fact there will be a useful purpose to provide capital rehabilitation funds on these category 1 and 2 lines which really are not operating subsidies as such.

It is rehabilitation and would last for many years and provide good service for many years, and we feel that is a viable use for Government funds.

Mr. SKUBITZ. What do you mean by "category 1 and 2 railroads?"

Mr. SULLIVAN. Category 1 consists of lines that have been filed as subject to abandonment while category 2 lines are potentially subject to future abandonment. Operating railroads make these filings to the ICC; it is their judgment that these particular lines have so little traffic and low economic viability that the railroads anticipate abandoning them in the course of events before the ICC.

Mr. SKUBITZ. Now, under existing law when we break them down into that way, we provide, do we not, that a line, before it goes into bankruptcy, the State or the community or other interested parties can file and keep that road going for 1 year at 100 percent of the loss, Government payment, is that correct?

Mr. SULLIVAN. Yes.

Mr. SKUBITZ. The second year, it is 90 percent.

Mr. SULLIVAN. That is correct.

Mr. SKUBITZ. The third year, 80 percent.

Mr. SULLIVAN. Down to 70.

Mr. SKUBITZ. And then it stays there until 1981.

Mr. SULLIVAN. That is correct.

Mr. SKUBITZ. Now, what are you suggesting? Are you suggesting any change in that?

Mr. SULLIVAN. The change in the matching formula we are suggesting is to go to straight 80-20 formula, which would be consistent with other initiatives in the Department.

Mr. SKUBITZ. Over how long a period of time?

Mr. SULLIVAN. We would have a rehabilitation program that would be an ongoing program. We are suggesting that operating subsidies be limited to 2 years. In other words, the program, Mr. Skubitz, would be a permanent program but within the suggestion we are proposing that operating subsidies on these types of lines be limited to 2-year periods.

Mr. SKUBITZ. In other words, after 2 years?

Mr. SULLIVAN. After 2 years, somebody should be able to decide whether or not it is economically viable.

Mr. SKUBITZ. Are we forgetting at that moment whether or not it is in the public interest to operate the branch line or are we making it a straight economic division?

Mr. SULLIVAN. I guess what we are saying is the practice would be making a combination public interest and economic determination.

Mr. SKUBITZ. What you are saying really is that after 2 years if you cannot hack it, boys, you are out of business, isn't that right?

Mr. SULLIVAN. That is correct.

Mr. SKUBITZ. So, what you are saying to the people, little communities along the line, and what you are saying to the shippers that are along the line is sorry, boys, but we are just closing the line down.

Isn't it in the public interest to keep these lines going?

Mr. SULLIVAN. No, sir. I think what we have been saying is there is too much railroad out there and we are looking for the logical ways to restructure. I do not think anybody has described restructuring as enlarging the physical structure of the system; there is a general recognition that there is too much rail structure out there which burdens the industry.

Mr. SKUBITZ. Out where?

Mr. SULLIVAN. In the United States, which burdens the whole industry with costs that far exceed what they should be bearing in light of the revenue they are generating from the freight that they are handling.

So, where railroads do not have sufficient freight and/or other revenue to support a particular branch line they then make the decision that they would like to get out of serving that particular area.

Mr. FLORIO. On that point, accepting what you just said—and I do—how do you reconcile that with the ongoing program for the capital construction?

Mr. SULLIVAN. In the lighter density lines, I think it is generally recognized that you are talking about capital investments that can last for many, many years, and you do get into this gray area of chicken-and-egg type of thing.

If you do maintain service through a period of time, do you then attract extra shippers to that area? In other words, a corporate vice president searching for various potential locations for new plants, which might entail several jobs for an area and business for a railroad would ask: Is rail service available? How far is it by branch line to the nearest main line, et cetera.

This definitely can be an aid to maintaining the economic viability of a given area. However, we do not want to get into the position of having Federal dollars go as operating subsidies to lines which have been proven to be nonviable because they are not able to attract shippers.

I think the description we had of the Iowa plan was excellent, where they have looked at this in this sense of economic viability with the State's own desire to get out there and do the necessary things to involve the railroad and the shippers in rehabilitating lines and in fact the way they do it in having the shippers take part in this seems to me to be an inducement for those shippers to use the rail service more than they would otherwise. I think they have done an excellent job out there and it is that kind of thing that we would like to encourage.

Mr. FLORIO. The only difficulty I have with that is that obviously there is just so much capital available for the railroad entity. Now, you are advocating a permanent program for capital construction subsidies, thereby freeing up capital in the railroad to divert over to operating subsidies that normally would have had to be used for maintenance.

This program was originally conceived of as an emergency program to deal with the problem of abandonment flowing from Con-Rail, or whatever is now being converted into a subsidy program not to specifically assist the municipalities or the communities that there is an economic impact upon because of abandonment. But probably there will be a permanent subsidization of some of the railroads.

I go into a different facet of the question dealing with category A and B as opposed to what we are now talking about. But I see a shift and I am wondering if this is a conscious shift on the administration's part to convert this program from what it originally was, which was an emergency program to assist municipalities that were being hurt, into a permanent decision that we are going to have a greater involvement of the Federal Government in railroad maintenance?

Mr. SULLIVAN. It is a conscious shift, but I would want to limit it to say that we have never shifted away from our desire to see railroads prosper in the private sector. But we do recognize that the time it takes to restructure—as I testified, we have been making some progress in our restructure efforts and we think this program is a very viable aid to proposed restructuring and does allow the time for local authorities to make the investment decisions necessary to decide which areas should be assisted and which should not be assisted, which should be abandoned and make those

decisions in a way that directs the capital moneys involved into economically viable projects.

Now, as to capital investment itself, I think the important thing to recognize—and I am sure this committee does—is that capital started to flow away from the railroad industry in 1906 at the time of the passage of the Hepburn Act which gave ICC the authority to set maximum rates for railroads.

Up to that point, capital was flowing to the railroad industry but people who had capital to invest could recognize that where a Government entity could put a lid on the revenue that the industry could produce, that industry was no longer a desirable investment.

So, these questions will be addressed in our final 504-901 study, which the chairman referred to, but I can assure you that we have no intention of trying to provide all of the capital that the industry needs.

We point out that the industry badly needs capital. I made a special point of mentioning that at the close of last year, the industry's working capital position was negative \$40 million and in the first quarter the industry lost \$158 million.

What I am saying is that we hope for greater public recognition of the industry's problems. We do not want the solution to be a Government takeover of railroads nor do we want any feeling to develop that the Government is the court of last resource and can do these things better than the railroad industry.

I think we have to lead into the fact that the industry has to have a climate wherein they can earn money; simple as that. They can earn money. With all due respect to the gentleman here from the farm States, they discussed the problems with peak capacity, and I did not hear anybody volunteer to pay more for the service that was needed.

When you want a service and are not willing to pay for it you turn to the Government. I think out in California they are telling us we better not turn to the Government anymore.

But in this bill which is a small effort to establish a program that is permanent in the sense of—I guess I would call intelligent capital projections, we want to have it provide the vehicle for intelligent rationalization and restructuring of the railroad industry such that their costs are lowered and it is easier for them to make money. If railroads make money in an area they are then economically viable and can provide not only service but better service.

Mr. FLORIO. I thank the gentleman for yielding.

Mr. SKUBITZ. Then, if I understand you correctly, and if I understand my colleague correctly, we are moving toward a program of Federal-State assistance to the railroads that may even be viable in order to help them with their maintenance and rehabilitation programs. Is that correct?

Mr. SULLIVAN. Rehabilitation; yes.

Mr. SKUBITZ. And maintenance.

Mr. SULLIVAN. I guess in a sense.

Mr. SKUBITZ. Isn't that a rather wasteful way of doing it? That is, turn money over to a viable railroad in order to fix up its tracks and to rehabilitate its own equipment and so on. Wouldn't we be

better off if we just took over the maintenance itself and maintained the roads on a leaseback method of some sort?

Mr. SULLIVAN. What we are doing is directing the moneys toward the sections of the railroad they have identified as sections that they do not intend to continue in service.

Mr. SKUBITZ. Isn't this an inducement to bring all sorts of things to you so they get more money? Do you have a staff to police it?

Mr. SULLIVAN. Yes.

Mr. SKUBITZ. How big a staff?

Mr. SWINBURN. That is under this proposed legislation.

Mr. SKUBITZ. Answer my question; how big a staff do you have to police?

Mr. SWINBURN. We have a staff running this program of 21 people.

Mr. SKUBITZ. To police a whole damn railroad system to determine whether or not they are giving you a bunch of fake figures somewhere along the line?

Mr. SWINBURN. If you will excuse me, this is a State program and the States will be running the program and using Federal dollars and the legitimacy of the investment decisions and the checking to make sure that the investments are being conducted properly will be a job of the States, not of the Federal Government.

Mr. FLORIO. Will the gentleman yield?

With regard to the determination, there are no criteria, are there, as to whether a line is to potentially be abandoned? In other words, when someone makes a determination that they are potentially going to abandon it, there is no criteria that has to be met to satisfy this designation, is there?

Mr. SWINBURN. That is generally correct. The lines just show intent upon the part of the railroads.

Mr. FLORIO. There is going to be testimony later in the afternoon regarding a desire to expand that classification even wider, so we are not just talking about potentially able to be abandoned lines.

Some people will be advocating that we should get into lines that are viable, but there is some difficulty in financing them. Lines that are profitable or are close to being profitable should be financed as well.

Now, what I am suggesting is: If there is no criteria and you are going to rely on the States to just make a determination, how is it that you, as the agency in charge of dispensing the moneys, at the outset will be in a position to say what is a line that is really potentially eligible to be abandoned as opposed to one that we just would like some more money for?

Mr. SWINBURN. An important, and we believe necessary, feature of this bill, Mr. Florio, is the requirement that all capital projects be justified upon a cost-benefit basis.

Mr. FLORIO. The better the line, the easier it is to justify it on a cost-benefit basis. If a line is marginally profitable as opposed to one abandoned, it is much easier to meet that standard. Therefore, that should be no deterrent for a line to come in and say, We would like some assistance on this line. We are not really going to abandon it and it is not even potentially eligible for abandonment. We would like money for it and it meets your cost-benefit ratio determination.

Mr. SWINBURN. One, the cost-benefit ratio determination is going to be measured on a public sector basis. So that any investments that pass the cost-benefit ratio and are made are by definition going to return public sector benefits to that local community.

So, your primary fear that in some manner these funds are being wasted will not be present. By definition, they are going to go for public sector benefits.

Two, by definition the formula allocations to the States are also going to restrict the amounts of funds that each State has available to it for this program. The States are getting quite sophisticated, and we believe more so every year, in making these decisions intelligently, and they are made in the context of an overall planning effort required by present law—plans that we review every year to insure that decisions are made in a structured, orderly, and rational fashion.

I do not think that we have to fear that all we are going to be doing with this money because of those considerations is enriching the railroad industry. There will be solid public benefits developing from these efforts.

Mr. FLORIO. I thank you for yielding.

Mr. SKUBITZ. Following up this point, the States are going to make the determination of who should get what, is this correct?

Mr. SWINBURN. Yes.

Mr. SKUBITZ. You have 21 fellows to supervise the whole program. You are going to sit over these as a bookkeeping organization; is that what you are going to do? The States will come in and tell you what they want done and you are going to take their advice and do what they say to do.

Mr. SWINBURN. I think that one of the principles of this legislation and one of the principles of the program that has been run today is that the States are the primary decisionmakers.

Mr. SKUBITZ. I get so tired of that. I look at the practical things. It seems to me what we do with this sort of program is throw good money after bad. For years I have been thinking about the way we should get at this problem in order to improve the rails, the maintenance of way—which is our biggest problem today. Railroads would not do it if they could get money from a bunch of suckers up here; they will use their money where they want to use it and then use our money on the things they should be taking care of themselves.

It seems to me what we ought to be doing first—and your problems will be with the railroads—is to be taking over the roadbeds in this country. I do not mean to take over the ownership of them. I am talking about taking over the roadbeds, then leasing them back to the railroads.

We take care of the maintenance of those roads and charge it back on a tonnage-per-mile basis. It sounds socialistic to you, but it really is not. At that time the Government would see that the roadbeds were properly taken care of, would charge it back to the railroads on the basis of the use they make of the beds.

If business is good, you charge them more because they are using more of it. If business is bad, then they are using the roads less and the costs are less.

I would much sooner take care of the problem that way and have Uncle Sam get something for his money than the way we are handling it today. Would you like to comment on that, Mr. Sullivan?

Mr. SULLIVAN. The whole subject of what Government involvement should be in the railroad industry is a tough one. I think railroaders that I met would probably not have preferred to see the highway trust fund funnel \$100 billion into a highway system that enables trucks to travel across the country and take away freight that would normally go by railroad, and they certainly support us in our efforts to get user fees that would represent—

Mr. SKUBITZ. Did you get that message across to your president so he will know some of us up here are just a little opposed to a slurry coal pipeline that is going to take coal business away from railroads?

Mr. SULLIVAN. I certainly join you in that, Mr. Skubitz. The question of ownership of roadbeds is not one that I want to try to give a conclusive answer on here today.

I think what we are saying is we have not given up the effort to foster a private sector successful railroad industry. I think that can be done. I think in the amounts of freight that you handle—I spent a few years in a steeve company—when you have conditions right, conditions being the amount of revenue and with your costs in line, you can make nice amounts of money when you are handling volumes of freight that railroads currently handle.

Right now, the railroads handle over 40 percent of all defense needs for all of our bulk commodities. They handle over 60 percent of the movement of coal, ore, et cetera. They would, if not constrained by unrealistic regulations, be able to compete for other traffic that now goes to trucks simply because the railroads are more stringently regulated than the trucking industry.

So, I see the strong possibility that this situation can be turned around and railroads can be a very viable profitable private sector enterprise, and I abhor any drift toward further Government involvement that would keep that from happening.

So, in that sense, I shudder to think about the Federal Government buying up all the roadbeds.

Mr. SKUBITZ. I am not suggesting the Government buy them up. I am suggesting that you try to reach some sort of leasing agreement with the railroads. The railroads would maintain title to the bed. In a long lease arrangement we take care of the maintenance of the line which we can do during depressed times when we have high unemployment rather than putting people to work on ditch digging jobs and then charge back to the railroads the cost of maintenance through a charge on the amount of freight that they haul on those lines.

What is so socialistic about that?

Mr. SULLIVAN. I guess I did not explain my position too well. I think of the private sector as separate companies who control the assets they own. As such, they decide who to hire and fire and how much to pay those people and, out of that combination of people and things, they try to do whatever will bring them enough business to pay the bills and have something left over.

I do not see that our involvement in an intrusive way helps that much. What I am trying to say is that there is enough freight business out there that, if it moved at the proper price, you would have a railroad industry that would prosper, and I would like to see that happen.

Now, I think for us to dream up a way to come in and have the Government take a role in that is something that would only keep that from happening.

Mr. SKUBITZ. Does the Government play a role in determining what the rates are going to be?

Mr. SULLIVAN. Exactly. Yes.

Mr. SKUBITZ. Is that who you are criticizing, the Government?

Mr. SULLIVAN. I would call it Government criticism, yes. If I were to run a business and had to provide service where I could not charge a rate that would pay for that service, I would consider that unrealistic regulation on the part of the agency that was regulating me.

Mr. SKUBITZ. Speaking of private business having the right to hire and fire, does the railroad have the right to hire and fire people, particularly fire? When business is bad, can they lay off so many people? That is what you are suggesting. You are talking about private enterprise.

Here is one industry that does not have all the rights you think they ought to have.

Mr. SULLIVAN. Exactly.

Mr. SKUBITZ. That is all, Mr. Chairman.

Mr. MURPHY [presiding]. Ms. Mikulski.

Ms. MIKULSKI. Mr. Sullivan, I have a few basic questions in relation to this legislation.

One of the questions I have is: Why are there no provisions in the bill that would allow a State to transfer its benefits to another State, or combine funding in a regional approach where these funds would contribute to the overall economy of the State?

I come back to my own interest in the Delmarva Peninsula, where a few bucks Maryland had pooled with Virginia could make a substantial improvement in the Virginia segment of the line. There should be flexibility in certain areas where the regional approach would be most effective, particularly where there is small State convergence.

Would you tell me why there is no such provision? Would you support such a provision to develop more regional flexibility?

Mr. SULLIVAN. I would like Mr. Swinburn to answer that for you.

Mr. SWINBURN. That type of flexibility is permitted under the present law, Ms. Mikulski, and this bill modifies present law. We did not see any reason to include that provision. We are allowing Delmarva to pool their funds. We allowed Midwestern pooling. There are no restrictions against it.

Ms. MIKULSKI. So, in other words, they could develop their own regional, flexible approach.

Mr. SWINBURN. Yes.

Ms. MIKULSKI. As States come up with their own local funding share, we have traditionally in the Federal sector used "in kind" benefits to be counted as our local funding share, whether it is office space or a variety of other things.

My understanding is you have eliminated that in the bill. Aren't these, therefore, more stringent requirements than, say, those used by OMB in other situations?

Mr. SWINBURN. I do not believe so, Ms. Mikulski. We still allow "in kinds" benefits to be used. The language in our proposed legislation is more specific than the language in the prior legislation.

I do believe that everything that has heretofore been allowed for an "in kinds" benefit under the program would be allowed under the new legislation.

I know that some of the States have expressed uncertainty as to whether or not staff time would be allowed under the way we have written the bill. It is allowed under the present law. Just to clear up that uncertainty, we would allow the contribution of staff time which legitimately was used for program purposes to be considered "in kind" benefit.

Ms. MIKULSKI. So, you would allow use of staff time.

Mr. SWINBURN. Yes.

Ms. MIKULSKI. The last question I have pertains to an issue Mr. Bauman raised in his testimony in which the Maryland shortline railroad was fined for transporting hazardous material, when that railroad in effect does not own the track.

It was the State of Maryland's responsibility to do something about that track. Could you clarify for me why you fined them?

Mr. SULLIVAN. I was not personally involved in that specific case. I think, to the extent that I heard it discussed earlier, there were hazardous materials traveling across a line that is not up to the standards that we specified for hazardous materials.

Of course, we are very rigid on that.

Ms. MIKULSKI. I salute you on that. My question is: Why fine the railroad? Why didn't you fine the State of Maryland, if the State of Maryland did not do its job?

Mr. SULLIVAN. I would like Madeleine Bloom to respond to that.

Ms. BLOOM. I cannot fully respond to the question. It is my understanding from our Office of Safety that the requirements for safe operation of lines always run to the operator rather than to the State or the owner. We can check on that further for you.

Ms. MIKULSKI. Would you get from Mr. Bauman the specific case? I think it involved nitrogen. And then I would like a response to it.

I have no further questions.

Mr. SULLIVAN. This is Mr. O'Driscoll from our Office of Chief Counsel.

Mr. O'DRISCOLL. Every one of the operators gets a certificate from ICC as a designated operator, and they have full responsibility for safety, not the State.

Ms. MIKULSKI. What do you do if the tracks are bad and they are not your tracks?

Mr. O'DRISCOLL. The operator has an agreement with the State to maintain them. If they operate below the class 1 standard without authority, that is their problem. They cannot do that.

Ms. MIKULSKI. This may be an area for other activity. I note for the Chair it is 4:30. I would prefer to have that answered in another circumstance where I can study it. We will not eat up the

time of the committee clarifying my understanding of an ICC certificate.

Mr. SULLIVAN. We would be glad to write you on that.

[The following information was received for the record:]

CERTIFICATE OF DESIGNATED OPERATOR

When the Local Rail Services Program in the states of the Northeast and Midwest was originally authorized, the status of the operator of the subsidized service in relation to the ICC's authority to regulate its activities on the subsidized line was unclear under the law. Several different kinds of problems were involved, including such questions as:

(1) Whether a common carrier duty still existed on the lines not included in the Final System Plan, and where that duty lay;

(2) Whether the ICC had power over such areas as requiring service on the lines, determination of rates and divisions, correction of illegal rebates, issuance of embargoes, etc.;

(3) Whether the bankrupt estates would allow use of their properties by the carriers designated to provide service under Section 304(d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744); and

(4) Whether the Federal Railroad Administration (FRA) had authority to enforce its safety statutes over subsidized service where the common carrier status was unclear.

The revision of section 304 by section 804 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 744) expressly directed the ICC to assure that there would be no disruption of service, and to use its existing authority (including the enforcement of common carrier duties on the bankrupt estates) for this purpose. The ICC used its authority under section 304 to issue a Certificate of Designated Operator to each carrier operating subsidized service under the program. By notice of March 8, 1976 (41 FR 10526) (copy attached), the ICC explained its procedures for the filing of requests for issuance of these Certificates.

The notice advised that operators would not be required to seek and obtain authority under former sections 1(18) and 1a of the Interstate Commerce Act ("Act") (now sections 10901 and 10903 of Title 49 of the United States Code, as codified by P.L. 95-473), but that they would be subject to all other provisions of the Act, as common carriers by railroad. Thus, operation pursuant to the Designated Operator Certificate assured that not only the ICC but also the FRA would have the necessary jurisdiction over the service to carry out its responsibilities, since FRA safety authority under the various rail safety statutes extends to common carriers engaged in interstate commerce by railroad.

It should be noted that these subsidized operators are independent contractors insofar as their relations with the states are concerned. They are responsible for their own wrongful acts, including negligent conduct and violations of safety requirements. If the states were permitted to pay fines of operators where no relationship of principal and agent exists, there would be no deterrent effect on the operator and, since the Government subsidizes the state, it could wind up paying its own fine.

CONRAIL, ET AL.

Continuation of Rail Service Under Subsidy by Designated Operator

Information concerning the implementation of section 304(c) and (d) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 744), as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210 (45 U.S.C. 801), enacted on February 5, 1976.

Background. Over the past several months, the Interstate Commerce Commission (Commission), has received many inquiries regarding the authority required, if any, by ConRail, other railroads, or responsible persons (including a government entity) designated to operate rail freight service (Designated Operators), pursuant to section 304(d) of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976. The staff of the Commission has responded to these inquiries by informing the parties to file an application with a motion to dismiss so that the Commission could formally consider the matter. This procedure was considered unsatisfactory and burdensome. After further study of the situation, including the problem of seeking authority to commence operation or to abandon upon termination of the rail service continuation payment, the Commission has concluded that Designated Operators should not be required to file an application under section 1(18) of the Interstate Commerce Act. As an alternative solution, the Commission has adopted the following procedure:

A "Certificate of Designated Operator" will be issued by the Commission to ConRail, other railroads, or responsible persons (including a government entity) designated to operate rail freight service (Designated Operators), pursuant to section 304(d) of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, when a Designated Operator files with the Commission a letter which indicates its intent to provide the proposed service. The letter must include the following additional information:

1. The status of the Designated Operator.

(a) The name and address of the Designated Operator.

(b) If the Designated Operator is a new corporation or other new business entity and a non-carrier, a copy of the certificate of incorporation from the appropriate state authority in the state in which the Designated Operator is incorporated or, if unincorporated, the facts and official organizational documents relating to the formation of the new, non-carrier business entity.

(c) The names and addresses of all officers and directors of the new, non-carrier business entity with a statement from each which indicates present affiliation, if any, with a railroad.

(d) Sufficient information from the Designated Operator to establish its financial responsibility for the proposed

undertaking, unless the Designated Operator is a common carrier by railroad. 2. The relevant dates:

(a) The effective date of the proposed discontinuance of service by the owning carriers in reorganization.

(b) The exact dates of the period of operation which have been agreed upon by the Designated Operator, on the one hand, and, on the other, the offeror of the rail service continuation payment and the owner of the line to be operated, in their operating or subsidy agreements.

3. The nature of the proposed service:

(a) A copy of all agreements between the Designated Operator, on the one hand, and, on the other, the offeror of the rail service continuation payment and the owner of the line to be operated.

(b) Any additional information which is necessary to provide the Commission with a description of:

(i) the line over which service is to be provided, e.g., (U.S.R.A. Line No.);

(ii) all interline connections including the names of the connecting railroads; and

(iii) the nature and extent of all liability insurance coverage.

4. The status of the offeror:

(a) The name and address of the offeror of the rail service continuation payment.

(b) Sufficient information to establish the financial responsibility of the offeror for the proposed undertaking, unless the offeror is a state or municipal corporation or authority when must then state that it has authority to perform the service or enter into the agreement for subsidy.

Upon receipt of this information, the matter will be docketed by the prefix initials "D-OP." When a certificate is issued it will be entitled a "Certificate of Designated Operator." This certificate will state generally that the Designated Operator has entered into an agreement to provide service, pursuant to the provisions of section 304 of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, over a described line, with the right to commence and terminate service pursuant to the terms of agreement between the parties in accordance with the provisions of section 304, without further authority under the provisions of the Interstate Commerce Act, (Act). Although the Designated Operator will not be required to seek and obtain authority from the Commission pursuant to section 1a and 1(18) of the Act, as amended, for either commencement or termination of operations, the Designated Operator will be subject to all other provisions of the Act, as amended, as a common carrier by railroad.

Any operator, including ConRail, other railroads or responsible persons (including a government entity), which is not a Designated Operator, pursuant to section 304 of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, is subject to all provisions of the Interstate Commerce

Act. More specifically, a "Certificate of Designated Operator" is designed for a rather limited situation. It will apply only to subsidized operations conducted pursuant to section 304(c) and (d) of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976. It will not apply, for example, to purchase situations described in section 304(d) (as amended to 304(f)) of that Act. A "Certificate of Designated Operator" will not authorize entry onto or operation over a high density line subsequent to its purchase.

RATES AND TARIFFS

Regarding rate and tariff issues, the implementation of the Final System Plan with respect to subsidized operations will involve the use of adoption notices as the vehicle to effectuate the shifting of the tariff responsibilities to the operating carrier. Since it now appears that there will be some subsidized operations performed by entities that will, at least initially, be non-carriers, deviation from the tariff filing requirements of Tariff Circular No. 20, 49 CFR 1306, will be necessary in some instances. To facilitate the take over by non-carriers, special permission can be granted, upon application, when warranted. It should be noted that ConRail's request for special permission for authority to file an adoption notice was granted by order of the Commission, Division 2, served March 3, 1976.

PROCEDURE

A "Certificate of Designated Operator" will be issued when all of the necessary information plus three copies thereof are filed with the Secretary of the Commission. The Commission strongly urges all Designated Operators to submit the necessary information as soon as possible. In the lower right corner of the covers of all envelopes which contain such information, "D-OP Certificate" should be indicated. In the event that all necessary information has been filed and no certificate has been received by the Designated Operator, operations may be commenced pending receipt of the "Certificate" on the date specified in the agreements filed with the Commission.

INFORMAL SEMINAR

An informal seminar, concerning the implementation of section 304 (c) and (d) of the Regional Rail Reorganization Act of 1973, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, will be held on Friday, March 19, 1976, at 10:00 a.m. at the offices of the Commission, Washington, D.C. The location of the seminar will be posted in the lobby of the Commission. It is hoped that such a conference will clarify questions that individuals may have concerning this section of the new Act and its implementation by the Commission.

By the Commission.

Dated: March 5, 1976.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 76-7011 Filed 3-10-76; 8:45 am]

Ms. MIKULSKI. I have no other questions.

Mr. FLORIO. May I ask what the gentleman intends to do to stop railroads from artificially listing lines as potentially candidates for abandonment so as to qualify for assistance?

Mr. SWINBURN. The listing of lines in categories one and two is a matter which is regulated by the Interstate Commerce Commission under law. We are only using the listing of those lines.

Mr. FLORIO. We have already established the fact there is no set criteria, so the decision is an internal house decision made by the company. They can make it with no degree of accountability to any particular standard.

Now, it is going to be your determination as to where the money is going to go utilizing the State agencies as the dispensing vehicle, so to speak, but the ultimate responsibility falls to you.

Mr. SWINBURN. As I understand the ICC procedures, Mr. Florio, on the lines that the railroads choose to list in these diagrams—those lines have to provide very detailed financial accounting information to the ICC which is surveyed by ICC staff, and I do believe the ICC has the same concern that you do.

I must admit I am not familiar with the mechanics—maybe Mrs. Bloom is—as to what ICC does to control that phenomena.

Ms. BLOOM. It is my understanding that the reports have to be filed with the ICC, annually. There is a quite detailed format that has to be followed by the railroads that list lines in those diagrams.

Mr. FLORIO. For both classification for abandonment and potential for abandonment?

Ms. BLOOM. Category 1 is lines potentially subject to abandonment in the next 3 years and category 2 is lines under study for future abandonment. Category 1 lines definitely have to have ICC accounting records filed.

I am not certain about category 2 but there is someone here from the ICC who could probably clarify that.

Mr. FLORIO. I understand that the ICC is coming tomorrow, so I will reserve some of my questions. Wouldn't a gross tonnage standard be an easier point for you to evaluate? Either you meet the gross tonnage standard or you do not. If you do not, it would indicate that your line was eligible. Has anyone given any thought to utilizing an objective standard to determine eligibility for this program?

Mr. SWINBURN. We do routinely and annually collect the information that would be necessary to set gross ton miles standards for determination of the A and B lines that have been suggested earlier. Those are in fact taken from what is called our 503 designation of rail lines.

We collect traffic information and publish it for the system. We will be updating that annually as to the tonnage in individual rail lines.

Mr. FLORIO. Isn't there some correlation between a volume of traffic in terms of gross ton miles and some degree of profitability? Isn't there some way you can work out a system whereby beneath a certain volume of gross ton weight one can presume that that is a line that is potentially able to be abandoned?

Mr. SWINBURN. There are various rules of thumb that are relevant in the industry, but you probably find many specific cases

that violate those rules of thumb because of the nature of the traffic, condition of the line, et cetera.

I do not think for regulatory purposes, we could define a specific point.

Mr. FLORIO. The point is that you have apparently not defined it at all at this point, and all I am suggesting here is that at least some indicators deserve consideration.

Mr. SULLIVAN. What we have said, Mr. Florio, is to include A and B branch lines, in our view, would increase the universe to around 100,000 miles which is so far in excess of what we have authorized and appropriated, that we favor the cost-benefit analysis as the mechanism that we would separate one from the other.

Mr. FLORIO. I share your feeling. My only point is that we have not done anything to get that A and B universe not included in the classification 1 and 2.

Mr. SULLIVAN. The reason that becomes difficult, as has been said here and is really the germ of why we are moving or trying to move out of the strictly cats and dogs category into the 1 and 2, is that in reality the A and B are apt to include things that will look more attractive to direct your rehabilitation dollars to so that I do not see there is any set mechanism that will say this is the point where you should in equity cut off funding.

It is probable that A and B projects would look better than category 1 and 2 projects depending on who is to be served.

Mr. FLORIO. Let me conclude by agreeing with some of the things Mr. Skubitz said and also agreeing with your concern about too much Government involvement in the railroad industry.

I just see this as potentially doing some bad things in regards to more involvement from both ends of the spectrum, and this is particularly colored by my greater awareness of problems in the Northeast than perhaps in the Midwest. I am convinced that I can conceive of State departments of transportation or State officials reacting to some local pressure and then going out and looking for some of the assistance to keep lines viable or to keep them alive when in fact they really should be abandoned.

At that is a crutch to stop from happening what really should happen, if we were talking about the economic realities of the thing.

On the other extreme, I can conceive of some railroads seeing the pie there and wanting to include Federal funds to do what should be their job, because these lines that they may want to get some assistance for are not lines that are really potentially eligible for abandonment.

Rather, this is a means by which we can get more Federal involvement into the railroad process and, as you say, there are those who feel—as I am starting to feel more and more is the case—that this has caused most of the problems. So, there is going to have to be, to satisfy me, a higher degree of specificity, a greater objective scale that is going to have to be used as to where these Federal dollars should be used for the purpose they were originally intended to be used, that is, to cushion adverse impact on communities that are worth cushioning.

You cannot take care of every shipper or every little factory, and there will have to be some hardship. It may well be cost-effective.

Trucks may take away some of the business where appropriate, but if we are going to maximize the benefit of the dollars we are putting into this program, we have to make sure that the dollars are used in a most cost-effective way.

Mr. SULLIVAN. That is why we are so strong on the inclusion of the cost-benefit requirement.

Mr. FLORIO. I agree with that 100 percent. As I indicated before, that should not be used as the standard when we are talking about potentially excluding A and B railroads there because they can meet that standard.

They are lines that are not objectively potentials for abandonment and maybe could use some help. Perhaps the help should not be coming from the Federal Government. They are basically good lines—marginal or perhaps conceivably profitable.

They can show a good cost-benefit ratio. I know you gave me a little explanation about the difference between public sector benefit and private sector benefit, but I do not understand what you are talking about. So, I will be happy to receive from you the distinctions from public moneys going into a line and having the public benefit from it as opposed to the private.

That sort of discussion is like angels on the head of a pin. If in fact the public gets some benefits out of a private facility being serviced, where do you make the distinction between public and private?

I am sure you thought it through much more than I and I will be happy to receive from you a dissection on the distinction between the two types of benefit.

Mr. SWINBURN. I will be happy to provide that.

[The following information was received for the record:]

AUG 29 1978

Honorable Fred B. Rooney
Chairman, Subcommittee on Transportation
and Commerce
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

During hearings on H.R. 11979 on July 12, 1978, I agreed to provide for the record a discussion first as to how the Federal Railroad Administration (FRA) would distinguish between benefits accruing to the public on the one hand and to the private railroads on the other, and second as to how we would guard against simply providing indirect subsidies to the railroads as a result of the new program.

Since that occasion the House Committee on Interstate and Foreign Commerce has completed a mark-up of the proposed amendments to Section 5 of the Department of Transportation Act which excludes the cost/benefit provisions in the Administration bill. I believe this is a serious omission particularly since the cost/benefit provision is the principal feature designed to prevent the program from serving only as an indirect railroad subsidy. Accordingly, I would like to address the rationale for cost/benefit criteria, along with a response to the considerations raised at the July hearing. For your convenience, these issues and the Administration's position are outlined in the enclosed summary paper.

Sincerely,

/s/ John M. Sullivan

JOHN M. SULLIVAN
Administrator

Enclosure

Rationale for Benefit/Cost Criteria in Proposed Railroad
Amendments Act of 1978

Program Purpose

The rehabilitation portion of the Section 5 program is designed to achieve a dual purpose: (1) to provide assistance to the States for rehabilitating, and thus ensuring the continuation of important local rail services; and (2) to contribute to the usefulness of the rail industry by assisting the rehabilitation of branch lines which might earn future profits for their owners but which would not otherwise be rehabilitated due to the non-availability of private investment funds.

Need to Protect Public Investment

- The program is not intended simply to provide a subsidy to the railroad industry under the guise of helping local communities. Nor, on the other hand, should the program seek to provide community benefits that are unrelated to efficient rail service, for example, benefits that could be achieved more inexpensively through non-rail investments.
- To prevent misallocation of funds, the bill includes a provision which specifies that the Secretary, after consultation with the States, shall promulgate regulations establishing criteria to be used to determine the ratio of public benefits to public costs of projects proposed for financial assistance.

Use of Public Benefit/Cost Criteria

- Properties being assisted with rehabilitation funding will remain in the private sector and will not receive public operating subsidies, but some operating savings will accrue to the railroads.
- Public benefits should accrue over and above the operating savings to railroads. A methodology is needed to measure those benefits from the public investment, in order to establish priorities for the use of funds within a State, and in order to permit proper budgeting for the program, as well as Federal decisions on prudent use of funds in individual cases.
- The cost/benefit methodology to be developed will address quantifiable public benefits such as retained or expanded employment; increases in the local tax base as a result of new plants locating on improved rail lines; and shipper related cost savings when compared to the alternative of truck service.

Railroad Benefits

- If there were to be no benefits accruing to the railroads as a result of the investments made under the new program, the railroads would not voluntarily participate. Operating savings to the railroad which do not generate community benefits, however, should not be considered as justifying the investment of public funds.

Safeguard Against Railroad Disinvestment

- The States' agreements with the railroads will contain certain safeguards. A State must ensure that the railroad is committed to providing service at the level to which the line is rehabilitated for at least the economic life of the investment.
- It is intended that the railroad commitment be no less than five years and that the Federal assistance not result in any decrease in the overall level of railroad capital investment.
- As the result of a project the carrier could move more traffic, on bigger cars, at a faster speed, with no addition or decrease to its routine maintenance cost. The only cost the railroad would have saved is the cost of the actual upgrading project which it probably was unable to incur anyway. If the project has satisfied our public cost/benefit test, the public purpose would be met as long as the line were retained for at least the economic life of the investment.

Mr. MURPHY. Thank you, Mr. Sullivan, Mr. Swinburn, Mrs. Bloom, and Mr. O'Driscoll.

The next witness is Mr. Louis Rossi, New York State railroad administrator. Mr. Rossi, I understand you are representing Commissioner Hennessy, New York Department of Transportation.

Mr. Rossi. That is correct.

Mr. MURPHY. Will you proceed.

**STATEMENT OF LOUIS ROSSI, RAILROAD ADMINISTRATOR,
NEW YORK STATE DEPARTMENT OF TRANSPORTATION**

Mr. Rossi. Mr. Chairman, I welcome the opportunity to present New York's views on the important subject of branch line assistance. In New York alone 700 businesses with an employment exceeding 8,000 depend on this program. Although New York administers the largest branch line assistance program, the cumulative impact of 50 State programs is one indicator of the national significance of these hearings.

The need for comprehensive and flexible branch line legislation cannot be denied. The problems presented by the present statutory provisions contained in the railroad Revitalization and Regulatory Reform, 4-R Act have been described many times.

New York concurs in the apparently very broad sentiment that new legislation is necessary, legislation that will increase local flexibility, broaden program scope, provide far more efficient solutions, increase program size and make the program permanent.

These are all laudable goals and necessary improvements. Many very bright people have been working hard on this. The administration's bill steps in this direction.

But, I am here today to advocate caution. Let me focus on just two immediate concerns and two long-term concerns.

First, the legislation makes extensive use of the ICC's "System Diagram Maps," categories one and two. These are a carrier's designation of (a) lines which it anticipates it will seek to abandon within 3 years, category one; and (b) lines under study by the carrier which it believes may be subject to future abandonment attempts, category two.

Category two is extremely loosely defined by the Commission, so loosely defined, in fact, that the Milwaukee Road has placed over 2,000 miles of road, or fully one-fifth of its system, in this category while the Delaware & Hudson has none in either category one or two.

The legislation uses these categories in several ways: It makes them eligible for assistance; it allocates the States funding through them and in doing so, it weights them twice as heavily as the lines already eligible in the Nation.

Frankly, I know of no other transportation grant-in-aid program that awards funds solely on the basis of the recipients greediness in asking for them. That is what this legislation would do.

In fact, a railroad is "entitled" to twice as much money for a line that it "anticipates will be" or "believes may be"—quotes from part 1121—the subject of a future abandonment application than for a line legitimately before the Commission under the present 4-R Act subsidy language.

We have heard several times today that the lines before the Commission are abandoned. But the lines of Northeastern States are running, the lines currently in the program are not abandoned lines. Under the final system plan provision that State-designated lines continue service, it remained certificated service; a certificate of public convenience and necessity to discontinue operations was never issued.

All the lines the 17 States run are properly common carrier lines.

New York is opposed to the use of category two lines in any form for any purpose and this means we are advocating that ConRail's five category two lines in New York not count in our allocation either nor be eligible for aid.

Second, although broadening the eligibility of a particular project may be laudable, altering the present statutory process for allocation of funds is very harmful. In fact, I do not see why these two always seem to be linked.

In entering the national program this year, the 17 Northeast States suffered a drastic cutback in funding, as the 4-R Act statute provided. Anticipating this, we in New York recently accelerated our effort to scale down our program.

The original title IV program of 32 lines and 600 miles is now down to 19 lines and under 400 miles, 100 miles of which was terminated since the turn of the year. We cannot cut further.

In fact, we are having to provide about \$1 million in State funds to complete a \$2.2 million rehabilitation of a branch line that, once rehabilitated, will be profitable to ConRail. I understand some Northeast/Midwest States are unable to meet even their contractual subsidy needs.

This proposed legislation, if enacted, would make a further cut in New York's allocation from 10.4 percent to 7.5 percent. Pennsylvania's would drop from 9.7 percent to 6.4 percent, a 3.3 percent drop which translates into an added \$2.2 million loss based on this year's appropriation.

While the crunch is worst in total amount in the large mid-Atlantic and Midwestern industrial States, the smaller States in the East are also hurt; typically, Maryland's drop from 2.4 percent to 1.6 percent will cost it another one-third of its program.

In all, the States with Congressmen and Congresswomen on the subcommittee would drop from 32 percent to 25 percent of their appropriation. This is also without considering the further impact in lost reallocations, which in past years have been very significant.

For example, nearly \$6 million or 9 percent of the total appropriation was reallocated from unobligated fiscal year 1977 funds.

Mr. FLORIO. You say there will be those cuts because eligible mileage is the basis for the allocation. What is the existing basis for allocation, if not eligible mileage?

Mr. ROSSI. Eligible mileage is the existing basis but in expanding the eligible miles by adding in thousands of miles in category one and two, you increase the denominator of all of the equations but do not increase the numerator in the Northeast and Midwest States, which do not have category one and two lines because

ConRail abandonment processes under the final system plan took care of that problem.

Mr. FLORIO. So, you just assumed that all of these numbers regarding the percentage of cutbacks, will get proportional cutback in funding, which is not really an accurate assumption. It may well be that New York would receive everything it is getting now and someone else would get more than proportional cutbacks, is that correct?

Mr. ROSSI. No; what we have used is the mileage that is currently eligible—we have taken existing allocation formulas which have certain mileages in them for each State, have a numerator and denominator for each State. We added in mileages that currently exist in category one and two to each of the States that has category one and two mileage and recomputed the percent allocations.

So, what I am showing you is the percent drop in the current appropriation. Now, that amount could be made up by a larger appropriation, for example, but not by any direct method here. The money would be strictly on an allocation based on miles.

On the question of reallocations, last year 6.9 percent or \$6 million of total appropriations was reallocated and that reallocation goes to all States.

I am not here to ask for more money than we anticipated nor even to defend the reallocations. But, I must plead for the industries already served by this program that the statutory authorization levels we have already based our programs upon be left untouched.

I have two long-term concerns. First, in the long-term, the most serious misgiving we have is the cumulative effect of branch line financial assistance programs on the Interstate Commerce Commission's regulatory standards and tests in abandonment cases.

I fear that, quite unintentionally and in no place in the written record, we are slowly losing the regulatory protections the public convenience and necessity test offered to the public.

Virtually no policy consideration has been given, by the States at least, to the effect of the subsidy statutes on the abandonment statutes. While decades of thought and research has gone into the abandonment statute in years past, little thought, except the ill-conceived categorization process, has been given to them recently.

Let me quote from Dr. Cherington's "The Regulation of Railroad Abandonments, 1948."

Regulatory power is not wielded in a watertight compartment, but rather in an institutional framework far wider than the immediate area involved. Under the impact of regulatory measures private interests often attempt to take refuge in other parts of the institutional framework, such as the courts, or in the delicate balance of power between the Federal and the State governments.

Thus the exercise of the Commission's authority has repeatedly raised problems of statutory interpretation, and occasionally issues of constitutionality, which have had to be settled in the courts. The Commission has learned that unexpected factual situations may complicate the simplest statutory language.

Right now, the subsidy law is changing the institutional framework of abandonment regulation. And this is potentially very damaging to rail users.

New York has offered an approach to the subsidy program that blends both the financial assistance and regulatory statutes; it

places primary responsibility with the ICC. I have attached a summary for information (attachment I).

What it does is, in each and every case an investment decision is made within the Commission's abandonment proceeding, so that there is a hearing officer, there are attorneys who can litigate both sides, and the public interest on both sides. Even the administration can come into the litigation.

Second, a Northeastern State cannot help but be aware of the congressional antipathy to the title V assistance program. In the long term, blending of this program with the title VIII local assistance program, with program administration in the hands of the States may be best. Perhaps this could be considered next year.

In summary, there are many features of the Local Rail Service Assistance Act that would be beneficial. As I stated earlier, many bright people have worked hard on it. Unfortunately, New York feels another year of work is necessary to present a permanent legislative solution to branch line problems. The effort to date in the proposed legislation would not be wasted as much of it would remain pertinent to a revised bill.

Added time would also provide the opportunity for ICC to reconsider and revise its system diagram maps process to a more useful product.

Thus, another year will enable regulatory and other concerns to be incorporated. If this subcommittee feels that another year can be made available, New York pledges to help in any way we can.

Finally, should it prove necessary to amend the existing statute, this must be done without altering funding allocations. In the event amendments are made, I have also appended a four-page section-by-section position paper (attachment II) containing New York's detailed views on the administration's bill.

In closing, let me repeat the thanks Commissioner Hennessy has often offered in testimony before this subcommittee to you, Mr. Chairman, and the other subcommittee members for your concern for and help in our rail transportation problems.

[Attachments to Mr. Rossi's prepared statement follow:]

"CORRECTIVE ACTION PROCEDURE"
Working-Paper

PURPOSE

More railroad management and government attention have been directed at the branch line problem than can be justified by its significance relative to the overall railroad problem. This has been wasteful, and yet it should not be forgotten that branch line problems can be significant relative to the shippers directly affected. What is needed is a procedure that permits shipper concerns to be addressed, without excessive diversion of rail or state management resources from larger rail problems. Such a procedure is outlined below. It is designed to expedite analysis of problems through a tight schedule. While it does not change existing abandonment and post-abandonment subsidy procedures, it does give a railroad earlier recourse to interim subsidy.

CORRECTIVE ACTION PROCEDURE

1. To initiate a corrective action procedure, a shipper or a state would petition the ICC to order a corrective action procedure for a specific rail line. A shipper may act independently or in cooperation with other shippers on the line.
2. Within 30 days after filing of the petition, the ICC would: obtain cost and revenue data for the line from the railroad; determine whether costs exceed revenues as measured by RSPD standards; and
 - (a) if costs exceed revenues, order that a corrective action procedure be undertaken;
 - (b) if revenues exceed costs, deny the petition and refer the matter for investigation to the Bureau of Enforcement.
3. Within 90 days of the filing of the petition, the petitioner must either:
 - (a) file a corrective action agreement made between the carrier, the shipper, and any other parties, in which case the ICC would order continuation of service by the terms of the agreement, and direct payment of a 100% federal subsidy to the carrier for the period from the date of the petition to the date of the agreement, inclusive, or
 - (b) enter a joint plea with the carrier for arbitration, in which case the ICC would, within 30 days, arbitrate the matter, circulate a proposed corrective action agreement among the parties for ratification, and
 - (i) if ratified by all, order continuation and payment of subsidy as in 3(a); or
 - (ii) if ratified by everyone except the carrier, dismiss the proceeding without ordering payment of interim subsidy; or
 - (iii) if ratified by all except the petitioner, order payment of subsidy as in 3(a), remove the lines from eligibility for further federal subsidy, and dismiss the proceeding; or
 - (iv) if the arbitrator determines that no cooperative action agreement is feasible, despite the best efforts of all parties, it shall order payment of subsidy as in 3(a) and dismiss the proceeding without prejudice to further action by any of the parties under any statute.

A Position Paper on
The Secretary's Bill to amend the
Federal Railroad Safety Act of 1970, the
Rail Passenger Service Act, other
rail safety Acts, the Railroad Revitalization
and Regulatory Reform Act of 1976, and the
Department of Transportation Act.

Submitted by
New York State Department of Transportation

Title I - Local Rail Services

Declaration of Policy

Section 101 - New York State supports the purpose and policy described in this section. It especially supports expectations that states, local communities, shippers, and all elements of the railroad industry will commit themselves to long-term solutions. Such philosophy has been and will continue to be the basis for New York State's branchline assistance program.

Expansion of Assistance

Section 102 - New York State supports the broadening and clarification of eligible uses for assistance funds, especially in the areas of rehabilitation and substitute services. The State is also supportive of the concept of a cooperative action program.

Cost Sharing

Section 103 - New York State supports the concept of a permanent 80 percent federal share program. However, to support Congressional intent of placing less emphasis on line subsidies, we suggest lowering the federal share of operating subsidy funds only to 50 percent. New York also supports the proposed mechanism of allowing cash or other benefits to be eligible as the state's share and the concept to allow the amount in excess of the 20 percent contribution during any fiscal year to be applied toward the states' of the costs of its program for subsequent fiscal years.

Formula Allocation

Section 104 (A) New York State supports the proposal for a \$100,000 minimum per state in place of the 1 percent minimum. These funds, however, should be used at the discretion of the states and should not be considered solely as planning funds.

(B)(i) New York State is firmly opposed to the proposed formula which provides an allocation for each state based on the state's ratio of two-thirds weight on "potentially subject to abandonment" mileage and one-third weight on mileage eligible for assistance under Section 402 of the Regional Rail Reorganization Act of 1973 and any other presently eligible formula.

Such a formula is inconsistent with and unfairly biased against existing eligible mileage which, through a consistent and comprehensive study procedure, has been found to be a measure of present needs and commitments. If FRA feels obligated to weigh any categories more heavily than others, the emphasis logically should be on lines owned or invested in by the states. Under a formula which heavily weighs

mileage "potentially subject to abandonment" the cost of public convenience and necessity is borne by the public, not by the railroads or shippers who lose incentive to attain viability. It also opens the way for states and railroads to list lines as potentially subject to abandonment for the sole purpose of acquiring larger shares of federal funds.

New York State supports a mechanism in which the ICC would make a determination based on appropriate evidence as to which lines would be helped and to what extent assistance would be provided. ICC would then direct FRA to transfer the appropriate funds to the state.

Absent this mechanism, the State is forced to support the existing allocation formula including a broadening of the existing Section 5 formula to include lines which are publicly owned and invested in on a permanent basis.

This formula meets all the intended criteria for continuation assistance in that it is directly related to each state's need for assistance under the program and is applied easily and provides for a relatively consistent level of funding from year to year.

Termination of Section 402 eligible mileage in 1981, as proposed by FRA, is acceptable to New York. Retention of the Section 5 formula would keep line eligibility criteria consistent for the entire five-year program period.

(B)(ii)(3) New York State opposes this proposal which would enable grants to be made to states and designated Metropolitan Planning Organizations if a consolidated planning fund is authorized to be created within the Department of Transportation and which gives the Secretary the power to transfer up to five percent of the total amount of funds appropriated for any fiscal year to such consolidated planning fund.

It is New York's experience, and probably that of the majority of other states, that branchlines problems exist in rural areas for the most part and not in urban areas as implied in the proposal. In New York State's case, 55 percent of all eligible subsidy mileage is outside of MPO boundaries and over 85 percent is outside of New York State's urbanized areas. In addition, MPO's are neither staffed nor have the experience for railroad and shipper contacts to conduct such a program within the time allowed.

Planning Assistance

Section 105 - New York State opposes the proposal relating to the use of the \$100,000 minimum allocation. The restriction of using these funds solely to meet the cost of establishing, implementing, revising, and updating the state rail plan is unacceptable. These funds should be used by the states at their own discretion. More importantly, however, New York feels that in addition to

the \$100,000 minimum addressed in Section 104, no state should be made eligible for less planning and project programming funds than they were eligible for under the 3R and 4R Acts. Eligibility levels the prior two years should be considered as minimum levels for each state in any future entitlements.

These actions are imperative in order to allow states to maintain their present planning. Anything less would be a blow to states which have just begun their rail programs, largely in response to the encouragement and support of the FRA and to the ever expanding federal program requirements.

Project Eligibility

Section 106 (K)(1) New York State is agreeable to these eligibility criteria for operating subsidy of lines in concept. It is necessary to point out, however, that if eligible mileage criteria are not changed, subsidy for non-abandoned lines is to be borne by the public, not by the railroads and shippers on those lines.

(K)(2), (3), (4), and (5) This comment, which relates to all the noted paragraphs deals with the proposal that the Secretary find that each type of project satisfy benefit/cost criteria developed by the Secretary.

In proposing such action, FRA is attempting to generalize and then legislate decisions, which, by their nature and circumstances, including each state's needs, policies, and priorities, are impossible to standardize. Funds for eligible projects should be in the form of block grants with the states deciding for themselves which projects are cost effective. New York State is opposed to this benefit/cost requirement.

(K)(2) Though New York State supports the proposed eligibility criteria for Rail Banking projects, it must be pointed out that such a program will not prove useful unless additional appropriations are made available.

(K)(3) New York State feels that the provision for rehabilitation/substitute facilities must also be an alternative for abandoned lines. It is necessary to include abandoned lines in order to provide states with flexibility to mitigate the impacts of abandonment.

(K)(5) New York State supports the proposed cooperative action concept with the exception that each project be eligible for 3 years rather than the proposed 18 months. Experience with New York's negotiated solution program has shown that such a time period is required in order to collect the required data, evaluate the line, and secure commitments from shippers or other involved parties.

Benefit-Cost Criteria

Section 108 - New York State has already made its objections to the promulgation of regulations establishing criteria to be used by the Secretary to determine the ratio of benefits to costs of proposed projects eligible for financial assistance in its comments addressing Section 106(K) (2-5).

Section 109 - New York State supports the eligible funding uses under rehabilitation assistance while maintaining its desire to include abandoned lines as eligible projects as stated in Section 106(K) (3).

Amendments to the Rail Passenger Service ActAuthorization for Appropriations

Section 401 (2) - New York State feels that to be consistent with Section 401 (1), no specific funding should be stated for fiscal years ending September 30, 1979 and September 30, 1980. Funding should be to the extent necessary to continue operations of Amtrak's basic system pending outcome of the Secretary's route restructuring study. Once Congress approves a realigned basic system, the level of funding should be made sufficient to implement and operate the approved system.

Mr. MURPHY. Thank you, Mr. Rossi.

Tomorrow we are going to hear from other State officials. Does your testimony differ substantially from that testimony that will be presented tomorrow?

Mr. Rossi. You have heard in effect from two or three States already today, representatives of Virginia and Maryland also. I think in concept, most people are agreeing in the long-term goals of what we are doing.

I think there is some disagreement on how we proceed and what we do this year.

Mr. MURPHY. On page 3 of your testimony, you state an objection to the fund allocation provided in the bill. Wouldn't the State of New York benefit from the more liberalized eligibility for branch lines, given the fact that the emphasis is to be placed on rehabilitation rather than operational subsidies?

Mr. Rossi. Yes. We would have some benefits from this bill. We have been working in trying to perfect a bill of this type. We would have in New York, for example, the ability to invest in certain category one or two lines of ConRail or D and H puts some on their system diagram map and rehabilitating them makes them more secure.

Our problem is that we are dealing with a program that is totally—every dollar—committed to businesses and industries that are served by the lines presented to us by the final system plan.

The 2 years we have been running them is not enough to get rehabilitation complete. We are still doing that rehabilitation work. Some contracts have not even been let and, given the priority of continuing to address an existing program and added flexibilities which we think are beneficial, we have got to defend the existing program.

Mr. MURPHY. Ms. Mikulski.

Ms. MIKULSKI. I have no questions. I thank you for your testimony and your position paper.

Mr. MURPHY. Mr. Florio?

Mr. FLORIO. I would observe two points. First of all, that you have not convinced me with regard to the accuracy of your projections as to the impact of the bill. Just because one expands the universe of eligibility lines by the adoption of this formula does not mean all of those new miles of railroad in the category of potentially eligible to be abandoned are going to be funded. That is the ultimate decision which will be left up to FRA or the States, as the case may be.

So, I do not think that it is 100 percent accurate to say that there is inevitably going to be a 9 percent decrease, and I can understand your concern. But it seems to me that the countervailing social benefits of getting to lines that are legitimately potentially going to be abandoned may well outweigh the arguments that you put forth.

As a matter of fact, on page 5 you say that the long-term blending of this program, the title V assistance program, with title VIII local assistance program with program administration in the hands of States may be best.

That is what some of us are concerned about—what is happening right now. We are concerned about the blending between these two programs, when in fact they were for two different things.

We are concerned about the potential of some lines in the A and B classification being assigned to the classification 2 area, thereby making no distinction whatsoever between the title V assistance and the title VIII local assistance.

Mr. Rossi. I would agree that under the reallocation methods you could have all the money reallocated back and wind up with the same total dollar amount. Under that basis the problem you would still have is that the States are on certain dates contractually responsible to meet operating subsidy payments or to let a contract at a certain time to rehabilitation.

All our rehabilitation contracts in the Northeastern tier of States have to be let in early spring or they are not completed. Waiting for reallocation to restore the money can mean failure to meet operating subsidy payment in some States or it can mean failure for a year to start rehabilitation.

So, even if it were all reallocated, there could still be an impact. The other thing I would say is, yes, I agree that there is need to address these other problems. Category 2 lines, however, give me a great deal of concern to making them eligible for the real potential for abuse.

Mr. FLORIO. Are you concerned about the same thing I am, the objective definition as to what should be a real category 2 line? I think that perhaps when we have the ICC people here tomorrow we ought to dwell on that point very specifically on the point of how they monitor because, as you have indicated in your testimony, the definitions are very loose and seem almost to be defined by the applicant as opposed to the regulator.

Mr. Rossi. That is correct. It is entirely defined by the applicant. In the case of category 1 lines, they must compile data in conformance with RSPO regulations and they must intend seriously to file abandonment. That has at least one degree of comfort and certainty to it.

The study lines are completely discretionary and they could be put in there for any purpose.

Mr. FLORIO. Thank you very much.

Mr. MURPHY. Thank you very much. We certainly appreciate your testimony.

The next witness is Mr. Richard Freeman, vice president—law, Chicago & North Western Transportation Co.

Mr. Freeman.

STATEMENT OF RICHARD M. FREEMAN ON BEHALF OF ASSOCIATION OF AMERICAN RAILROADS

Mr. FREEMAN. My name is Richard M. Freeman. I am vice president—law of Chicago & North Western Transportation Co., but I appear here today on behalf of the Association of American Railroads.

My company has had a particularly large amount of abandonment experience as evidenced by the fact that we operate 9,340 miles of railroad. Some 522 of those miles are before the Interstate Commerce Commission at the present time for abandonment; 1,037 are in category 1 lines you have been hearing about and 206 are in category 2.

I appreciate the opportunity to appear before you today to present the views of the Association of American Railroads on H.R. 11979. I will not read all of my statement but will ask if it may be incorporated in the record [see p. 90].

I will try to indicate the extent to which we agree with or differ from some of the previous witnesses. I will concentrate on the rehabilitation assistance.

We share the views of the States who have expressed them so far that confining rehabilitation assistance to categories 1 and 2 is too narrow and in part, Mr. Florio has made a point that may have some validity, that category 2 indeed could be quite expensive.

But we believe that it is important to maintain the integrity of categories 1 and 2 for the purpose for which they were designed and not have any kind of statutory scheme that would encourage the railroads to expand the use of those categories for another purpose.

We are troubled, however, by the proposal of the States that you have heard so far that all lines with a density of under 5 million tons be included. We are troubled because we would be required as railroads to keep detailed records on all of those lines since they would be eligible for inclusion for rehabilitation assistance.

We have a plan, a scheme which we think meets some of the problems that appear to bother you, Mr. Congressman, and also deal and meet the problems that we have with respect to record-keeping because we do firmly believe that there should be cost-benefit tests and, if you are going to have cost-benefit tests, you have to have recordkeeping.

So, we are not asking to get rid of the recordkeeping responsibility. We are asking to have it confined to lines which realistically should have rehabilitation assistance.

Our plan is to—

Mr. FLORIO. Did I misunderstand Mr. Sullivan or did he say he had records of gross mile tonnage?

Mr. FREEMAN. He has records of gross ton miles but those are not the kinds of records we would be required to keep in order to supply the States with the data they needed for cost making.

Their cost-benefit studies are a very, very elaborate set of data and go much beyond gross ton miles. It is that kind of data I speak of, Mr. Florio.

Our proposal is that it is satisfactory to continue to put categories one and two as eligible for rehabilitation assistance if there is added lines which can be agreed upon by the appropriate State agency, and the railroad concerned so that as part of the universe one would have lines in category 1, category 2 and lines agreed upon by the State, State agency and the railroad.

I think that goes a long way toward meeting the problem of getting the universe large enough. It certainly solves the record-keeping problem because a railroad will not agree to include a line unless it is prepared to keep the records and it should go a long way toward meeting the problem of having lines which do not deserve to be in such an eligibility list because then the States do not have to agree.

In any event, all such lines in this universe, as I defined it, would have to meet the cost-benefit test which will be supervised by the Federal Railroad Administration.

One further matter with respect to recordkeeping. Because it is so burdensome, we ask that your bill be amended to provide that the railroads can be reimbursed for the chore of collecting the necessary data to meet the cost-benefit test.

If I may, we understand that the Interstate Commerce Commission will have testimony tomorrow and I further understand that there may be testimony on behalf of the Railway Labor Unions. In that event, I would ask for permission to file a supplemental statement if we feel that would be appropriate.

Ms. MIKULSKI [presiding]. No objection.

Mr. FREEMAN. With that, and with the assumption my statement will be treated as if read, I will be delighted to answer questions.

[Testimony resumes on p. 105.]

[Mr. Freeman's prepared statement and attachment follow:]

[The supplemental statement of Association of American Railroads and the answers to questions submitted by the subcommittee staff were subsequently received for the record:]

STATEMENT OF
RICHARD M. FREEMAN
IN BEHALF OF THE ASSOCIATION OF AMERICAN RAILROADS
ON H.R. 11979

BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
U.S. HOUSE OF REPRESENTATIVES

JULY 12, 1978

My name is Richard M. Freeman. My business address is 400 West Madison Street, Chicago, Illinois 60606. I am Vice President-Law of the Chicago and North Western Transportation Company (CNW). I appear today in behalf of the member lines of the Association of American Railroads (AAR) with headquarters in Washington, D.C., in my role as Chairman of the Association's Rail Services Group. The railroads which are members of the Association operate 92 percent of the line-haul mileage, employ 94 percent of the workers, and produce 97 percent of the freight revenues of all railroads in the United States. My employee-owned company, which is a member of the Association, currently operates 9,340 miles of railroad, and has 522 miles pending before the Interstate Commerce Commission (ICC) for abandonment, 1,037 miles listed in ICC Category 1 (lines subject to abandonment within three years) and 206 miles listed in ICC Category 2 (lines potentially subject to abandonment).

I appreciate this opportunity to appear before you today to present the views of the Association on H.R. 11979, the Local Rail Service Assistance Act of 1978.

H.R. 11979 would amend the branch line or local rail service assistance program authorized in Section 5 of the Department of Transportation Act

as amended by Title VIII of the Railroad Revitalization and Regulatory Reform Act of 1976 (4-R Act). Title VIII of the 4-R Act established a program of temporary subsidies to support local communities and shippers which would suffer dislocations as a result of abandonments of railroad branch line service authorized by the Interstate Commerce Commission. While the amendments proposed in H.R. 11979 make some modest changes in the existing program to mitigate the effects of such abandonments, they also establish a new policy to provide federal assistance to upgrade light density branch lines when such assistance provides tangible economic benefit to the affected communities and enables the continuation of adequate service without further federal assistance.

Dealing first with changes in the present program, the amendments continue subsidies to the states to support operating assistance for branch lines which the Commission has authorized for abandonment, along the same lines as now provided, except that the level and duration of such payments are changed. Instead of the declining percentage of support payments which will terminate in 1981, H.R. 11979 provides a flat 80% federal contribution toward operating assistance for any lines authorized for abandonment without regard to when the authorization was issued (Sec. 4), but limits the period of eligibility for a particular line to two years (Sec. 7). We support this change.

Turning now to the important change in policy reflected in H.R. 11979, we urge a further change with respect to upgrading the physical condition of light density branch lines. We urge that rehabilitation funds be made available for a broader group of lines than is permitted in this bill. The only lines eligible for upgrading are those which have been identified by the railroads

as "potentially subject to abandonment" or as to which the railroads plan to submit for abandonment (Sec. 7). These two classes of lines are those designated as Categories 1 and 2, respectively, by the Interstate Commerce Commission under the 4-R Act on maps published by the railroads. By and large, the lines in these two categories are the least used by the shipping public and least needed in the nation's or a state's rail network. This limitation on the lines that can be upgraded omits the much more important category of branch lines which are frequently used, which cannot be upgraded because of lack of funds by the operating railroad, which the railroads have no plans for abandoning, and which are not potentially subject to abandonment. Thus the lines covered by the bill are those least needed in the transportation system, whereas the branch lines not covered are most likely to be needed.

We are reluctant, however, to propose that all branch lines be placed in the universe for eligibility of upgrading, since we fear the tremendous administrative and cost burden which would fall on the railroads to supply the vast amount of data needed for the states to comply with the Department of Transportation's benefit-cost study criteria. To resolve this apparent dilemma -- that is, to assure that the most worthy lines are eligible and to control the administrative burden of data collection to manageable proportions -- we suggest that an additional category of lines be added, lines which a railroad and the appropriate state agency agree should be included in the universe of eligible lines. We have discussed this change with representatives of the National Conference of State Railway Officials. It is our understanding that this change is agreeable with that organization. The financial burden on the railroads of supplying

relevant data to the states should also be ameliorated by providing that the railroads be reimbursed for this cost.

Our recommendation is based in some measure on the experiences of two states outside the Northeast Region -- Iowa and Minnesota -- which have functioning rail plans and on-going programs for upgrading branch lines. About three years ago, Iowa reviewed all branch lines in the state and concluded that some 37% of the lines probably should be abandoned, but that many of the balance of the branch lines needed rehabilitation beyond the financial capability of the railroads. The Iowa Legislature, with guidance and leadership from the Governor and the Iowa Department of Transportation, appropriated \$3 million of state money to commence rehabilitation work on these lines for which the railroads had no plans for abandonment. That program has been continued each year since its initiation. Interestingly, the Iowa Department of Transportation and the several participating railroads have had no difficulty in reaching agreement on which lines should be upgraded. That experience has now been repeated in Minnesota, which has adopted a similar program. We, thus, are proposing a change which has been tested in practice. We know it will work.

Since we do not ask for any increase in federal funds authorized for branch line operating assistance or rehabilitation, our proposed change will not cause any increase in the cost of this program to the federal government. The result will simply be a more effective allocation of federal funds.

As previously mentioned, H.R. 11979 also provides that lines eligible for upgrading must be tested by a benefit-cost criteria developed by the Department of Transportation (Sec. 9). We agree with the need for this concept,

since it would seem appropriate that federal funds be applied first to those lines where the benefits and the need are the greatest. The bill, however, leaves the railroads out of the process of developing appropriate benefit-cost criteria. We have substantial experience and knowledge to bring to this process. We urge the Subcommittee to amend Section 9 of the bill to provide for consultation with representatives of the railroad industry in designing the benefit-cost criteria.

The changes proposed in Sections 5 and 6 of H.R. 11979 are matters of primary interest to the states. We have no comments on these provisions.

The AAR's suggested amendments to H.R. 11979 are shown in an attachment to this statement. We hope the Subcommittee will give them favorable consideration.

Mr. Chairman, that concludes my prepared statement.

AMENDMENTS PROPOSED BY THE AAR TO H.R. 11979

1. Sec. 6, which amends Section 5(i) of the DOT Act, should be further amended to read:

"(i) During each fiscal year, a State may, regardless of its current eligibility under subsection (j) of this section, expend its annual entitlement under subsection (h)(1)(A) of this section solely to meet the cost of establishing, implementing, revising, and updating the State rail plan required by subsection (j) of this section and for development of data from the railroads to apply the criteria required by subsection (o) of this section, unless the Secretary has included such funds in any transfer to the consolidated planning fund pursuant to subsection (h)(3) of this section."

2. Sec. 7, which amends Section 5(k) of the DOT Act, should be further amended to cause 5(k)(3)(A) to read:

"(A) the line of railroad related to the project is, in accordance with section 1a(5)(a) of the Interstate Commerce Act (49 U.S.C. 1a(5)(A)), described as 'potentially subject to abandonment', or is identified as a line with respect to which a carrier plans to submit, but has not yet submitted, an application for a certificate of abandonment or discontinuance or is designated by agreement between a State in which the line is located and the railroad owning or operating the line; and "

3. Sec. 9, which amends Sec. 5 of the DOT Act, should be further amended to cause new subsection (o) to read:

"(o) The Secretary, after consultation with representatives chosen by the States and the railroads, shall promulgate regulations establishing criteria to be used by the Secretary to determine the ratio of benefits to costs of proposed projects eligible for financial assistance under paragraphs (2) through (5) of subsection (f) of this section."

SUPPLEMENTAL STATEMENT OF
THE ASSOCIATION OF AMERICAN RAILROADS
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE
HOUSE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
ON
H.R. 11979,
THE "LOCAL RAIL SERVICE ASSISTANCE ACT OF 1978"

The Association of American Railroads (AAR) is a voluntary, unincorporated, non-profit organization composed of member railroad companies operating in the United States, Canada, and Mexico. Together, AAR's members operate more than 92 percent of the line-haul mileage, employ 94 percent of the railroad workers and produce 97 percent of the freight revenues of all railroads in the United States. The comments presented in this statement are in addition and supplementary to those offered to the Subcommittee on July 12, 1978 by Mr. Richard M. Freeman, Vice President-Law, Chicago and North Western Transportation Company, in behalf of this Association.

On Pages 8-10 of the Statement of A. Daniel O'Neal, Chairman of the Interstate Commerce Commission, the Commission

has in effect asked Congress to reverse the decision by the United States Court of Appeals for the Seventh Circuit on May 30, 1978, in Chicago and North Western Transportation Company, et al. v. U.S.A. and I.C.C., (Nos. 76-2283, 77-1008 and 77-1487), which held that the Commission's abandonment and subsidy regulations failed to reflect the will of Congress. The Commission, as the Court forcefully said, simply paid no attention to the words of the Congress. Now, the Commission wishes the Congress to effectuate the Commission's will.

The Congress adopted, as a test for lines subject to abandonment and for payments to a railroad if someone wished an abandoned line to be continued, the standard of economic indifference; that is, the railroad operating the branch line should be in the same economic position, whether the line is abandoned or subsidized. The Congress and the Court understood the wisdom of this policy. The Commission did not and, thus, seeks to change it.

It is in this context that the Court's reversal of the Commission's regulations should be viewed. The Commission challenges three of the five issues decided against it by the Court.

First, the Commission says the Congress should amend the 4-R Act to permit the Commission to extend the Congressionally mandated six-month period for the railroad and the subsidizer to negotiate. The Commission says that to do otherwise would create a "potential imbalance in the bargaining positions of the subsidizer and the railroad." Not so. If the amount provided by the subsidy is consistent with the Congressionally established

standard -- that is, the amount needed to make the railroad economically indifferent -- then the railroad has no inducement to delay the bargaining process. It is the subsidizer who has the inducement to delay the process. Those seeking to have the abandoned line continued have every reason to delay the negotiating process, because, while delayed, the service continues without the subsidizer having to pay and with the railroad bearing all the losses during the negotiating period.

The following is a current example. The North Western filed to abandon its line between Hawarden, Iowa and Iroquois, South Dakota on January 2, 1973, some five and one-half years ago. The Commission finally concluded, after more than four and one-half years, that the public convenience and necessity permit abandonment. The order became final in October, 1977. Although the North Western promptly responded to all requests for data from potential subsidizers, there still has been no offer to subsidize this line. Yet, the Commission would force the North Western to continue losing well over \$200,000 per year^{1/} while potential subsidizers consider a subsidy offer at their leisure. This is not what the Congress had in mind. Congress wisely provided that the negotiation process must come to an end. The only way to accomplish that is to leave the statute as is with an absolute time limit on the bargaining process.

^{1/} The Commission found the North Western's losses on this line to be over \$1,000,000 between 1970 and 1975.

Let us turn now to the other two issues raised by the Commission.

The Commission says that when Congress provided that branch line costs should include "expenditures to eliminate deferred maintenance," it meant only maintenance costs necessary to permit operations at 10 m.p.h. (FRA Class I). However, the Court said: "operations at that speed may be so inefficient a use of equipment, personnel and fuel that rehabilitation to a higher level is a practical necessity if service is to continue." The Court believed that if Congress intended to promote such inefficient transportation, it would have said so in unmistakable language. But, the Congress actually said, "eliminate deferred maintenance"; it did not say, permit operations at only 10 m.p.h.

The Commission says that the Court would require the subsidizer to pay for "any higher previous level of utility it [the railroad] desires." That is not the consequence of the Court's decision. The statute provides for expenditures to eliminate "deferred maintenance". All the Court held is that the Commission must define "deferred maintenance" and that bringing a line to "10 m.p.h." is not synonymous with eliminating "deferred maintenance". That would seem to be self-evident.

The other element of branch line costs -- for equipment -- presents another example of the Commission's attempt to second-guess the wisdom of the Congress. If, as is the case, the railroads are short of cars and locomotives, then they must buy additional cars and locomotives if a line which uses that equipment is

not abandoned. That is, the "avoidable costs" are the costs of the equipment which would not be furnished if the line is abandoned. That is what the Court said the Congress meant. Again, that would appear to be self-evident, even though it is not so to the Commission.

The Commission then suggests that the impact of the Court's decision would be to increase costs by two to three times and, thus, undercut the branch line program. This is not a realistic prediction. In the areas of the country covered by the 4-R Act -- outside the Northeast Region -- there has been only one subsidy contract executed with a railroad since that Act was passed, and for good reason.^{2/} Very few lines which are candidates for abandonment are likely candidates for subsidy. Those states which have complied with the Congressional intent that they establish a state rail transportation plans have found that lines authorized by the Commission for abandonment are almost always lines which are not needed in the state's rail plan. But, even if an abandoned line is needed, the subsidy cost will not increase in the magnitude suggested by the Commission. The rehabilitation costs to cure "deferred maintenance," rather than permit only 10 m.p.h. operations, will be offset by much lower operating costs -- crews, fuel and equipment -- and the equipment costs required by the Court's decision are only a small fraction of the total costs

^{2/} The single contract involves a line in Minnesota, Redwood Falls to Sleepy Eye. The North Western has abandoned twenty-two other lines since the subsidy provisions were enacted, without any interest in subsidy being shown.

of any line. The panic reaction of the Commission is not justified.

This Subcommittee and Congress should not amend the 4-R Act as the Commission has suggested. We recommend that the Commission be given an opportunity to conform to the will of Congress, as found by the Court. When the Commission complies with the Court's decision, we believe that it will find the imagined problems are not real.

On pages 7-8 of the Statement of J. R. Snyder of the Railway Labor Executives' Association (RLEA), as presented at the hearing on July 17, 1978, by Edward Friedman, RLEA has proposed that H.R. 11979 be amended by requiring the State, carrier or any designated operator, which is willing to perform rail service on lines eligible for federal financial assistance, to abide by certain labor protective requirements as a condition to obtaining such financial assistance. An operator would have to agree to rehabilitate and operate the line under the terms of a collective bargaining agreement under the Railway Labor Act and to continue and maintain "employment" on the line. Such an amendment would amount to compulsory unionism by legislation. It would saddle the employees with representation by railway labor organizations and the obligation to join and pay dues and initiation fees to such organizations, regardless of the employees' present labor representation if any. It would also require those employees to work under railway labor agreements instead of one of their own. Of more concern, however, such an amendment would saddle the operator with a standard labor contract containing wages and work

rules which may have prompted the proposal to abandon the property in the first place, thus leading to the need for a perpetual federal subsidy for continued operation of the line. Before adopting any such amendment which could be adverse to continued operation of the line and the public interest, surely this Subcommittee would want to know the need for and effect of such a requirement.

As we understand, the purpose of H.R. 11979 is to provide federal financial assistance for the rehabilitation and operation of lines of railroads that otherwise might be abandoned. This should be done on an economically sound basis, not to perpetuate or to make worse the conditions which have led to abandonment. We urge the Subcommittee and Congress not to adopt the labor protection conditions proposed by RLEA.

In the Statement submitted for the record by Mr. L. Ray Eastin, President of the State Contracting and Stone Division of Medusa Aggregates Company and a Director of the National Limestone Institute, Inc., he states on page 2 that "the purchase of ballast must be done in an open competitive market with consideration for good economics and good engineering practices." We agree wholeheartedly with this position, and for that reason would be opposed to any amendment of H.R. 11979 which would limit the railroads' managerial discretion to purchase ballast in such manner.

THE ASSOCIATION OF AMERICAN RAILROADS

July 27, 1978

ANSWERS TO QUESTIONS SUBMITTED TO
MR. FREEMAN BY THE SUBCOMMITTEE'S STAFF

1. Mr. Freeman, in your testimony you talk about expanding the universe of eligible lines to branch lines which cannot be upgraded because of lack of funds that which the owning railroads have no plans for abandoning. Am I to understand that you are advocating outright grants of assistance to maintain profitable railroad property? In fact by your definition virtually every mile of track would receive taxpayer money for rehabilitation with the taxpayer having the dubious privilege of underwriting the railroads cost benefit analysis. I fail to see how you can state to this committee that such a program would not cause any increase in the cost to the federal government for branch line operating assistance and rehabilitation.

There must be some confusion about the position of the Association of American Railroads with respect to federal rehabilitation funds for branch lines. The AAR is not advocating the provision of federal funds for branch line rehabilitation, but rather is urging that if such funds are provided they be made available for an eligibility universe of branch lines (not main lines) which includes those lines which are agreed to between the appropriate state transportation agency and the railroad owning and operating the line. It is our concern that if only lines which are candidates for abandonment are included (ICC Categories 1 and 2), federal tax dollars will be wasted on lines for which there is no public need. For example, the State of Iowa's transportation plan finds that almost none of the lines in ICC's Categories 1 and 2 are needed. Our alternative is to make any federal funds which the Congress believes should be appropriated for branch line rehabilitation available for lines which hold some promise of being needed in the state and federal transportation networks.

Answering your questions specifically, we are advocating grants for rehabilitation of lines agreed to by the state agency concerned and the railroad, whether profitable or not. Obviously, a state will not agree to include a line in the eligible category if it believes the railroad has the resources to upgrade the line. Virtually every mile of track would not receive taxpayer money.

The AAR does not advocate increasing the authorization or appropriation of funds for branch line assistance (operating or rehabilitation), but simply urges that the monies the Congress does authorize and appropriate should go to lines where the taxpayers will get the most for their money.

2. If you were advocating that the expansion of assistance included loans to the railroads for the maintenance of branch lines not being considered for abandonment, I would consider your proposal to be a constructive application of federal and state funds. However, no where in your recommendations do I find the element of fiscal responsibility so essential to assistance programs. You appear to be advocating a totally one-sided effort in which the federal and state governments will contribute to the rehabilitation and maintenance track without the railroads incurring the slightest additional liability. Would not the interest of the taxpayer be better served by the federal government actually taking over all track maintenance and rehabilitation programs and leasing the track back to the railroads on a usage basis?

It is our view that the program should be flexible, providing either loans or grants, as provided in H.R. 11979, with the states having the choice of one or the other, or a combination of both. We believe it is much more responsible to provide tax dollars, whether grants or loans, to rehabilitate

lines which hold some promise of being needed in the rail transportation network, rather than to rehabilitate lines which probably are not needed and should be abandoned. Any program in which the government acquires the right-of-way, assumes the burden of maintenance and leases the track back to the railroads raises fundamental and serious questions. Among other things, such a plan would require an expanded bureaucracy and would cause severe operating problems by separating the maintenance and operating responsibilities.

Ms. MIKULSKI. You raise interesting questions related to objective criteria test in the testimony as developed today. Mr. Florio from New York has a substantial amount of background. Mr. Florio, I yield to you because I think you have done a great deal of work on this and rather than me asking questions, I think colloquy between you two would be beneficial.

Mr. FLORIO. I appreciate your kind and generous comments which are not justified, and I thank you for giving me the order of expertise which I do not have. But I do have some questions about this new category.

You have been here most of the day, haven't you?

Mr. FREEMAN. Yes. I heard the prior testimony.

Mr. FLORIO. You heard all the comments. We started out with the Maryland people, lamenting the fact we were extending the funding mechanism beyond just abandoned lines into potentially eligible for abandonment.

We heard other people talk about the same problem. The previous speaker talked about diluting the amount of money available. What you are advocating is perhaps diluting it even further by going into lines that are going to be subsidized, so to speak, as a result of agreements between State and railroad officials.

Are you prepared to suggest what the criteria should be?

Mr. FREEMAN. I will not deal with how money should be allocated among the States. That is part of the discussion that we have had today. I am not nor do we in the railroad industry feel we are competent to deal with that subject.

What we do feel we are competent to deal with is the universe that should be included for eligibility. That is what I am addressing myself to. The present dominant view among the States, as I understand it—and you will hear from quite a few more tomorrow—is that all lines with a density of less than 5 million gross ton miles should be included as eligible lines.

As I said before, we feel that that is too broad in the sense that it puts a very, very heavy data collecting burden on the railroad industry. Even though we might be able to solve that problem to some extent by being reimbursed, it nevertheless puts—we have enough records to keep, if you please, or a whole host of reasons, and we are reluctant to add that burden if in the final analysis many of those lines would never be considered for assistance.

So, we are trying to carve it back to lines which we think are potential lines for assistance as the railroad sees it and as the State sees it.

Mr. FLORIO. Are you implying that the States are going to ask that those lines utilizing this new standard will automatically be eligible? If they were not automatically eligible, it would depend on the application. You certainly are going to have to keep records.

You do not have to keep records unless you are going to apply.

Mr. FREEMAN. If the States' plan were adopted, the plan you heard including all lines with a density of 5 million gross ton miles per mile of track, if that were the eligibility criteria under the bill as now written, in order to apply the cost-benefit test to all of those lines so they would be ranked, you would have to collect data for all of those lines. It is that burden that concerns us.

Mr. FLORIO. I understand that.

It just seems to me that perhaps there are further modifications needed such that lines would have to have the concurrence of the owners before they would be ranked on a priority basis, thereby invoking the need to collect the data.

Mr. FREEMAN. That is another way to do exactly what I think we are talking about. If you had the test, gross ton mile test of 5 million tons provided, however, that a railroad must be agreeable to having that line included on the list that would accomplish part of the objective.

I do not think it would meet your problem about "Gee, we may have some lines on there that should never be seriously considered."

Mr. FLORIO. I understand what you are saying, but I have assumed, and perhaps inappropriately, that the States are not going to be applying for moneys for railroad lines when, in fact, the railroads themselves do not want those lines to be included in terms of application.

Mr. FREEMAN. I would think in most instances that is undoubtedly the case. Our experience and one of the reasons we make this proposal—some of us in the Midwest have had experience with programs like this where the States are using their own money and we have had almost no difficulty in agreeing with the State on which lines should be subject to rehabilitation assistance because when they are dealing with scarce dollars, just as we are dealing with scarce dollars, their priorities tend to become very much the same as ours.

I might say we—and I address myself now to Mr. Sullivan's comments—we do not see that by broadening the eligibility universe one need necessarily increase the amount of money that is spent. Rather that by broadening the eligibility universe, you see the money that you do spend, Federal dollars, go where they will get the biggest bang.

We, the railroad industry, are not asking to expand the amount of dollars being spent.

Mr. FLORIO. I understand that, but you are recommending something that will dilute the impact of those Federal dollars by virtue of just expanding the universe.

Mr. FREEMAN. I am asking that those Federal dollars go to the lines where you will get the biggest benefit.

Mr. FLORIO. I understand that.

The only difficulty I have with your proposal is who is it that makes that determination? What you are advocating is that the State and the railroads make the decision.

Mr. FREEMAN. No; they make the decision, if you please, of the lines which are in the universe from which the selection will be made.

Then, the Federal Government under this bill will design a cost-benefit formula and that is the formula that the Secretary or the Administrator promised to write you about, what that formula consists of.

Then, the States will apply, using the data that the railroads give and other data they collect, to that cost-benefit formula and the lines that come up with the highest benefit-cost ratio will be the lines that get the money.

Mr. FLORIO. I have difficulty with that—and I think that you heard my little dialog with one of the previous speakers. Isn't it a loaded situation when those lines that are best off are going to inevitably turn out better on the cost-benefit ratio, and therefore, if we have an automatic ranking, they will rank very high and accordingly will do very well?

Mr. FREEMAN. I think that probably is an erroneous interpretation of the way it will work. I should let the Administrator speak, as I understand he will address to you the question or the answer to the question of how the cost-benefit formula that they are proposing will work, and I really should defer to him.

Mr. FLORIO. Before you defer to him, let me ask about the difference between a class 2 line, which is potentially eligible for abandonment and the classification, the category A and B lines. Wouldn't one expect almost inevitably that the A and B lines would turn up with a higher cost-benefit ratio than the classification 2 lines?

Mr. FREEMAN. I think so in practice—and I go back to our—

Mr. FLORIO. It is not practice that we are talking about.

Mr. FREEMAN. I go back to our Iowa experience. We did not want any of the State-appropriated money to go for any line that we had put in category one or two. Interestingly, the State of Iowa did not want any of their tax dollars going to those kinds of lines. Indeed, they have a State rail plan and their State rail plan says—and they can speak for themselves tomorrow—that in almost every instance, the lines that our railroads put in class 1 and 2 are lines that should indeed under their State rail plan be abandoned.

So, under a scheme proposed by the Federal Railroad Administration, you get the result that the only lines eligible for Federal assistance are lines which some rational States looking at this problem say should not have any tax dollars put into them.

It is only lines that are not in categories one and two that should have tax dollars whether it is State or Federal, put into them. It may very well be that that result in Iowa—and it is now being repeated in Minnesota—that that result is not a parochial Midwestern result.

I do not know. But I can tell you in practice that that is the way it is worked in those two States. I just do not like to see Federal dollars go where they may be wasted, I guess.

Mr. FLORIO. To the converse side of that, we do not like to see Federal dollars being used where private dollars should be used.

Mr. FREEMAN. We can agree on that 100 percent.

Mr. FLORIO. The last point I would like to bring to your attention is you are asking for reimbursement for data collection costs. Now, were you talking about what we discussed a few moments ago—data collection costs that were mandated by virtue of having a railroad arbitrarily required to submit data when they had not made applications, or are you talking about reimbursement for those applications that you are seeking?

Mr. FREEMAN. No; the reimbursement we are seeking is reimbursement for those costs which we would be required to bear in order to provide data for all the lines in the universe, whatever it may be, from which lines will be selected.

Mr. FLORIO. You are not seeking reimbursement for data collection for applications?

Mr. FREEMAN. No, sir.

Mr. FLORIO. Thank you very much. Thank you, Mrs. Chairman.

Ms. MIKULSKI. I think the judgment of the Chair was appropriate that that colloquy would establish the discussion we wanted.

Mr. FREEMAN. The fine gentleman from New Jersey is well informed. We have had one dialog not on the record, and I welcome the chance to have had this one.

Ms. MIKULSKI. I am sure before the short line bill is concluded there will be many more dialogs. Thank you very much.

The next witness is Mr. John Ingram, president of Chicago, Rock Island & Pacific Railroad Co.

Mr. Ingram, I understand you have a plane to catch.

Mr. INGRAM. Not until 7:30, Mrs. Chairman. I will be glad to stay with you as long as you like but I will make my remarks brief.

Ms. MIKULSKI. I am disappointed at that answer. I was ready to be courteous and move you along.

Mr. INGRAM. I will be delighted to make my remarks brief.

STATEMENT OF JOHN W. INGRAM, PRESIDENT, CHICAGO, ROCK ISLAND & PACIFIC RAILROAD CO.

Mr. INGRAM. Thank you very much, Mrs. Chairman, for the opportunity to comment on several provisions of H.R. 11979. The Rock Island takes a vital interest in this proposed legislation, not so much because it is some magic cure-all for the problems of the Midwest railroads, but because it allows concerned parties, States and shippers in particular, to create transportation improvement programs that are specifically tailored to their needs.

The committee is well aware, I am sure, of the successful branch line rehabilitation program that has been underway in Iowa for several years. The Rock Island has been a major participant in the Iowa programs, and I think the most important point to be made in that connection is that we have not only fixed track and thus provided improved and reliable service but we are repaying on schedule the funds advanced for the rehabilitation by the State and by shippers.

The Iowa program, which is purposefully flexible in order to maximize benefits, has produced a lot of repaired railroad that has generated additional traffic. The programs in Iowa have not been

set up just to accommodate traditional traffic flows that were being impeded by deferred maintenance although it was an important consideration.

For every new carload of freight—and I am oversimplifying in order to make the point—generated on a rehabilitated line, we allocate a portion of that new carload's revenue as a loan payback, first to the shippers and then to the State.

In other words, the more the shippers use the facility that they financed, the quicker they get their money back.

H.R. 11979 is a bill that will permit other States to establish similar programs. One of the best features of the legislation as written is that it is flexible. It allows the States to carefully fashion rehabilitation programs that meet their specific needs, and it works. Iowa has made that point wisely and well.

I would like to suggest two minor changes in the bill. They sound major, perhaps, but they are really minor.

First, restricting eligibility to lines that have been listed with the Interstate Commerce Commission as being "potentially subject to abandonment" or lines with respect to which the carrier plans to submit an application for abandonment, in other words, lines that are in "category 1" or "category 2" on the ICC system diagram maps, is simply an invitation for game playing.

A carrier can add or delete such categorizations to its system diagram at will. I would rather not cause distress among shippers by announcing that their branch was a "potential candidate for abandonment" simply because that is what I had to say in order to make the line a potential candidate for excellence.

My second point is that some parties have suggested restricting eligibility to lines that carry less than 5 million gross ton miles per mile per year. My earlier testimony before the other body on the companion bill, S. 2981 commented that ton-mile benchmarks, especially when set arbitrarily, could be dangerous.

Some branch lines can be profitable with very little tonnage; others need a lot. It depends on the cost of operating the branch and the revenue derived from the particular commodity that is dominant on the branch.

As clarification, let me say that an upper-level benchmark, especially one in the 5 million ton area, poses no problem. I would hope that the committee resists any suggestion to set lower limit benchmarks, however. Do not exclude lines which, when rehabilitated, will have adequate earning power.

In short, Mrs. Chairman, H.R. 11979 is a good bill and deserves expeditious handling. That concludes my formal remarks. I will be glad to respond to any questions.

Ms. MIKULSKI. Thank you, Mr. Ingram. One of the concerns or interests that I have is the whole relationship or impact that ICC plays in this process, on both ownership and operation of the short lines.

In respect to this bill, do you think more States would be willing to assume ownership of branch lines if the initial transaction were exempt from the abandonment procedures of the Interstate Commerce Act?

Mr. INGRAM. I really do not know. I have not had any experience in the 13 States Rock Island serves with States who wish to own

any of the branch lines, any place that I know of. It might be that some of them would be more interested in exploring that alternative if it were not for the ICC abandonment mechanism. But I really cannot say that to be a fact.

Ms. MIKULSKI. Do you think the States might be willing to venture into it if the law was changed to assure them after a specific period of time they would also be free to abandon the branch lines without ICC approval?

Mr. INGRAM. That would make me want to go into the branch line business. Yes; that would be quite an advantage.

Ms. MIKULSKI. So, you think that would be quite an incentive.

Mr. INGRAM. Yes, indeed.

Ms. MIKULSKI. I do not have any more questions.

Mr. FLORIO. I have one or two points. I think that your explanation as to the proficiencies of using the 5 million ton standard is very good, 5 million tons in one instance may not be the same as 5 million tons in another instance. But your first point, the game-playing that you make reference to—what do you suggest as an alternative?

Mr. INGRAM. The Interstate Commerce Commission's rules for determining what category 1 and 2 railroads are are simply that you do that determination in any way you want to. And I know how it is done on my railroad and there are very few lines of railroad in either category on the Rock Island.

Some will come in and say, "I do not think we are making any money at all on such and such a line." I will call my marketing research people and say it is alleged there is no profit or no contribution to the operation on line ABC. They then make a study and come back and say, "No, there is a contribution" or in some cases they will come back and say, quite right, that we should make the following changes and this is what would improve things.

Occasionally, they come back and say there is no hope for that line and I call up the lawyers and they put it on the map and that is all there is to it. How it gets on the map is a function of how well those fellows do their studying.

I think people are pretty good. We do not put lines on those maps in a frivolous way. I do not think there is anything wrong with the approach. So, you put an incentive on it which is the ability to collect money to rehabilitate that branch line.

Once that incentive is put on, I agree with Mr. Freeman's statements that perhaps some more cooperative way of putting a line in category of eligibility would be a better service both to the States and to the railroads.

Mr. FLORIO. My only concern is again about some degree of objectivity. Certainly, no one is advocating—and I would not advocate a statutory standard. We will get some information from ICC as to what they use. But everything I have heard indicates they do not have much of a rule, that they defer to the applicant in terms of making its determination.

Mr. INGRAM. That is quite right. The reason there is no criteria in the Interstate Commerce Act for eligibility really for one and two category railroads is simply those categories are used by ICC for an entirely different purpose.

Mr. FLORIO. To the extent that we are now talking about a new purpose, the line would be listed as potential for abandonment because they feel it should be abandoned. Now, there is the possibility, remote though it may be, that someone could list its important potential for abandonment to qualify for Federal money, so you have a new situation that is going to have to be addressed by someone.

Mr. INGRAM. That is correct. I think Mr. Freeman's approach recommended by the Association of American Railroads is a good one. There may be others that would be equally good. I do not think any State is going to subsidize the operation or rehabilitate a railroad line they do not want to see subsidized or rehabilitated, so getting the State to agree is all right.

I do not think anyone is going to put money into a railroad privately, where that privately operated railroad does not want it. So, I think the agreement between the States and the railroads is probably as good a way as any to determine whether a line should be eligible.

Mr. FLORIO. I have some questions about the States' role. All too frequently I have seen some States become involved without sufficient knowledge, without sufficient data bases. They have just been persuaded by whatever power that is in existence in their State to go along without really giving a good public interest evaluation.

But I understand what you are saying. Since we have you, perhaps you would like to just give us some of your thoughts on Mr. Sullivan's comments about title V. He indicted things were going fairly well. I know that your railroad has had some involvement in that program and thought you might like the opportunity to get on the record.

Ms. MIKULSKI. The chair would appreciate if you would be crisp in your comments.

Mr. INGRAM. Let me do it by example. We have an application before the Federal Railroad Administration. It has been there for over 1 year now for approximately \$81 million worth of loan guarantee funds for various purposes.

We have another application for \$9 million. Let me explain the \$9 million application on which no action has as yet been taken.

It would finance the systemwide installation of hot box detectors on the railroad. These hot box detectors are state of the art high technology mechanisms in which the infrared radiation of an overheated journal box would cause an alarm to sound to prevent accidents.

This is a situation where this billion dollars worth of loan guarantee funds we were talking about a minute ago could easily be used on a fairly high rate of return item where we have made application and have received very little response. There was one letter that I can recall, somewhere about 6, 7, or 8 months ago.

We would be delighted to sit down with the Administrator and further discuss that project at his convenience. It is something we think would improve the safety of operations as well as earn a high return on investment.

Mr. FLORIO. In the interest of time, I would like you, if you would not mind, to perhaps give me some of your thoughts resulting from this experience, which is not the most pleasant one for a railroad.

Give me some of your thoughts on the whole question of the loan guarantee program.

There has been discussion earlier in the day it that seems to be something that has no attractiveness to those who need the assistance most. To this extent, there is some need in the Congress to reevaluate the major thrust of title V and how we can make any adjustments to achieve the purpose that was originally contemplated. I would appreciate it.

Mr. INGRAM. I would be delighted to do that.

Ms. MIKULSKI. Thank you, very much.

The next witness is Mr. William Withuhn, vice president of the Maryland & Delaware Railroad and of the Virginia & Maryland Railroad.

**STATEMENT OF WILLIAM L. WITHUHN, VICE PRESIDENT,
MARYLAND & DELAWARE RAILROAD CO. AND VIRGINIA &
MARYLAND RAILROAD CO.**

Mr. WITHUHN. I am William Withuhn and I am vice president of the Virginia & Maryland Railroad Co. and of the Maryland & Delaware Railroad Co.

My companies provide the rail freight services on some 228 miles of route on the Delmarva Peninsula. We serve as contract operators of these lines, under the jurisdictions of the respective States and under the branch line provisions of the 3-R and 4-R Acts. We are private operators but acutely aware of our responsibilities in utilizing public funds.

Let me state categorically: For us this bill in its present form would be unmitigated disaster. As far as Virginia is concerned, the bill is a formula for failure. If passed, this bill would amount to an irresponsible waste of all the taxpayers' dollars applied to the rail problem in Virginia over the past 2 years and over future years. In Maryland, the problem would not be as acute but the waste of taxpayers' funds there would also be sizable.

Because this bill would be so damaging to Virginia, let me concentrate for the moment on our operations there. As you may be aware, the Virginia & Maryland Railroad serves the route between Pocomoke City, Md., and Norfolk, Va., down the Virginia portion of Delmarva and across the Chesapeake Bay.

Since our startup on April 1, 1977, we have slashed operating costs from \$6.7 million under ConRail to \$2.7 million in our first full year. At the same time, we have substantially improved our service. We have put 45,000 new ties into the track, we have overhauled our two leased tugboats and we have obtained a second car-float to supplement the old Penn-Central float.

We have worked out excellent operating relationships with ConRail and with the four large connecting rail carriers in Norfolk, resulting in a marked improvement in our ability to serve our customers.

In a nutshell, we have very nearly turned the situation around on our Virginia line. In May and June of this year we actually made it into the black on our operating statement, a situation unheard of on our track in decades.

Our railroad's success affects even the economies of the Midwestern States. A major item on our route is export grain from the

Midwest, from Iowa and Illinois, and the availability of our route lowers shipping costs for Midwestern farmers.

The Virginia & Maryland has become a national model for this kind of turnaround under the 3-R and 4-R Acts. We have been cited by respected national financial columnists and by the railroad trade press. A slash in operating costs of 60 percent, combined with improved service, does not go unnoticed by either shippers or by the voters.

But there is a way to go yet before we can talk about any "permanent" results. And H.R. 11979 would cut us off at the knees, turning a national model into what would ultimately be a congressional embarrassment.

The basic problem lies with the bill's arbitrary formula for allocating the limited funds available among the States. I would not want to get into a detailed discussion of either the allocation formula in section 104 of the bill or into a discussion of total fund authorization levels. These are admittedly tough problems with no easy solutions, and the days of taxpayers' revolts are much with us. I do not envy you, your task in trying to strike a fair balance among all the conflicting goals in this bill.

On the V. & M., however, the problem is fundamental. Under the allocation formula in the bill, Virginia's Federal share of funds could be cut nearly in half. From 1.6 percent of the total allocation last year, Virginia's share would drop to 0.75 percent to 0.8 percent or possibly to 1 percent.

Mr. FLORIO. How did you arrive at that allocation?

Mr. WITHUHN. That percentage was computed for me by both the Virginia Department of Highways and Transportation and also confirmed to me by the State Assistance Office in FRA.

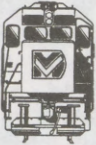
Mr. FLORIO. They are saying, in fact, by virtue of including category two, the total mileage amount is increased. Therefore, you assume that all of that mileage will be financed.

Mr. WITHUHN. I am no expert on the nationwide allocation problem. Basically, I had these percentages given to me by an expert in Virginia DOT and then confirmed to me by one of the chief analysts in FRA.

Mr. FLORIO. Anything you could do to give us a specific statement on the methodology that was used we would appreciate because I have some serious questions regarding all these representations we heard all afternoon that something will be cutback. So, I do not see the inevitability of that.

Thank you.

[The following letter was received for the record:]



MARYLAND & DELAWARE RAILROAD VIRGINIA & MARYLAND RAILROAD

P.O. BOX 71

CAPE CHARLES, VA. 23310

27 July 1978

Hon. James J. Florio
House of Representatives
1726 Longworth House Office Bldg.
Washington, DC 20515

Dear Mr. Florio:

At the hearing of the Subcommittee on Transportation & Commerce on 12 July 1978, regarding H.R. 11979, you asked me to supply certain technical information concerning the USDOT estimates for Virginia's share of the total branchline assistance under the bill.

I have been in touch with Mr. Colin Pease of the State Assistance Office of the Federal Railroad Administration. Mr. Pease advises that he would be most happy to supply you and your staff with a complete breakdown of assistance anticipated for each state under the bill, together with an explanation of the basis for the estimates. Mr. Pease may be reached at 426-1677.

On the Delmarva lines, we are encouraged by the fact that we have been able to slash Conrail's costs for operating the same track by 60%, permitting us to get into the black on our operating statement a full year ahead of our most optimistic estimates. Hence our need for operating subsidy is rapidly decreasing, due to the economies we have implemented. At the same time, we have markedly improved service to shippers.

The track upon which we must operate, however, has been neglected and allowed to deteriorate for nearly a quarter-century. This long neglect cannot be corrected over night. The track rehabilitation funds programmed under the 4R Act are absolutely essential if we are (1) to reach the goals for viability recommended to us by FRA, USRA, and RSPQ; and (2) if we are to assure safety to the people who live along our lines.

Hence any serious cut in the track rehabilitation funds available -- whether of 30, 40, or 50% -- is of grave concern to us, to the states who hold our contracts, to the shippers we serve, and to the people of our region. All our planning has been done on the stipulation that a given stream of rehabilitation funds would be programmed through 1981, at which point all Federal help would cease. We are confident that we can reach these goals, and probably sooner than the time allotted, under the 4R Act. But we cannot reach these goals if the planned track funding is curtailed or substantially reduced in the last two critical years of the 4R Act program.

In your own State of New Jersey, there is a shortline rail operation which is a model of the sort of operating economies possible on a well-run branchline. Your staff might look into the freight operations of the Black River & Western Railroad, Ringoes, NJ, which is the only profitable railroad in the State. The BR&W has built its freight business to substantial levels by responsive and courteous service to shippers, by turning its revenues into improvements in track and physical plant, by improvements in equipment to provide better service, and by close attention to operating costs. The BR&W has never received a nickel of subsidy from anyone, and has improved its track to a tie condition of about Class IV (FRA safety condition). All the profits of the line are derived from its freight services on some 20 miles of route.

I appreciated the opportunity to testify before your Subcommittee. If there is anything we can do, by way of providing data or other information helpful to you, please let us know.

Cordially,

W. L. Withuhn
Vice President

Mr. WITHUHN. I tend to agree with you. I suggested later in my remarks that this has to do with specific dollar amounts, which already appear in State rail plans.

Concurrently, we face a real and physical problem on Delmarva which cannot be managed away. Under its former owners, the track we operate received its last full program of maintenance in 1954. For nearly a quarter of a century that track has been moldering away. Our 45,000 new ties barely gets the line to the line-minimum FRA class one safety standard.

Meanwhile, the other 150,000 ties continue to molder at an accelerating rate. We will have to run just to keep up to FRA class one. For long-run viability, however, every Federal agency has told us, the FRA, the USRA, the RSPO, that class two track is essential. Only in this way can we get our operating speed up to 25 mph and assure safety to the people who live along our line. An FRA class two track safety standard requires 40 percent good ties to start, with sufficient annual maintenance to keep the track that way.

Under the present bill, unless some amending language is inserted, there is no way we can reach that standard on a long-run basis in Virginia. Even one percent of the final appropriated funds would be completely inadequate. At present, we are forced to use a condemning limit as a construction standard. This is hardly a prescription for long-term success. If reconstruction of track is done just to meet a condemning limit, how long is it before the safety condition is once again below that limit? Not long, I assure you.

As far as Delmarva as a whole is concerned, the Virginia line is the link-pin of rail health for the entire region. The connection over the Bay to Norfolk is the indispensable part of the regional network. Improved service on our Maryland branch lines on the Eastern Shore depends on maintaining the Norfolk link. Even ConRail suffers if we fail. Without the Norfolk connection over the V. & M., the ConRail line from Pocomoke City north to Wilmington would immediately lose some 12,000 to 15,000 cars per year of through traffic. Without this through traffic from the V. & M., many union jobs on ConRail would be lost, and the ConRail line from Pocomoke to Harrington, Del., would be thrown in jeopardy.

It is in the interest of the subcommittee to avoid such a scenario. But we cannot avoid it without your help. Meanwhile, at FRA urging, ConRail is rebuilding its track all the way to Pocomoke for FRA class two operation, on the assumption that the V. & M.'s improvements will continue. This expenditure of tax funds only makes sense in terms of a regional, long-range plan, which all of us had assumed we were working toward. Now, H.R. 11979 pulls the rug out.

The irony has not escaped us. For 2 years, the Delmarva States have been urged to come up with a "long range" plan. The present bill lays great stress on "long-term solutions." Now, when we are on the brink of one, someone proposes an arbitrary allocation formula which in our judgment places the sanctity of a formula ahead of commonsense.

One suggestion seems obvious. Somewhere in the process of approval of State rail plans by DOT, the FRA Office of Safety should be involved. If the money to be spent in rehabilitating a piece of track will not be adequate to reach proper safety standards for the

type of trains to be run, then someone in the safety office should be permitted to point that out before we pour millions of dollars into a line.

And if we are to have any long-term planning, then the dollar allocation must have some assurance of dependability from one year to the next.

I am not saying the same level amount but an amount we can plan for. Otherwise it seems like folly to be talking about planning if there is no assurance of a predictable trend in the dollar allocation that can be applied.

Mr. FLORIO. Wasn't the original concept to have a declining Federal contribution?

Mr. WITHUHN. Yes, indeed. All our projections and anticipated plans are based on current legislation. The 4-R Act which is now 80-20 Federal-local share will drop to 70-30 and will expire in 1981.

Mr. FLORIO. The new approach that is being advocated is not declining the Federal contribution. Has anyone costed that out? Even though the universe is bigger, it seems to me your railroad or comparable railroads might be better off with the consistent 80 percent the Federal Government would provide as opposed to a declining amount.

It may not be available from any other source.

Mr. WITHUHN. Yes, I think both Virginia and Maryland are very happy with the notion of the 80-20 and as a steady Federal-State split in the funding. The problem that neither Virginia nor Maryland understands at this point is the problem that I think you are addressing: How much, how many dollars do we end up with in the fiscal 1980 and 1981 appropriations?

That would depend on the FRA diagram between category one and two. It would depend on total appropriated funds and the figure that I have been given by both the FRA State Assistance Office and Virginia DOT is Virginia would end up with 0.8 percent of the total appropriation.

Mr. FLORIO. I will defer until you finish but it seems to me if your main concern, as legitimate as it may be, is the long-term consideration, you may well be better off, even though there might be a temporary crunch, with a long-term stability that this program would provide you with, but with a guaranteed 80 percent contribution from the Federal Government as opposed to the previous concept of the Federal Government ultimately opting out and then you being left to your own devices.

Mr. WITHUHN. In the sense of a choosing between 80-20 and 70-30, to us the costs are down to the point where it would not make that much difference to us.

Mr. FLORIO. What happens after that?

Mr. WITHUHN. We are fully prepared to live under the existing 4-R Act and terminate all Federal assistance in 1981.

Ms. MIKULSKI. Please finish.

Mr. WITHUHN. In concrete terms, I would suggest this bill be specifically amended in such a way that the long-run viability of current, ongoing rehabilitation programs be protected. It makes no sense to me to direct some portion of the allocation to lines "potentially subject" to abandonment without assuring that ongoing, fully

approved programs reach the goals previously set by the various Federal agencies.

With such protection for ongoing programs, then allocation to new programs makes good sense. I would think that such a compromise would make good sense to the States and to DOT.

Two other sections strike us as in need of change. Section 103 should permit some forms of in-kind contributions by States to the local share. Frequently, these in-kind contributions are very real and as valuable to the success of a program as cash. Section 106 should extend project eligibility beyond 2 years. We understand DOT's intent here, whereby lines reaching the abandonment stage would be subject to assistance before then. But in the event that assistance is deemed wise for a to-be-abandoned line, nothing of substance can be accomplished in 2 years. Rather than a 2-year limit, a more flexible standard should be set.

I am also aware that our good friends from the United Transportation Union are still trying to put forward their proposals from last October. I believe our position on this issue was made fairly clear in the October hearings, and I will only cite the cost data we presented at that time for our two railroads on Delmarva. In essence, any sort of "shotgun" wedding between a short-line railroad and the UTU is just an affront to the taxpayers. However artfully phrased, the UTU proposal simply means our costs on the V. & M. will go back from \$2.7 million to \$6.7 million after a few years. The immediate impact on both lines would be about \$1 million annually, with rapid escalation thereafter. I cannot see the voters putting up with such a situation. Meanwhile, we are studying how we can expand our employee benefit package mentioned to this subcommittee last October, whereby we hope to add either an employee profit-sharing plan or an employee stock-option arrangement.

We are not suggesting a "grandfather clause" just for Delmarva, but a clause to protect the continuity of all approved, ongoing rehabilitation programs in the States affected. This protection may not be tied to a formula, but to dollar amounts required to reach goals already set for existing programs.

One figure we do know very well is how much it will cost in dollars to arrive at the rehabilitation goal that the USRA and FRA and RSPO all say we should arrive at. How that would convert from the machinery of section 104 of this bill is obviously open to deliberation.

Ms. MIKULSKI. Is that it?

Mr. WITHUHN. I hope the members of the subcommittee can find a way to safeguard the rail plan which the people of Virginia, of Maryland, and of Delaware, have designed for themselves over 2 years. Thank you for your time and attention.

[Attachment to Mr. Withuhn's prepared statement follows:]

Jenkin Lloyd Jones

(Appendix to Mr. Withuhn's
prepared remarks.)

Everybody Has a Stake in the Efficiency of the Railroads

IN MID-DECEMBER the great Chicago, Milwaukee, St. Paul and Pacific Railroad running from Louisville to Seattle filed a petition for reorganization under the Federal Bankruptcy Act.

The management mentioned last year's hard winter and a mid-system drought that cut carloads, but this was equivalent to ignoring an open vein.

Nearly everywhere the Milwaukee goes, many competing railroads go, too. It is one of six lines between Chicago and Kansas City, one of five between Chicago and Omaha, one of five between Chicago and the Twin Cities and one of three between Chicago and the north Pacific states.

So the Milwaukee is a classic example of the great railroad overbuildings of the late 19th Century. It is unwanted as a merger partner by its close competitors. It is cursed by many branches, viable only for grain shipment.

But what is not generally appreciated in this country is that a Milwaukee disaster, like the Penn Central disaster, would get into everyone's pocket. The closing down of the railroad, the dismissal of its employees and the abandonment of a thousand shippers are not feasible for railroad giants.



Jones

SO THERE ARE three alternatives. The government could perform a shotgun marriage with a solvent line, which, in effect, would be a partial confiscation of the assets of the solvent line's stockholders. Such a marriage is like the use of federal power to force the Penn Central to absorb the financially hopeless New Haven which hastened that debacle.

The government could simply take over the Milwaukee, provide a tax-subsidized competition for free enterprise, as in the present example of Conrail.

Or the American railroad industry, with the cooperation of the railroad brotherhoods and the Interstate Commerce Commission, might take on a new means of living.

The present average return on that investment of 1.49 per cent is a bummer. It will never generate the revenue necessary to keep the rail system in repair, let alone attract enough investment capital to seize upon new technologies.

No American industry has as terrible employee relations as the railroads. In the business cars, management cusses the brotherhoods, and in the cabs, cabooses and switch towers, the brotherhoods cuss the management. As a matter of fact, both are eminently cussable.

Some railroad managements still seem to imagine that the name of the game is to block competing railroads. It isn't. The game is to survive against competing transportation forms. Airlines, truck lines, pipelines and powerful tow boats didn't exist in the 19th Century.

The brotherhoods cling to 100-mile work-days, jealously guard Chinese walls between road and yard assignments and rest on an assortment of featherbeds — all on the theory that these are good for railroad labor. They will, in fact, compel additional major bankruptcies.

Last summer Al Chesser, president of the 175,000-member United Transportation Union, said Congress should consider nationalizing the railroads. He added that management proposals to change the pay base to an hourly rate instead of by mileage would "place the American railway workers in the same category as the Russian railway workers."

He neglected to add that members of all other major American labor unions get hourly wages.

WHEN THE INTERSTATE Florida East Coast Railway finally beat a strike marked by bombing and sabotage, put its crews on eight-hour days and eliminated the distinctions in road and yard work, it began to show a profit.

Recently, when a new corporation, the Virginia and Maryland Railroad, took over 96 miles of old Conrail track on the eastern shore of Chesapeake Bay and tried the FEC system, it reduced operating costs by half and got into the black. However, the brotherhoods are now pushing a bill in Congress which would use federal power to restore the system that helped break the former owners.

The idea that nationalized railroads would preserve rail jobs is dubious. Since the British railways were taken over by the government in 1949, mileage has been halved and employment cut 60 percent. The German National Railway, losing \$3 billion a year, planned to lay off a third of the workers by 1985.

Yet, as the energy shortage deepens, rail haul, which is about four times as fuel efficient as truck haul, makes increasing sense. But not with decaying road beds or worn-out rolling stock, not with 25 miles-a-day freight car usage and long delays at interchanges.

We'd better get the system fixed, for ordinary citizens will pay for failure, either in higher than necessary freight rates or in the perpetual hemorrhage of tax subsidy.

Rail efficiency is everybody's business.

(Jenkin Lloyd Jones is the well-known financial writer whose column is carried by about 100 newspapers around the country. The piece above appeared during the week of January 7-14, 1978.)

Ms. MIKULSKI. Thank you.

One of the questions—I am fascinated with what you said you were able to reduce costs from \$6.7 million with ConRail to \$2.7 million under your management. That is a substantial saving and, yet, you talk about the quality of service.

I think the committee would be interested in knowing how you were able to do that since you said there are other problems you cannot manage.

Mr. WITHUHN. The problem we cannot manage away is the condition of the track which is something we operate as a contract organization and is inherent.

What we have been able to do basically is work out an employee program whereby we are not saddled with inefficient work rules and so on, that ConRail was saddled with. We have local on-the-spot management which can respond to some shipper down the road who needs a car at a certain time.

We have eliminated most of the middle management that used to be involved in operating that track when it was a portion of Penn Central and a portion of ConRail.

There is no middle management between the fellows that run the trains and the five or six managers who are the vice presidents and general managers of the company.

Ms. MIKULSKI. How dependent is the Delmarva economy on continuation of this branch line? Can you tell me this in dollars and cents?

Mr. WITHUHN. I do not believe I can give you any answers in dollars. Virginia would have to be the one to give you that, but I can say there are about 40 shippers on that line from Pocomoke to Norfolk. Most of them are pretty small but there are a half dozen fairly large shippers, fertilizer manufacturers, prefab concrete manufacturing plants and two of the largest are grain shippers that handle export grain from the Midwest.

Basically, the situation we have is a situation where these are feed mills, lumber companies, warehouses, other facilities of this kind, fertilizer companies which, if they had another way to go in terms of shipping their product, they would have a long time ago.

Ms. MIKULSKI. What you are saying is they have no other means.

Mr. WITHUHN. They have no other alternatives.

Ms. MIKULSKI. If the branch line railroads would go out of business, so would those eastern shore businesses—

Mr. WITHUHN. For those particular companies, I believe that the vast majority of them would be forced to close their doors because their costs of shipping either their inbound or outbound product would be too high.

Ms. MIKULSKI. How close would you say the Delmarva short line railroads are to being self sustaining? Are you in good shape? How close are you if we put this many bucks in?

Mr. WITHUHN. In terms of the Virginia line for Pocomoke City south—basically if we have the track or will have the track in class one, the minimum Federal safety condition within another month when the contractor now engaged by us finishes installing those 45,000 ties—to get to FRA class two means 40 percent tie condition and that would require another million dollars construction money.

In terms of operating expenses, we were in the black the last 2 months, but there is a high seasonality on that track. What we are doing is comparing the same month now with 12 months previous. We see an excellent trend. But obviously, that same seasonal cycle will be with us as long as that track is open.

We feel though within 2 years that hopefully the peaks and valleys will balance out enough so at year's end it will definitely be in the black. We think \$400,000 would be ample as contingency operating subsidy for that track. Then, there is \$500,000 of lease payments to the trustees of Penn Central to cover lease of the track and lease of the marine equipment. That is \$1.9 million total need for the fiscal year following this one for the V. & M.

That need, of course, will be a combination of Federal and local funds under whatever formula is in effect at that time.

Ms. MIKULSKI. In your testimony, you have outlined certain very specific areas that you think need to be changed in this bill so that you could be viable. You need help to maintain your viability, at least during this still difficult transition time in taking nearly a defunct, rundown awful situation and acting like the Salvation Army, or Red Cross.

The point I am making is that you made this tremendous investment so far in terms of the private and public sector. Now, it is only about another 2 years to go and then you can really be on your own and this bill in many ways jeopardizes that, am I correct?

Mr. WITHUHN. Yes, Ms. Chairman, that is exactly our feeling.

We have added up total Federal dollars that have gone into the Pocomoke-Norfolk that track since 1976. It amounts to \$6.24 million since April 1, 1976. Now, ConRail spent over \$2 million of that their first year strictly to run the trains and to do no rehabilitation.

So, of that \$6.24 million, we have received about \$3.6 million at this point which is a combination of rehabilitation funds and operating funds.

Ms. MIKULSKI. In addition to the comment you made on correcting the bill so it would not be damaging to you, do you have any other suggestions that were not contained in your testimony?

Mr. WITHUHN. Well, I think, Ms. Chairman, that is it in a nutshell, not being an expert in the language that would be required to make such a hold-harmless amendment acceptable to the National Conference of States, members of the subcommittee, and to the various other constituencies.

Ms. MIKULSKI. I think what we would appreciate would be as you review the legislation as an operator and a prime beneficiary, if you would forward to the committee any recommendations that you might have in terms of policy or principle, so we could take a look at it.

My concern is—and I think the gentleman from New Jersey feels this way—we in the Northeast corridor have very special problems. My concern, quite frankly, with this legislation is that it is loaded for the Midwest. For those of us who are on the Northeast corridor and who have part of our States that are in many ways both rural and urban, agricultural, and industrial, how can we meet those needs and maintain our economic viability?

To me, the railroads are a key factor in the economic viability of the Northeast corridor. And it is not only in terms of the big cities like Baltimore but in communities like the Eastern Shore. Therefore any recommendations you might have would be really helpful to us.

Mr. WITHUHN. Specifically, Ms. Chairman, for the impact on the Maryland Eastern Shore, one of our lines in Maryland is from Delaware to Cambridge, Md.—you are probably familiar with that line—there is a fish canning plant there which closed in March of 1977 that is possibly going to be able to reopen, depending on some guaranteed loans from the Department of Agriculture.

Ms. MIKULSKI. Why did they close? Was it because they could not ship their product?

Mr. WITHUHN. I am not sure why they closed but I do know one of the factors in the decision made by the parties trying to reopen the plant is the availability of improved rail service. In the past that company shipped 250 outbound cars a year and employed 200 or 300 people and those people lost their jobs in March of 1977.

It seems to me that is a clear example of the kinds of economic impact that can occur just in decisionmaking to reopen a plant, aside from ongoing economics of a region.

Mr. FLORIO. Just two questions. You said you were not interested, although I assume you would like to be grandfathered in. Then, you said you would like to be considered for an absolute amount of money but were not enthused about taking part in a formula.

If in fact the ultimate working of this distribution system entails a formula not just for classification two but also for your classification as well, do you have any difficulties attempting to justify a cost-benefit ratio, the expenditure of continued moneys to you?

Mr. WITHUHN. We have no difficulty whatever with any cost-benefit test that either the Virginia line would be subjected to or the Maryland lines. Certainly, one of the Maryland lines in particular was probably the highest-density excluded line from the ConRail system, in terms of shipments.

Mr. FLORIO. The only other point, for my own academic interest, is that you are a short line railroad.

Mr. WITHUHN. Essentially, yes.

Mr. FLORIO. What is your relationship with the brotherhoods? Are you nonunionized?

Mr. WITHUHN. Yes.

Mr. FLORIO. How does that work? I assume they have been around to see you.

Mr. WITHUHN. As I mentioned last October—in the hearings in October—we knew very well when we were going down there we were to be kind of the fat in the frying pan. We contacted the UTU ourselves and I talked to one of the people there and I said basically what we were going to be doing and I said it is obvious if we are burdened with the same work rules as ConRail that there is no point in even starting.

And he made no reply to that, but then I said “Is there any way we might cooperate?” And he said, “Well, there are some men who are not protected under title V of the 3-R Act which gives protection to employees of the old Penn Central,” and so I said we would be very happy to certainly interview and to extend offers of em-

ployment to those men who we felt would be capable, who had been former ConRail employees.

As it turned out, they turned out to be the core of our operating personnel.

Mr. FLORIO. So, these former union members are now nonunion members?

Mr. WITHUHN. They dropped their union membership.

Mr. FLORIO. You have, I suppose, an understanding with the union.

Mr. WITHUHN. There is no understanding. I am sure they would heatedly deny there was any understanding.

Mr. FLORIO. Of course, you are carrying traffic from lines that are unionized over your line.

Mr. WITHUHN. Essentially. For example, if the Virginia and Maryland ceased operation, the ConRail line north of Pocomoke City up to Wilmington, Del., which is run by UTU crews, would immediately lose 12,000 to 15,000 through-cars a year which would have a very bad impact on UTU employment on the ConRail Delaware line. That traffic would have to go down the western shore rather than the eastern and bypass Delaware.

Mr. FLORIO. The point I am trying to get to is that there is an understanding to at least have a lack of understanding. There is no organizing effort going on in your company.

Mr. WITHUHN. Not that I am aware of now. There are no overt organizing efforts.

I would like to say there certainly is a community of interest in keeping our line going.

Mr. FLORIO. Thank you very much.

Mr. WITHUHN. There is a line in Vermont which has similar experience, a line about the same size which is also nonunion. I think because of the community of interest that that line in Vermont is able to sustain itself in a normal work role.

Mr. FLORIO. I am not sure if we have any union representatives coming tomorrow, but I have heard in the past we do. There has been some opposition to this type of a bill, although maybe not this particular bill, on the basis of the fact that it does provide incentives to start short line roads with the ultimate result being what you have been able to do. So, I will be interested to hear what the Brotherhoods say tomorrow about not only the bill, but about the potential for the development of short line routes and what they feel will have as an impact on the membership. I thank you very much for your help.

Mr. WITHUHN. You are very welcome.

Ms. MIKULSKI. The committee stands adjourned until 2 p.m. tomorrow in the same room.

[Whereupon, at 6 p.m., the committee adjourned subject to the call of the Chair.]

LOCAL RAIL SERVICE ASSISTANCE

MONDAY, JULY 17, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2123 Rayburn House Office Building, the Honorable Fred B. Rooney, chairman, presiding.

Mr. ROONEY. Our first witness this morning will be one of our colleagues, the Honorable David L. Cornwell, from Indiana.

STATEMENT OF HON. DAVID L. CORNWELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. CORNWELL. Thank you, Mr. Chairman.

Mr. Chairman, you look fairly lonely up there without all your friends.

Thank you for allowing me this opportunity to testify in support of an amendment to H.R. 11979, the Local Rail Service Assistance Act of 1978, allowing moneys from the local rail service assistance program to be used for the relocation of railroad tracks in addition to the current rehabilitation and renovation purposes now permitted.

The Railroad Revitalization and Regulatory Reform Act of 1976, popularly known as the 4-R Act, expanded aid given by the U.S. Department of Transportation from just rail lines in the northeast to rail lines throughout the country, which have met certain eligibility criteria. This year several proposals have come forth, among them, H.R. 11929, to expand the number of lines which can receive these funds.

The amendment I am testifying in favor of today is in the same spirit of allowing more flexible use of 4-R Act funds by letting the appropriate State transportation agency—in my own State of Indiana it happens to be the Public Service Commission—decide which alternative, renovation, rehabilitation or relocation, is the most workable and effective approach for the particular situation involved.

[The following information was received for the record:]

AMENDMENT TO H.R. 11979

(Offered by Mr. Cornwell)

Page 4, strike out "and" at the end of line 4.

Page 4, strike out line 11 and insert in lieu thereof the following:
tives or shippers; and

(123)

"(7) the cost of relocating existing lines of railroad."

Page 13, line 12, strike out "paragraph (6)" and inserting in lieu thereof "paragraphs (6) and (7)".

Around the country you can see rail lines which, by relocating the tracks around a town, would make the line itself more economically feasible and eliminate a great safety hazard at the same time. The choice of relocating versus renovation or rehabilitation is a choice I feel a State, because of its closeness to the situation, is in the best position to make.

In some instances, relocating tracks will strengthen a town's economy. For example, a rail line may run right through the middle of a city tying up traffic in a downtown business district. Meanwhile, since the rail line was first built, industry has moved towards the outskirts of town. By relocating the tracks around the town, the economic health of the rail lines would be preserved, insuring continued operation. At the same time a safety and traffic problem would be solved.

By giving the States this increased flexibility in using funds appropriated under the local rail service assistance program, I believe we will help more branch lines remain in operation to provide needed railroad service to many parts of our country.

I would like to say in my own committee, Public Works and Transportation, we have recently concluded oversight hearings which looked at problems concerning advance waste treatment facilities. There we found certain agencies on Capitol Hill were using more of the cosmetic approach in solving the problem, that is, let us build to the tune of \$500 million advanced water treatment facilities which we hope will solve the problem, but they are not getting to the root of the problem.

I think this amendment that I am testifying on today does just that and does not approach in a cosmetic or superficial way the problem we have at hand.

Finally, I just want to thank you, Mr. Chairman, for the superb leadership you have exhibited over the years in keeping rail service a viable transportation mode in this country and I certainly appreciate your consideration of this matter.

Thank you.

If you have questions, Mr. Chairman, I will be happy to try to answer them.

Mr. ROONEY. Thank you, Mr. Cornwell.

We had discussed this several weeks ago in my office. I went to see the FRAA Administrator and I asked him whether or not he would concur with your recommendation for an amendment permitting the relocation of the track. He stated at that time that he would concur if the line could be relocated, could comply with the cost-benefit criteria provided in the bill.

I wonder, do you believe that the project or projects that you have in mind satisfy this criteria?

Mr. CORNWELL. Mr. Chairman, in my particular situation in my district we have a railroad that runs right through the middle of the downtown business district, tying up traffic, severing the ties that certain parts of the city have to the hospital and medical assistance, to schools and the like.

It causes a great inconvenience and discomfort to the numbers of people who travel this route daily. Because of the railroad severing the town, literally cutting it in two for anywhere from 15 minutes to an hour and a half at a time, a number of businesses are beginning to expand outside the downtown business area into—I don't know if you can call it suburb yet because the town is not that large—on the outskirts of town, thereby killing the downtown business district.

I think this amendment as it regards my particular project and a number of other projects that I have looked into would certainly meet that criteria of cost-benefit ratio.

Mr. ROONEY. If it didn't we could amend the cost benefit criteria further. But I do appreciate your testimony and I am sure that this committee will act favorably on your very fine amendment.

Mr. CORNWELL. Thank you very much, Mr. Chairman. I hope you will give it all the consideration that you are capable of giving. Thank you very much.

Mr. ROONEY. Our next witness is Mr. Alan Fitzwater, Director of Rail Services Planning Office, Interstate Commerce Commission.

STATEMENT OF ALAN M. FITZWATER, DIRECTOR, RAIL SERVICES PLANNING OFFICE, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY RICHARD J. SCHIEFELBEIN, ACTING DIRECTOR, RAIL SERVICES PLANNING OFFICE; AND MARTIN D. ZELL, ACTING CHIEF, SECTION OF TRANSPORTATION POLICY PLANNING, RAIL SERVICES PLANNING OFFICE

Mr. FITZWATER. Good morning, Mr. Chairman.

I have with me my staff members, Dick Schiefelbein and Martin Zell.

Mr. Chairman, I am the Director of Rail Services Planning Office. Today I am here wearing two hats. First, I am here standing in for the Chairman in connection with testimony on H.R. 11979.

Second, I am here as Director of the Rail Services Planning Office in connection with briefing the committee on a study that we have underway on port equalization. The second is at the request of the staff of the committee. I will summarize the Chairman's statement. [See p. 133.]

Mr. ROONEY. It will be made a part of the record without objection.

Mr. FITZWATER. Thank you.

Mr. Chairman, the Commission has been active in the development of the legislation on local rail service for 1½ years. We have been very active working with both committees and several staff members of different offices. We believe the basic thrust of H.R. 11979 is a good one, but we have certain areas where we believe it can be improved.

First is the 2-year limitation on operating subsidies. We suggest elimination of the 2-year limitation for operating subsidies. Undoubtedly situations will occur that cannot be identified at this time where it would be more advantageous, even from a cost-benefit analysis, to continue to subsidize as opposed to dropping the subsidy automatically at the point when the 2-year time period elapses. We would suggest as an alternative reducing the Federal

share after 2 years to assure that the States make good judgments in deciding which lines are to continue after that point.

The second is the area of funds for rehabilitation. This is the area that we strongly support. We believe that there is a definite need to try to shift the funds from operating subsidies into rehabilitation.

The area that we believe needs strengthening the most is the entitlement formula. We recognize the difficulty in developing an equitable formula. The Commission offers no solution, only comments.

First, we disagree with the proposed-entitlement formula because it would not include those lines that are in category 3, those lines that are presenting pending before the Interstate Commerce Commission. To exclude these lines would work a hardship on many States. At the present time there are about 4,500 miles in this category and this represents about 25 percent of those lines that would be eligible for either rehabilitation and/or operating subsidies.

The exclusion of category 3 lines will result in a failure to match the needs of the States with the funds available. For example, in California, 72 percent of their lines are in this category. In Illinois, 53 percent; Kentucky, 68 percent; Mississippi, 72 percent; Tennessee, 66 percent; West Virginia, 72 percent.

The other formula which has been discussed in the last couple days of hearings was the gross ton-mile formula. This also has some disadvantages. We believe that the mileage factor does not really reflect the social needs of communities involved. Many Class I railroads, for example, are in a situation where their main lines would fall in these categories. We don't believe that the Federal funds should be used to rehabilitate lines where the railroad would be keeping the line anyway.

We believe the money should be spent on lines to meet the community needs and interests as opposed to the railroad's needs.

Second, in the A and B lines there is very little certainty. The only published data are in connection with the report required by section 503 of the 4-R Act that the Secretary put out a year or so ago. Everyone recognized the data in that report were inadequate. So there is not any good data base to go into if you are dealing with the A and B classifications.

Third, it would be very easy in many cases to manipulate this formula. It would be very easy for railroads to divert traffic from one line to another in order to make sure it fell within a certain gross-ton-mileage formula.

So what we would recommend would be staying with the formula that is in the proposed legislation but adding category 3.

In conclusion, we would recommend that the formula probably could be modified so that it is satisfactory, but in some way we have to make sure that the social needs of the communities are matched with the funds, as opposed to the needs of the railroads.

Last, I would like to point out that there has been a decision handed down in the seventh circuit that will have an adverse impact on the program. There will be two major impacts.

First, the Commission's jurisdiction has been severely limited by this decision. We believe it will create a potential imbalance in the bargaining positions between the parties.

The second is that we believe it will substantially increase the cost of the program. The two areas that we have the most concern about are deferred maintenance and the cost of equipment. In both of these areas we believe we implemented what the Congress had in mind, but the seventh circuit did not agree with us. We will be appealing this decision.

If this decision is not overturned, we estimate a significant increase in the cost of the program.

Mr. Chairman, that concludes my summary of the Chairman's statement. I would like to take a couple of minutes, at the request of the committee staff, to fill you in on what we are doing on port equalization.

At the request of Chairman O'Neal the office undertook a study of rail port equalization. The initial research has been completed and a preliminary report was released on July 7. The office has been conducting informal seminars and will be conducting formal hearings on this report in the near future. We will be submitting a final report to the Commission for final action in early October.

The report will contain our formal recommendations as to how we believe the Commission's policy on port equalization should be adjusted, if we so find. The principal purpose of the study is to determine if the Commission's involvement in port equalization has a beneficial or detrimental impact on commerce flowing to the U.S. ports.

The office has attempted to do this by one, examining the historical background of the Commission's decisions and pertinent statutes; two, the impact of the charges on domestic transportation upon the flow of imports and exports; three, technological innovations in ocean-going transportation, terminals and port facilities; and four, the current physical distribution aspect which affects import and export traffic.

Pursuant to this research the office concluded that the Commission's role in port equalization proceedings should be reviewed. The reasons for this are that we have found that the longer haul rates are only one element in a total international distribution cost and they have a limited amount of influence over the selection of routes and ports.

Second, the increase of competition between modes in the United States has significantly reduced the railroads' market share and profit margins which previously allowed the railroads to support cross-subsidies.

Third, containerization and other technological improvements in ocean-going transportation tend to erode the traditional reasons for maintaining port equalization or at least shifting emphasis to a new physical distribution environment.

Fourth, port equalization tends to accelerate the decline in the rail share of the market because it restricts the ability of the rail industry to effect rate changes necessary to compete with other modes.

Last, certain shippers are disadvantaged because they cannot utilize the inherent advantage of their particular route because

port equalization ratemaking adopts averages rather than specific costs.

Before these findings the Rail Service Planning Office has made are proposed to the ICC, we believe they should be subjected to public comment.

As I mentioned earlier, this comment period will run over the next month or so. We will be visiting many of the ports and we will be submitting the final report in October. That summarizes the two areas that I was asked to come to testify on.

[Testimony resumes on p. 143.]

[Mr. Fitzwater's summary statement and Chairman O'Neal's prepared statement follow:]

SUMMARY STATEMENT OF ALAN M. FITZWATER

July 17, 1978

RE: PORT EQUALIZATION

The committee staff has requested me to address the subject of port rate equalization. The Office is presently conducting a study of port equalization at the request of Chairman O'Neal. Initial research has been completed and a Preliminary Report has been released on July 7. The Office is also conducting informal seminars with interested groups and will hold a series of hearings at various locations in the country to obtain public comment on the Preliminary Report. After a review of comments, the Office will submit a final report in early October. The report will contain the Office's formal recommendations to the Commission on the subject of port equalization. During the period for public review, the Office is continuing its research on matters contained in the Preliminary Report.

The principal purpose of the study is to determine if the Commission's involvement in port equalization has had a beneficial or detrimental effect upon commerce flowing through United States ports. The Office attempted to do so by examining: (1) the historical background of the Commission's decisions and pertinent statutes; (2) the impact of changes in domestic transportation upon the flow of exports and imports; (3) technological innovations in ocean-going transportation, terminal and port facilities; and (4) current physical distribution aspects which affect export/import traffic.

Pursuant to this research, the Office concludes that the Commission's role in port equalization proceedings should be reviewed.

The reasons which prompt the Office to reach this conclusion are:

- Long-haul rail rates are only one element in total international distribution costs and may have a limited if not minor influence over selection of routes and ports;
- The increase of competition between modes in the United States has significantly reduced the railroads' market share and profit margins which previously allowed the railroads to support cross subsidies;
- Containerization and other technological improvements in ocean-going transportation tend to erode the traditional reasons for maintaining port equalization, or at least shift emphasis to a new physical distribution environment;
- Port equalization tends to accelerate the decline in the rail share of the market because it restricts the ability of the rail industry to effect rate changes necessary to compete with other modes; and
- Certain shippers are disadvantaged because they cannot utilize the inherent advantage of a particular route and port because port equalization ratemaking adopts "averages", rather than specific costs

The Office has requested comments on a number of specific issues which I will summarize at this point:

- Has the doctrine of port equalization of rail rates been beneficial or detrimental to the commerce of the United States?

- Given the fact that ports and railroads seek equalization to mitigate the competition of market forces, what role, if any, should the Commission have in this attempt to modify natural market forces?
 - What constitutes undue preference and unreasonable preference and advantage to any port or port district under section 3(1) of the Interstate Commerce Act?
 - Should motor carrier and barge rates be subject to port equalization and what is the impact on the rail system of the lack or such equalization for trucks and barges?
 - What factors besides long-haul rail rates affect the shipper's selection of a particular port?
 - What agencies besides the Commission should be involved in port equalization proceedings?
 - Does sections 202(f)(3) and 202(f)(4) of the 4R Act limit the ratemaking flexibility of the rail industry?
- Some interests contend that these sections should be given strict interpretation, mandating the Commission to equalize at least intra-port areas. Others reach a different conclusion. Inasmuch as the Commission has never guaranteed equalization of all rates within the same port in the past, they argue that Congress did not intend to alter the Commission's discretion and conclude that intra-port rates would be treated in the same fashion as inter-port rates.
- What is the impact of the increasing specialization of ports, of continued heavy investments in competing port facilities and of the strong possibility of substantial excess capacity on traditional ratemaking policies?

The foreword of the Preliminary Report amplifies each of these issues in greater detail and I would like to submit the full text of the foreword for the record.

Port equalization has become a controversial issue at this time although equalization of rail rates to and from ports and port ranges in the United States has been a tradition and trade practice as old as the railroad industry itself. The increasing controversy resulted in part from the economic factors summarized in my testimony and by enactment of the 4R Act. The 4R Act placed increased emphasis on flexible pricing and appears to require that all rail rates contribute to going concern value. These two goals conflict in several ways with traditional concepts of port equalization. It is in light of this conflict that the Office is reviewing the language of sections 202(f)(3) and (4) of the 4R Act. to determine the impact of those sections on the Commission's ratemaking authority and obligations.

STATEMENT OF
A. DANIEL O'NEAL
CHAIRMAN, INTERSTATE COMMERCE COMMISSION
BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE HOUSE COMMITTEE ON INTERSTATE AND
FOREIGN COMMERCE ON H.R. 11979,
THE "LOCAL RAIL SERVICE ASSISTANCE ACT OF 1978"

July 13, 1978

Mr. Chairman, Members of the Subcommittee:

I want to thank the Chairman and Members of the Subcommittee for giving the Commission this opportunity to present its views on H.R. 11979, the "Local Rail Service Assistance Act of 1978." During the past year, Commissioner Clapp and I have testified several times before both Senate and House Transportation Subcommittees on bills involving amendments to the State rail freight assistance programs. H.R. 11979 incorporates some of the provisions and concepts which we supported in these earlier bills, and also adds several provisions which were not addressed in our earlier comments.

In general, the bill would establish the local service assistance program as a permanent program at an 80 percent Federal assistance level, and would extend eligibility to additional projects, including rehabilitation of a line before it is abandoned, experimental service improvement programs, and the construction of new connections, sidings, and terminals. The bill would also limit operating subsidies on a line to two years, and would change the entitlement formula by which Federal funds are made available to the States. It would also require cost/benefit criteria to be applied to certain projects and would change the treatment of in-kind benefits. I would now like to discuss some of these

provisions, and invite your attention to some areas we have reservations about.

Nature of the Subsidy Program

Under the existing law, Federal operating assistance is available only for abandoned lines, with a Federal contribution level which declines from 100 percent to 70 percent over the five-year life of the program. With no legislative changes, the existing program would end June 30, 1981. H.R. 11979 would limit Federal operating subsidies to the first two years after a line is abandoned, but there would be no limitation on the overall life of the program. After this two-year Federal funding assistance terminated, continuation of service on a line would require a subsidy funded 100 percent by the State or by shippers.

The Regional Rail Reorganization Act of 1973 (3R Act) originally established the Northeast regional subsidy program as a short-term transitional program for the Region. However, it was amended before any subsidized operations began. The amendments extended the subsidy program nationwide, and extended the duration of the program to five years. In conjunction with the requirement for comprehensive long-range State rail plans, these amendments were a change in the concept and philosophy of the program from one of transitional assistance to one which provided an alternative to abandonment for States and shippers. There is a lack of continuing need for transitional assistance, the need rather being one by the States for longer-term assistance to maintain service on important lines.

The transitional need in the Northeast has already been met by the 100 percent Federal funding of the first year of subsidized operations in the Region, which helped mitigate the impacts of the massive line abandonments associated with the implementation of the Final System Plan. The need for such a program within the Region has been largely dissipated. The States outside of the Northeast, which were brought into the subsidy program through the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), do not face the problem of minimizing the impacts of large-scale line abandonments, and do not really need a transitional program. In our view, the Congressional decision in 1976 to lengthen the time limits for the program and to expand it nationwide--to areas that do not really need a transitional program--reflects a determination that the program should be one of providing rail users with the option of rail service continuation.

In addition, the States' rail plans have addressed the subsidy program as a rail service continuation program. The States have used Federal operating subsidies for continued service to maintain economic balance, to promote or retain development in areas of the State, to avoid the loss of industries and to prevent increases in unemployment. In many situations, the costs of continuing service are prudent expenditures in a State's overall economic plan.

H.R. 11979 would limit Federal assistance toward these purposes to two years for any line which is abandoned, and would therefore reflect a change in philosophy from one of allowing service

continuation to one of short-term transitional assistance. It is, of course, up to Congress to decide whether the emphasis of Federal assistance should be temporary or long-term. We would simply point out that this bill would significantly modify the underlying thrust of the program as it now exists.

As an illustration of how the two-year limitation might have undesirable effects, it is quite conceivable that in certain situations a State's priorities to continue to subsidize one line for longer than two years would be higher than for subsidizing another line which is approved for abandonment at a later point in time. However, H.R. 11979 would withdraw Federal assistance from one perhaps essential line after two years, regardless of the State's priorities. In fact, H.R. 11979 would actually encourage the State to subsidize the less useful line simply because it was abandoned at a later point in time. We do not feel this is a desirable result.

If Congress concludes that some limitation on Federal assistance is needed, we suggest that the Federal contribution be continued at a lower level after the initial two years of 80 percent assistance. We believe that this would achieve certain desirable results. First, all lines which are abandoned would be treated similarly, each being eligible for 80 percent assistance for the first two years after abandonment. This would be an improvement over the existing program, since the Federal assistance level presently varies depending on the calendar year in which the line is abandoned.

Second, under our proposal the larger State contribution required to subsidize a line after the initial two years would serve to minimize the continuation of unnecessary lines and encourage the development of less costly approaches to providing service. The experience in the Northeast has shown that there are alternative approaches to subsidizing lines which can actually result in better service at less cost.

In summary, H.R. 11979 would significantly modify the existing Federal assistance program by limiting this assistance to two years after a line is abandoned. Such a modification would reflect a change from a rail service continuation policy, to a policy of short-term transitional assistance. We do not believe there is any great need for transitional assistance, and feel that enactment of H.R. 11979 could hamper the States' attempts to continue necessary rail service. We suggest a continuing Federal contribution, but at a lower level after two years of 80 percent assistance.

Rehabilitation of Lines Before Abandonment

H.R. 11979 would also allow States to use Federal funds to provide assistance to a railroad to rehabilitate a line before an abandonment application is filed for the line. Similar provisions are included in S. 1793 and H.R. 9398, which this Commission supported in its previous testimony on these bills.

Many lines in the country are marginal operations which might be "turned around" if the line were rehabilitated and service on the line improved. Often, the marginal returns generated on the line are insufficient for the railroad to

invest funds in rehabilitating the line. As the line deteriorates, the quality of service drops and shippers shift to alternative modes of transport, which further reduces the traffic base and the return on the line. This cycle continues until the railroad abandons the line and potential subsidizers are faced with a deteriorated line which has little, if any, hope of becoming viable.

A one-time infusion of rehabilitation assistance into some of these lines could reverse the cycle, reviving a line which could provide good service to the shippers and a viable contribution to the railroad. We support the expansion of the assistance program to include rehabilitation of lines before they are abandoned.

However, we would not exclude from eligibility, as H.R. 11979 does, those lines which are the subject of pending abandonment applications. A State may deem some of these lines important in its rail transportation plan, and desire to return the line to viability by providing rehabilitation funds. We believe that the States should have this flexibility.

Entitlement Formula

The Commission has previously supported an entitlement formula which would assess each State's anticipated need for subsidy funds, rather than the existing formula which is based on lines previously abandoned.

We support the entitlement formula proposed in section 5 of H.R. 11979, with one important addition. The proposed formula would allocate two-thirds of the funds on the basis of lines which are potential candidates for abandonment and one-third based on

lines already abandoned. However, the formula would specifically exclude those lines for which abandonment applications have been filed but no proceeding has been completed. As a result, this formula would decrease the entitlement funding for those States that have a high proportion of rail lines involved in an abandonment proceeding, which is the time when the need for funding is likely to be greatest.

We believe that pending abandonment applications represent a significant element in a State's anticipated need for subsidy funds, and recommend that pending abandonments be included in the portion of the formula which allocates two-thirds of the funds.

Also, we would suggest that perhaps some thought should be given to modifying the entitlement formula to include those lines which are operated under subsidy after the initial two year period. Under the formula which would be established by H.R. 11979, a line which received subsidy funds for over two years would be dropped from the entitlement formula.

Cost/Benefit Criteria

The Commission supports the concept of balancing the benefits derived by subsidized service and the costs associated with providing that service. At the same time, we believe it is important to allow the States sufficient flexibility to tailor their subsidy programs to fit their needs. H.R. 11979 would require the DOT to promulgate nationwide cost/benefit criteria which would be used to determine if Federal funds would be available for certain assistance projects. We believe that flexibility is an essential element in this program, and are hesitant to believe that the

varying needs of the States and regions can be adequately addressed in a single set of cost/benefit criteria developed in Washington, D.C. Furthermore, in developing State rail plans, the States have already performed a type of cost/benefit analysis, with public input, in establishing priorities for lines in the State. We do not believe that an additional analysis under federally-established criteria, is necessary. Consequently, although we recognize the utility of cost/benefit criteria, we do not believe that they should be statutorily mandated in this situation.

Seventh Circuit Court Decision

On May 30, 1978, the United States Court of Appeals for the Seventh Circuit issued a decision^{1/} which overturned portions of the Commission's regulations governing the abandonment and subsidization of rail lines which implemented section 1a of the Interstate Commerce Act, as amended by the 4-R Act. This decision could have significant adverse impacts on the assistance programs addressed by H.R. 11979 as well as on the program currently in effect.

There are two major impacts. First, the Court's decision limits the Commission's jurisdiction to do anything other than issue an abandonment certificate at the end of the six-month subsidy negotiating period. This creates a potential imbalance in the bargaining positions of the subsidizer and the railroad, by allowing the railroad merely to let the six-month period run out. This

1/ Chicago and North Western Transportation Company, et al. v. U.S.A. and I.C.C., (Nos. 76-2283, 77-1008 and 77-1487). The Commission on June 26, 1978, petitioned for a rehearing en banc.

could have the effect of causing the subsidy program to be inoperative as to recalcitrant railroads. In addition, a railroad can ignore with impunity the subsidy calculation regulations prescribed by the Commission and establish individually the terms upon which it will undertake to enter into subsidy negotiations.

The second major impact of the Court's decision, if the parties do reach agreement on subsidy, would be a substantial increase in significant parts of the costs of the subsidy program--perhaps as much as two or three times. The major items involved are the rehabilitation costs and the costs of equipment used on the branch line. With regard to the rehabilitation costs, our regulations basically required the inclusion of rehabilitation expenses in the subsidy payment only if a line needed rehabilitation to meet minimum safety standards (FRA Class I) unless a potential subsidizer agreed to a higher level of rehabilitation. The Court determined that Congress intended to allow a railroad unilaterally to require rehabilitation of a line to any higher previous level of utility it desires in order to operate at efficient speeds as a precondition to its entry into a subsidy agreement. Clearly, including the cost of rehabilitating a line to a higher class of track standards in the required subsidy payment could greatly increase the cost of the subsidy. Further, if a State intended to subsidize a line for only one year, it would not be prudent to spend large sums of money on rehabilitating a line to a higher class in order to achieve minor reductions in operating costs.

With regard to costs of equipment used on the branch lines, our regulations, which are the same as regulations issued pursuant to the 3-R Act and still effective in the Northeast, refer to the average cost of all equipment in use throughout the individual railroad's system to determine the appropriate costs to be assigned to equipment actually used on the line. The Court determined that the subsidizer should compensate a railroad for the cost of new equipment on the theory that it would have to buy new equipment as a result of continuing service on the subsidized line. This current replacement cost concept would require a significantly higher subsidy payment.

We believe that these increased rehabilitation and equipment costs could restrict the State subsidy programs by reducing the number of lines that could be assisted within the funding entitlement of each State. Additionally, existing 100 percent privately financed subsidies could become prohibitively expensive as a result of the Court's decision.

The Commission believes the regulations originally promulgated are an implementation of the program as Congress intended. If, as we believe, Congress intended to mandate an economically feasible subsidy program designed only to relieve the railroads of prior burdens, and give them a reasonable profit for service provided under subsidy agreements, it will be necessary to incorporate clarifying provisions in H.R. 11979 or in some other appropriate legislation to guide the subsidy program in the direction that Congress intends.

Thank you for this opportunity to present the Commission's views on the "Local Rail Service Assistance Act of 1978." I will be glad to respond to any questions you may have.

Vice Chairman Christian was absent and did not participate.

Mr. ROONEY. Do you have an extra copy of that?

Mr. FITZWATER. Yes, sir. I have a paper prepared that could be introduced in the record which I briefly described in my testimony this morning.

Mr. ROONEY. I also would like to have a copy for my personal files.

Mr. FITZWATER. I will also be happy to provide you with a copy of the entire report.

Mr. ROONEY. Thank you.

On page 4 of your statement you state that this bill would encourage the States to subsidize less useful lines. I do not understand what the incentive would be for a State to prudently use its funds, Federal funds, as you say, simply because the line being subsidized would be abandoned at a later date. I wonder if you would elaborate and clarify the point that you are attempting to make.

Mr. FITZWATER. The possibility occurs that there will be lines that for whatever reasons the 2-year time frame will not be sufficient to get it back to the position that you would like it to be so that it would be self-sustaining. It might force you to a position that lines with lower priorities, just because they happened to have been abandoned more recently, would be the only lines that you could put your moneys against.

What we are suggesting is that we believe this should be a State's program as opposed to a Federal program and the States should be the ones to make the final decision as to where these moneys go.

We believe by cutting back the Federal matching share somewhat it will force the States into recognition that this cutback is coming and force them into a position of doing everything they can to try to limit the necessity of the operating subsidy to 2 years. But there will be situations where it will be impossible. It might be because of substantial rehabilitation that cannot be completed in the time frame. It might be because a plant that is under construction has not been completed. There are a number of reasons that I can think of that 2 years might not be a long enough period. As a result, you would be subsidizing the lines whose priorities in the States would be lower.

Mr. ROONEY. On page 5 of your testimony you indicate that this bill could hamper the States attempts to continue necessary rail service. It is my understanding that the States although desirable of a liberalization of eligibility requirements, have no objection to the 80-percent, 2-year provision. Do you have any evidence to the contrary? Perhaps your colleague may want to answer the question.

Mr. FITZWATER. No, sir. I think I understand the question. I think maybe later on today there will be some of the States' people here that you can ask the same question. I don't feel I should be trying to put words in their mouths. I do believe that there will be situations that maybe some of them don't recognize at this point where it would be a better use of Federal funds to continue operations beyond 2 years.

I think most of the States are looking forward to the rehabilitation program as opposed to the operating subsidy program and

have directed most of their attention in that way. I still believe that as the 2-year time limitation starts drawing near, that this committee will hear many complaints, that there are valid reasons to continue beyond 2 years and if the committee can address it at this point I believe it could be handled. It will be very difficult to handle later on.

Mr. ROONEY. Where is the Chairman this morning? Is he before the Senate?

Mr. FITZWATER. No; the arrangement was that I was scheduled to testify on his behalf last Thursday, and so I was scheduled again this morning, sir.

Mr. ROONEY. I want to thank you for providing us with a statement well in advance of the hearing this morning. I appreciate your testimony.

Thank you.

Mr. FITZWATER. Thank you.

Mr. ROONEY. Our next panel will be a panel consisting of Mr. Clifford Elkins, deputy director, National Conference of State Railway Officials; E. L. Tennyson, deputy director, Pennsylvania Department of Transportation, Harrisburg, Pa.; John D. Kramer, secretary, Illinois Department of Transportation, Springfield, Ill.; John D. Killoran, executive director, West Virginia Railroad Maintenance Authority, Charlestown, W. Va.

Gentlemen, I would like to take this opportunity to apologize for having to call you back on Monday. As you know, you were originally scheduled to testify last Thursday. Unfortunately, the House was under the 5-minute rule and they would not permit this committee to sit.

STATEMENTS OF CLIFFORD ELKINS, DIRECTOR, NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS; WILLIAM C. HARSH, CHIEF, BUREAU OF RAILROADS, ILLINOIS DEPARTMENT OF TRANSPORTATION; E. L. TENNYSON, DEPUTY SECRETARY FOR LOCAL AND AREA TRANSPORTATION, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION; ROBERT G. CORDER, TRANSPORTATION COORDINATOR, VIRGINIA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION; AND JOHN P. KILLORAN, EXECUTIVE DIRECTOR, WEST VIRGINIA RAILROAD MAINTENANCE AUTHORITY

Mr. ELKINS. Thank you, Mr. Chairman. In view of the scheduled change in the hearings we have some interchangeable parts with us today. We are a little bit different than we were on the panel. In place of Mr. Kramer, I have Mr. William Harsh, who is chief of the Bureau of Inner City Rail Services in the State of Illinois.

Also in view of the testimony of last Thursday I have asked Mr. Corder from the Virginia Department of Highways and Transportation to be with us in view of the interest and questions that were shown in the Delmarva rail situation.

Also, due to the scheduling time, Mr. Frank McKenna, who is counsel to the West Virginia Railroad Maintenance Authority is with us. Mr. Killoran is on his way. We anticipate he should be here within 10 minutes or so.

With your permission, we have submitted some written testimony for the record [see p. 149]. I would like to summarize our testimony.

ny and then the other gentleman in the following order after me; Mr. Harsh, Mr. Tennyson, Mr. Corder and Mr. Killoran will supplement the testimony and be available for questions.

Mr. ROONEY. Without objection, your statement will be inserted in the record in full.

Mr. ELKINS. Our purpose in testifying today is to present the consolidated views of the States regarding H.R. 11979. The points I will touch upon today are those that have been agreed upon after many hours of discussion and will benefit not only the States; but the rail industry, rail labor and the transportation system of the United States. We also believe this will be very beneficial to the general economies in these times of great economic concern. We would like to stress that everyone who has testified has pointed out the need to modify the existing program.

Indeed, we commend the Secretary for taking the lead and proposing changes in the existing local rail service assistance program now authorized in section 5 of the Department of Transportation Act. We believe that the testimony of the Department as well as other witnesses have borne out the need that this program must be changed to get rehabilitation assistance to lines prior to their being declared as having no public convenience and necessity by the Interstate Commerce Commission.

However, we will also suggest some specific changes to the proposed legislation which we believe will greatly improve what has been proposed by the Secretary and the Department of Transportation.

We think there is need to focus on in initial part of the legislation, indeed in the declaration of policy needs attention and modification.

We have deep concern that declaration of policy in the bill does not give proper recognition to the underlying reasons and need for programs called for in the bill. We believe the stated policy is overly concerned with short-term rehabilitation and transitional operating assistance, and does not place the emphasis upon the benefits that branch lines make to the overall rail system of the United States.

Indeed, some traffic may only travel on branch lines for a few miles but it may travel on someone else's main line for several thousand miles and make a definite positive cash contribution to the American railroad system while being a loss only on the branch line. Many lines are essential for local economies and while they may not make an operating profit, they do have public benefits which necessitate their continued operation. Indeed, we believe this is one of the issues that this legislation should concentrate upon. Many lines are essential for public interest reasons but they may be a loss to an operating railroad.

We think we have come to the time that if services are required for the public interest and they are a deficit operation, public funds should be the funding source. Some lines have a potential for economic development, for increased traffic and operating efficiencies but due to the rail industry being capital starved, it is essential that public money be infused in these lines so that needed and essential rehabilitation work will not be deferred.

We believe if these considerations are placed into the statement of policy the Congressional intent will be clearly stated to the Department of Transportation and others to understand that this program is clearly to assist State economies, the railroads, rail labor and all concerned with the rail system of the United States.

The section on in-kind benefits we think is good. However, we don't see any reason why in-kind benefits should include only cash or forgiveness of taxes. In many instances States need to count personnel and personal services for in-kind benefits since the use of other state personnel has proved beneficial.

States have also contributed materials and supplies and the in-kind benefit program as now constituted takes care of providing for these needs. They should not be changed but only in the sense to reflect the multiyear carryover which we believe is extremely essential.

Formula allocation. In view of the testimony of Thursday we believe formula allocation is a critical point to be focused upon. Indeed formula allocation is one of the most difficult areas for the States to agree upon since in many instances the changed formula will result in a reduction to a State's share or on increase.

The important point we wish to emphasize is that since its inception this program has been underfunded and unfortunately due to regulations issued and administered by the FRA, it has been difficult to utilize the present authorizations promptly.

However, the needs under the present program and the changes proposed are so great that the available funds will shortly be deficient and the critical needs of increased funding must soon be addressed.

We believe this program has proven to be a high priority in terms of benefits and needs and the problem that will be incurred by some States by readjustment of the allocation formula must be taken care of by having the authorization and appropriation process to reflect the program's need.

Planning assistance. Without exception, the States strongly oppose this section of the bill. Rail planning is conducted on a statewide basis and usually concerned with rural areas.

There are no valid reasons why any of these scarce planning funds should be diverted into a consolidated planning fund as proposed in this section. We were pleased to see Mr. Sullivan, the FRA Administrator, comment on this, but we don't agree that even taking 5 percent of this amount would not be detrimental. This program is capital starved now. There are no reasons that another group of people should be funded to come into the rail planning business. Instead the metropolitan planning organizations do have access to the State rail plans because in the rail State planning process a public hearing is initiated and all views are considered and entered into in a State rail plan.

Project eligibility. All who are concerned with the State rail program wish to insure that the universe from which projects may be eligible will be such that it will generate the highest return on the public investment. We have discussed and studied this matter at great length and urge that project eligibility be determined by having lines which have a density of less than 5 million gross ton-

miles per year be eligible. We believe this would be a more efficient and realistic criteria than what is proposed in the bill.

The system diagram process that is proposed in our opinion does not work. This process is viewed differently by the railroads. Some railroads will not place lines into categories one and two for fear of impairing shipper confidence while others may place many lines into these categories for the sole purpose of getting a larger portion of available funds. Routings and density, being a more complicated matter, are not easily manipulated and do reflect usage of a line.

Duration of operating subsidy. The bill provides that operating subsidies should be limited to a duration of 24 months. We oppose this provision since a 24-month period is usually not enough time to turn around a line and restore it to profitability. In many instances a line may just begin to show promise after a 2-year period and thence have to be cut off from continued assistance.

We would like to make the point that the 17 ConRail States and the rest of the States differ because of the eligibility process. Keeping in mind that when the 17 States' 3-R program was initiated it was not an abandonment program, it was a series of lines that were put into a process of receiving operating assistance as a result of the USRA's final system plan and have not been abandoned.

In the case of the other States the law requires abandonment criteria to be used. So there is a very definite difference in the two programs. It is highly unlikely that the majority of the States outside the Northeast Region will use operating subsidies. However, it is valuable to have operating subsidies since it will allow time for a line to turn itself around. Our point is that we don't believe that 24 months is sufficient time to accomplish this.

However, if Congress believes that a time limit is necessary for operating assistance we urge that it be done on a basis that if a line were making progress in increasing traffic and reducing operating costs, thereby reducing its need for subsidy, that such line be allowed to continue as long as the operating subsidy was being reduced.

Benefit cost ratio. We have heard quite a bit of discussion on benefit-cost ratio. However, the establishment of a cost-benefit ratio by legislation is of concern to the States since we now believe the present process being used by the FRA fully requires States to justify projects. The present project approval process has often proven to be cumbersome and slow and we are concerned that the establishment of a new cost benefit process may impede the program and impair State flexibility.

At the present time for a project to be approved a State must have an approved State rail plan and to get a rail State plan approved it is a multistep process. The initial step is a planning work statement. This requires FRA approval. After this has been accomplished a State rail plan is then embarked upon. This must be approved by FRA. Indeed within the State rail plan are project rankings and lines identified in order of priority. This indeed is a cost-benefit process. To have a third approval imposed, we would have great fear that while this step was being taken lines would pass out of existence because of the lengthy time it would take to process applications.

We believe it would suffice to have a statement in the bill that it is the intent of Congress to have this program be based upon those projects which have public benefit.

Miscellaneous changes. The 1 percent minimum has been talked about at great length. Indeed, we have changed our own position on this. In order to move the program and mitigate the impact upon States now receiving funds under some conditions we would be receptive to having either a percentage minimum or a fixed dollar amount for each State that would insure the smaller States would have a meaningful program.

Although under present regulations it is possible for two or more States to join together in planning and projects, we would suggest that legislation should state that it is possible for two or more States to join together and utilize their collective funds for joint projects and planning activities.

At the present time we have not incurred overly burdensome problems with FRA to date in this area but we feel that at some point in time a new administration may come with dissident policies, so we feel it is better to have it legislated to insure continuity.

Effect upon rail labor. In any legislation that is pending concerning rail matters we are concerned with the effect it will have on rail labor. We fully recognize the valuable contribution that rail labor makes to the American railroad system and we would not recommend legislation we believe to be detrimental to rail labor.

In our discussions with rail labor we are aware of their concern and we firmly believe that this legislation strengthens the branch line system of the American railroad system. Accordingly this is of benefit to rail labor and we are confident it will have their support.

In conclusion, we wish to take this opportunity to thank you, Mr. Chairman, and the committee. We realize the crowded schedule that faces you. We realize that there are many priority items. But the point we would like to make is that it is essential that we have legislation passed this session to have a meaningful program for the States to embark upon to save branch lines and have them make a proper contribution. If it is not passed this session we are faced with a virtual 2-year delay from the time legislation is enacted until States can get their own funding in order which usually requires action by State legislatures.

We are also faced with seasonality. In most States rehabilitation work can only be accomplished in the summer and spring months. If we wait through another season we are talking 1980 startup. In view of what is happening in the Midwest, and indications are that several rail problems are happening in the South and portions of the West, if we wait too long we are fearful that we will see an extensive abandonment program. Indeed, already the deteriorating financial system of the Midwestern railroads is going to deteriorate even further.

With your permission I would like to pass on now to Mr. Harsh and others of the panel to make some comments and we will be available for questions.

[Testimony resumes on p. 157.]

[Mr. Elkins' prepared statement follows:]

TESTIMONY OF THE
NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS
BEFORE THE
HOUSE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

July 13, 1978

I. INTRODUCTION

Mr. Chairman, my name is Clifford Elkins and I am the Director of the National Conference of State Railway Officials which is the Railway Committee for the American Association of State Highway and Transportation Officials. The Conference represents the State Agencies designated by their Governors to develop State rail plans and implement programs under the process created by the Railroad Revitalization and Regulatory Reform Act of 1976.

At the present time all States, except Hawaii and Alaska, are engaged in rail programming and the development of State rail plans.

Our purpose in testifying today is to present the views of the States regarding HR 11979. The points I will touch upon today are those that have been agreed upon after many hours of discussion and will benefit not only the States, but the rail industry, rail labor, the transportation system of the United States, and the general economy, which we believe to be of great importance in these times of economic concern to our State and National economies.

II. NEED FOR MODIFICATION OF THE EXISTING PROGRAM

We commend the Secretary of Transportation for taking the lead and proposing changes in the existing Local Rail Service Assistance program now authorized in Section 5 of the Department of Transportation Act (49 U.S.C. 1654). The Secretary's testimony, as well as that of all the witnesses today bear out the need to change the program to get rehabilitation assistance into lines prior to their being declared as having no public convenience and necessity by the Interstate Commerce Commission. However, we will suggest some specific changes to the proposed legislation which we believe will greatly improve what has been proposed by the Secretary and the Department of Transportation.

III. DECLARATION OF POLICY

We have concern that the declaration of policy in this Bill does not give proper recognition to the underlying reasons and need for the programs called for in the Bill.

The stated policy is too concerned with short term rehabilitation and transitional operating assistance and does not place the emphasis upon factors such as:

- A. the benefits that branch lines make to the overall rail system of the United States since some traffic may only travel on a branch line for a few miles but it may travel on someone else's main line for several thousand miles and make a definite positive cash contribution on the American railroad system while being a loss on a branch line.

B. Many lines are essential for local economies and while they may not make an operating profit, they do have public benefits which necessitate their continued operation.

C. Some lines have the potential for economic development, increased traffic, and operating efficiencies but due to the rail industry being capital starved, it is essential that public monies be infused into these lines or needed rehabilitation work will continue to be deferred.

We believe that if these considerations are placed into the statement of policy, the Congressional intent will be clearly stated to the Department of Transportation and others to understand that this program is clearly to assist State economies, the railroads, rail labor, and all concerned with the rail system of the United States.

IV. IN-KIND BENEFITS

The Bill proposes that if a State provides more than 20% of the cost of its rail service assistance program during any fiscal year, the amount in excess shall be applied toward its share for subsequent fiscal years. We strongly endorse this provision and commend the Secretary for recognizing the needs for the States for having proposed this provision. However, we do not see any reason as to why In-Kind Benefits should be reduced to only include cash or forgiveness of taxes. In many instances, States need to count personnel and personal services for in-kind benefits since often the use of other State personnel

such as Commerce, Agricultural, and Tax have proved to be beneficial. States have also contributed materials and supplies and the in-kind benefit program as now constituted takes care of providing for these needs and should not be changed except for the multi-year provisions.

V. FORMULA ALLOCATION

Formula allocation is one of the most difficult areas for States to agree upon since in many instances the changed formula will result in a reduction to a State's share.

The important point we wish to emphasize is that since its inception, this program has been underfunded and unfortunately due to the regulations issued and administered by the Federal Railroad Administration, it has been difficult to utilize the present authorizations. However, the needs under the present program and the changes proposed are so great that the available funding will shortly be deficient and the critical issue of increased funding must soon be addressed. We believe this program has proven to be a high priority program in terms of benefits and needs and the problems that will be caused to some States by readjustment of the allocation formula must be taken care of by having the authorization and appropriation process reflect the programs need.

VI. PLANNING ASSISTANCE

Without exception, the States strongly oppose this section of the Bill. Rail planning is conducted on a statewide basis and usually concerned with rural areas. There are no valid reasons as to why any of these scarce planning funds should be diverted

to a consolidated planning fund as proposed in this section. Indeed since the planning regulations issued by the FRA properly call for this planning to be done comprehensively and with public input, any of the proposed benefits that may exist from such a transfer are now occurring. This section would only cause a difficult situation to become impossible. We respectfully urge that this section be deleted.

VII. PROJECT ELIGIBILITY

All who are concerned with the State rail program wish to ensure that the universe from which projects may be eligible will be such that it will generate the highest return on the public investment.

We have discussed and studied this matter at great length and urge that the project eligibility be determined by having lines which have a density of less than 5 million gross ton miles per year be eligible. We believe this would be a more efficient and realistic criteria than what is proposed in the Bill.

The system diagram process that is proposed in our opinion does not work. This process is viewed differently by the railroads, some railroads will not place lines into categories one and two for fear of impairing shipper confidence while others may place many lines into these categories for the sole purpose of getting a larger portion of available funds. Routings and density being a more complex matter are not easily manipulated and do reflect usage of a line.

VIII. DURATION OF OPERATING SUBSIDY

The Bill provides that operating subsidies should be limited to a duration of 24 months. We oppose this provision since a 24 month period is usually not enough time to turn around a line and restore it to profitability. In many instances, a line may just begin to show promise after a two year period and thence have to be cut off from continued assistance.

We as States are fully cognizant of fiscal responsibility and the high demand for public funds. With this view in mind there is no reason as to why States would want to use operating subsidies for other than valid economic reasons. As we have previously stated the program is underfunded and use of funds for operating subsidies reduces the States ability to accomplish other projects so that only the highest priority lines would continue to get operating assistance for a longer period of time. We believe the States should have maximum flexibility under the program and should have the ability to have a longer operating duration if they believe it necessary for the particular circumstances within a State.

However, if the Congress should believe a time limit is necessary for operating assistance, we urge that it be done on a basis that if a line were making progress in increasing traffic and reducing operating costs thereby reducing its need for subsidy that such line be allowed to continue with an operating subsidy as long as this progress was being accomplished.

IX. BENEFIT - COST RATIO

The establishment of a cost benefit ration by legislation is of concern to the States since we now believe the present process being used by the FRA fully requires States to justify projects. The present project approval process has proven to be cumbersome and slow and we are concerned that establishment of a new cost - benefit process may impede the program and impair State flexibility.

At the present time for a project to be approved, a State must have an approved State rail plan and thence a project application to be approved by FRA. We believe that this process is more than adequate. However, in our discussions with FRA, we were pleased to note their intention is to recognize the public benefits that would accrue out of this program.

We believe it would suffice to have a statement in the Bill that the intent of Congress is to have this program be based upon those projects which have public benefit.

X. MISCELLANEOUS CHANGES

Since this Bill will eliminate the present 1% minimum States now receive, we urge that in addition to the \$100,000 that will be available to States for planning an additional \$50,000 be made available to each State for program administration and that the States should have the flexibility of using these funds of \$100,000 and \$50,000 respectively for planning, program administration, and/or projects.

However, in view of funding levels that this program has been receiving, many States believe that the most equitable manner in which to provide for States which have smaller programs is to

maintain the present 1% minimum we believe this to be of increased benefit with a larger universe from which eligible projects may be drawn.

Although under present regulations it is possible for two or more States to join together in planning and projects, we would suggest that the legislation should state that it is possible for two or more States to join together and utilize their collective funds for joint projects and planning activities.

XI. EFFECT UPON RAIL LABOR

In any legislation that is pending concerning rail matters, we are concerned with the effect that it will have on rail labor. We fully recognize the valuable contribution that rail labor makes to the American railroad system and would not recommend legislation we believe to be detrimental to rail labor.

In our discussions with rail labor, we are aware of their concerns and we firmly believe that this legislation strengthens the branch lines and the entire rail system is of benefit to rail labor and we are confident it will have their support.

XII. CONCLUSION

In conclusion, we also again wish to take this opportunity to thank Secretary Adams and the FRA for taking the initiative and proposing this legislation. We have had problems with the program being administered by FRA but we believe this is a positive step in solving these problems.

However, we realize the crowded calendar facing the House and believe this Bill should receive little controversy and would require the minimum of floor time. We respectfully urge that this legislation be considered and passed to the floor as soon as possible. We have urgent rail needs that must be taken care of now since most of the projects the States wish to undertake reflect many years of neglect. In many sections of the country, rehabilitation work is seasonal and passage this session will allow some projects to be taken care of this construction season.

Mr. Chairman, we are deeply appreciative of your concern for the States and their transportation needs and thank you for scheduling these hearings and we further appreciate the consideration you will give to the changes we have suggested in the Bill.

Mr. ROONEY. You may proceed.

STATEMENT OF WILLIAM C. HARSH

Mr. HARSH. Mr. Chairman, in order to conserve the time of the committee I wonder if I might take the written statement that was submitted to the committee earlier, which has been endorsed by Secretary John D. Kramer, expresses our support for H.R. 11979 and summarize briefly our small differences with FRA, and submit that for the record. [See p. 160.]

Mr. ROONEY. Without objection.

Mr. HARSH. Mr. Chairman, we in the States see the program of preabandonment assistance that is contained in this bill as very analogous to a health maintenance organization for railroads. As you know, Mr. Chairman, health maintenance organizations have proven that it can be not only less painful but also more cost effective to treat illnesses before they become critical rather than waiting for them to become critical and treating them then. We believe the preabandonment portion of this legislation will lead not only to a less painful way of dealing with abandonment problems as they arise, but also a more cost effective way to apply the taxpayer's dollars. If you would, allow me to give you two brief examples of the way in which this might be true.

First, as you know, Mr. Chairman, if maintenance is deferred on a line the tie condition on that line erodes and this leads in turn to damaging of the rail, which is the major asset on most branch lines. The rail first becomes surface bent, and then defects develop at the joints which lead to the necessity for replacing the rail, which is a very major expenditure when compared to maintaining the condition of the ties and roadbed.

If I can give you an example, on the Wabash Valley Railroad, which is operated under the section 803 program by the State of Illinois, we discovered 377 serious defects in the rail which were surely caused by years of deferred tie maintenance and which could have been prevented. In addition to forcing us to replace rail we should not have to replace, this means that we have had to reduce the speed limit on the line during the period of rail replacement to 10 miles an hour. As a result, we are having to devote more than \$700 a day of money that could be going into this and other lines for capital maintenance into wages for a second train crew that is entirely unnecessary and could have been avoided.

Second, I can tell you firsthand that shippers on lines such as those that have come to the attention of this program have become very cynical over the years regarding promises made by the railroads and subsequently by Government organizations concerning the way in which money is going to be applied to help their lines. It takes a good deal of time to turn these shippers' attitudes around to the point where they use the lines and make them viable. This time is very expensive. It requires several years of subsidy to provide the time in which the shippers can be made to believe that the line can be made viable. This subsidy is expensive and could be avoided through the preabandonment program which is contained in H.R. 11979.

To summarize this point, Mr. Chairman, the preabandonment portion of this program will allow us to avoid expensive rail re-

placement and line subsidy payments that arise when the physical condition of a railroad is allowed to decline for a number of years before you correct it. This will both ease the pain of the shipping public in this type of situation and will allow a more cost effective application of the taxpayer's dollars.

I should say parenthetically and make it clear that, from the point of view of the States, this is not to say that there will be no use at all for operating subsidies in the future. Particularly in the early years of the program we will have a number of rail lines in the pipeline that have advanced sufficiently far along the abandonment curve that an application of capital assistance alone will not be sufficient to turn them around. For these lines, a period of subsidy will be necessary in order to restore shipper confidence and allow a time in which to accomplish the required physical maintenance. Illinois, among others, will make limited use of subsidies in the coming years. But the point of the program is that, over the long term, the preabandonment portion of this program will allow us to get away from operating subsidy and to apply the public assistance early in the process in such a way that we will have a more cost effective solution.

The only other statement I want to make to you, Mr. Chairman, is that this legislation is very urgent in the part of the country from which I come. In Illinois we have more than 1,000 miles of railroad pending abandonment right now and a great many more miles in the pipeline. Many of these abandonments could be prevented today if the preabandonment program which is contained in H.R. 11979 were in place.

Let me give you one brief example of that. Last fall when I was before this subcommittee I told you a story about a little railroad called the Kankakee, Beaverville and Southern. You may recall that you and other members of the committee found the name amusing, as we in Illinois do. Let me tell you a story about another line in Illinois called the Bloomer Line, which runs from the same city, Kankakee, down to Bloomington. That line started out as a study line on the Illinois Central Gulf system diagram map. During the period of study, the railroad embargoed the line against 100 ton traffic, which makes a line a great deal less viable in the grain shipping part of the country. This embargo, in turn, led to a section 1(4) complaint by the shippers. That action in turn led the railroad to file the line for abandonment immediately. This abandonment was fiercely contested, and the railroad chose to evict the shippers and to refuse car service to them. The shippers are getting car service under court order, but the point of the story, Mr. Chairman, is that at several points along the way we could have resolved all of the differences on this line if the State had been able, through the preabandonment program that is contained in H.R. 11979, to assure the railroad that we could come in and make the capital improvements required in order to keep the line in operation over a long number of years. This is just one example of the type of good that H.R. 11979 could do in positively addressing the abandonment problems that are facing States in my part of the country.

Mr. MURPHY. The 100 ton limit was placed because of the safety factor on the line?

Mr. HARSH. That is what the railroad said, yes sir. That is exactly the type of safety factor that the preabandonment program in H.R. 11979 would allow us to correct.

In summary, Mr. Chairman, I simply would like to thank you and the members of this committee for taking time out of your schedule to consider this problem this year. It is a problem, as Mr. Elkins has said, that is of very urgent concern in parts of the country such as mine where large numbers of lines are facing abandonment and we are trying to cope with that as best we can.

Thank you.

[Testimony resumes on p. 167.]

[Mr. Harsh's prepared statement follows:]

STATEMENT OF WILLIAM C. HARSH

Mr. Chairman, my name is William C. Harsh and I am the Chief of the Bureau of Railroads, Department of Transportation for the State of Illinois. I want to thank you and members of the Subcommittee on Transportation and Commerce of the Committee on Interstate and Foreign Commerce for the opportunity to testify today on the Local Rail Services Assistance Act of 1978.

The State of Illinois supports the goals of this legislation and most of the policies contained in it. This proposal, H.R. 11979 recognizes intrinsic value of the State rail programs that were created as a result of the Railroad Revitalization and Regulatory Reform Act of 1976 by permanently establishing these programs, and by creating a new preabandonment capital assistance section to supplement the existing local rail service continuation section.

From the inception of the State railroad programs several years ago, I believe the States have proven valuable partners of the United States Department of Transportation in the Congressionally-mandated effort to preserve vital railroad links in the Nation's transportation network. By furnishing local expertise through highly integrated transportation agencies, the States have demonstrated their ability to analyze a railroad service problem, devise a solution and implement that solution in the most economical manner possible. Thus, permanently establishing and supplementing the State rail programs represents a positive step in combatting the result of years of inadequate earnings, deferred maintenance and declining service in some portions of the railroad industry.

Since 1975, Illinois has been among the most active States in the rail program. Illinois law permits our Department to rehabilitate or promote subsidized operations on any rail line eligible for assistance under the Railroad Revitalization and Regulatory Reform Act of 1976. Under that State

statute, the Department has continued rail operations on four lines in Illinois, two of which have been brought near the break-even point and show promise of ultimately returning to the private sector, and has made improvements to more than 125 miles of track. Further improvements are being made on all four of the lines currently operating under State contract, and the Department is studying possible renovation of several other lines in the State. The experience the Department has gained through the operation of the four lines has changed the Department's tactical outlook, but it has not changed the strategic policy of the State rail program. That policy is to preserve and promote that part of the private sector rail system that is vital to the economy of Illinois and the Nation, and to accomplish this through a program of selective government investment in the railroad network that neither burdens the railroad industry with additional debt nor burdens the public with the financial drain of permanent operating subsidies.

The change in tactical outlook brought about by the Department's recent experience in railroad operations concerns the point at which public investment can be most useful in preserving private sector railroad service. As you know, under current Federal law, the Department can rehabilitate or subsidize operations on a line only after the railroad has been permitted to abandon its own service on it. As a result, public investment comes very late in the abandonment cycle, when the physical condition of the line has deteriorated to an extreme degree and shipper confidence in the line has declined. This leads to a situation in which the Department must make unnecessarily expensive capital improvements to renovate the line and must subsidize operations until shipper confidence can be restored. This subsidy can be difficult to terminate and expensive to administer, and it is unattractive to many private sector

operators. H.R. 11979 would solve this problem by permitting the State to intervene very early in the cycle leading to abandonment, at the point at which it becomes apparent that the capital needs of the line exceed its ability to produce a return on investment, which is a point long before the formal abandonment process is started. The legislation would permit the State to provide assistance only to meet the capital requirements of a line and thus allow it to remain a viable operation in the private sector. This approach should result in a lower net cost to the public and would minimize service disruptions associated with abandonment proceedings that are burdensome to both the shipping public and the owning railroad.

Under the terms of this proposal, State rail programs would receive funds on an 80% Federal-20% State matching basis. This same ratio exists in most other transportation programs funded jointly by Federal and State governments and, thus, would place the rail program on a par with these other programs.

Although the local rail service continuation section would become permanent, I want to emphasize that those lines under subsidy would not become permanent recipients of government funds. This is a very important point. The legislation mandates time limits for which a line may receive an operating subsidy. Illinois disagrees with the time limits set in H.R. 11979 and has an alternate proposal, which I will touch upon later in my testimony, but we do basically agree with the Department of Transportation's position that there should be a limit on the duration of subsidies under this program.

This legislation would also establish a preabandonment capital assistance section, which is vital to maximizing the public good that this program can produce in Illinois and other Midwestern States. Under this section, States would assist railroads in upgrading branch lines carrying less than five million gross tons per mile per year. These lines would be assisted before

railroads are granted abandonment petitions by the Interstate Commerce Commission. As I said previously, Illinois believes this preventive medicine will reduce the number of unnecessary abandonments, reduce the amount of money necessary to restore lines to serviceable condition and avoid the necessity of providing an operating subsidy as would likely be the case if the assistance had to wait until railroad gained permission to abandon the line.

The preabandonment section is differentiated from the post-abandonment section in one very important respect, that is that operating subsidies to the like that received capital assistance would be precluded. States and carriers would, therefore, choose to upgrade only those lines which would be economically viable as a result of the rehabilitation program alone. An example of such a line would be one with a sound base of viable grain elevators that currently produces net income, but not sufficient net income to justify replacement of light or worn out rail out of the limited capital funds available to the owning railroad.

Thus far I have spoken of areas of the bill with which the overwhelming majority of States are in almost total agreement with the Department of Transportation (DOT). Now I would like to touch upon those few points where the States and DOT diverge, if not in principle, at least in method. The legislation would empower the Secretary of DOT to issue rules and regulations regarding cost-benefit analysis to be undertaken by the States on each project. The States believe that such regulations, issued for a nationwide program, would take an undue amount of time to develop due to the requirements of the Federal rulemaking process. Moreover, each region of the nation has different branch-line problems. A single blanket cost-benefit regulation for the nation would be unlikely to meet the particular needs of each region. Wouldn't

a better approach be to allow each State to design an appropriate cost-benefit analysis as part of its State Rail Plan, which is then reviewed at the Federal level? In a few years, a discernible pattern will probably appear, perhaps consisting of three or four acceptable methods of conducting cost-benefit analysis which would have been found to be appropriate for use in the various States. At that time, the Secretary could issue rules and regulations which would allow each State to choose among one of these acceptable methods. To us, this approach represents federalism at its best.

As I mentioned earlier in my testimony, most of the States agree with DOT that the subsidies should have a definite time limit on them. DOT believes that limit should be two years. Most States that have managed programs for the past two years believe this is not a sufficient amount of time to turn a line around. It is important to remember that the lines that are or will become eligible for operating assistance are those that have been in a state of decline for many years, both from a physical standpoint and a service standpoint, and for which the preabandonment section of H.R. 11979 came to late. In some cases massive rehabilitation is necessary to return the line to minimum FRA Class I track standards, a process that takes a minimum of one construction season, before shippers requiring the use of heavy cars can return to rail service. Even under ideal circumstances, this return takes time. Rather than cutting off all assistance arbitrarily after two years, regardless of how well or how poorly a line is doing, our proposal would be to base a continued subsidy on how much financial improvement a line can show over a base year. Only if a line exhibits substantial improvement during a two year period over the base year would it remain eligible for another two year period. Gradually the subsidy would work its way to zero as the line

continues to show improved economic viability. This method represents a viable management tool. After a few years, Federal and State officials can determine how successfully the program works and why some lines financially succeeded while others failed. This would improve the selection process of new lines that become eligible for subsidy. Under the DOT proposal, this valuable tool would more than likely be lost because most of the lines would never make it within two years.

Finally, H.R. 11979 proposes that if a consolidated transportation planning fund is established, the Secretary has the discretion to transfer planning funds from the rail program to Metropolitan Planning Organizations (MPO) to effectuate the plan. The States oppose this transfer to the MPO's because the branch line problem is almost exclusively a rural problem, not an urban one. The States are required under the provisions of the present law to confer with other state transportation agencies in drafting the annual State Rail Plans so that a unified transportation program results. Transferring the planning functions to the MPO's removes the State's expertise in rural branch line problems and would force the MPO's to go through the same educational experience the State rail planners have already encountered.

Unlike one or two of the States which have presented testimony before this Subcommittee during these hearings, Illinois believes that prompt action on this legislation is imperative. Waiting a year, as New York has suggested, will only aggravate the already festering Midwest rail situation. Each year's delay in implementing a preabandonment capital assistance program decreases the chance for returning a line to an economically viable status. Physical deterioration and shipper discontent would push some marginal lines past the point of no-return.

Congressional inaction would also delay regulatory action. As Members of this Subcommittee know, the Federal Railroad Administration (FRA) is not the quickest agency to implement a program. It requires anywhere from six months to one year for the FRA to issue its regulations and make funds available to the State programs. Thus, if Congress were to wait until the 96th Congress to act upon this proposal, it could be 1980 before the States could begin assisting the railroads in rehabilitating vitally needed branch lines.

In conclusion, I would like to reemphasize the State of Illinois' support for H.R. 11979. As one of the larger participants in the local rail service continuation program, Illinois believes that by permanently establishing this program and creating a preabandonment capital assistance program, the Congress will greatly aid communities throughout the nation by preserving and improving essential transportation routes to national and world markets for their products.

Mr. ELKINS. With your permission we will have Mr. Tennyson, Deputy Secretary of Pennsylvania Department of Transportation, make the next statement.

Mr. ROONEY. Before Mr. Tennyson testifies, I want to personally thank you for all of the assistance you have given me and my district. The name Tennyson is synonymous with transportation in my office. I want to in addition, thank you for all the help you have given us, extending rail service to Allentown and Philadelphia. The only thing you have to do now is to take care of Allentown, Bethlehem, Easton and New York.

STATEMENT OF E. L. TENNYSON

Mr. TENNYSON. Before I begin my testimony let me apologize that the Allentown service has not yet been better. I have been advised in the last couple of days some switching improvements will be made and new schedules will begin at the end of the month. I think beginning in August you will then have something that your constituents may benefit from. I would like to refer to July merely as a test period or training period. I don't think it is yet the quality of service that your people are entitled to.

Mr. ROONEY. I was the engineer on that train on the initial run between Bethlehem to Allentown. After getting all of the instructions from the real engineer, including the warning to slow down, I could understand the problem. I later walked back over that track and discovered that it is in very bad shape. Under the circumstances you have done an outstanding job.

Mr. TENNYSON. Now with regard to the bill before us here, H.R. 11979, I will not read my testimony [see p. 169] in order to help save your time, knowing how your schedule has been condensed.

Mr. ROONEY. We have inconvenienced you people since last Thursday. So you may have as much time as you want.

Mr. TENNYSON. We might dispute with Illinois as to which State is more important as to the number of lines that have problems. We certainly agree Illinois does, too. But Pennsylvania may lead the Nation with 40 lines already under contract under the light density line program. We are not proud of that but point to it merely as a matter of need. Now, I would like to change the subject a little bit to broaden it to consider that we have, for example, a 90-percent interstate highway funding program which is a cross subsidy largely for the interstate highway system due to local traffic paying the same tax.

We need the same thing for the railroad lines. Waterways likewise receive a great deal of help from the taxpayers. In Pennsylvania we have water only in a small portion of the State. The balance of the State is suffering discrimination by not getting aid for its transportation in order to equalize the difficulties in competing with the water-served areas. We have the need here for parity, that the branch lines not be discriminated against, that private enterprise cannot supply water transportation facilities or even airports. It has been driven out by the heavy competitive processes of Government funding. Therefore, it must be equalized in terms of such Government funding.

Now, the cost effectiveness must still be recognized. I don't want to ask you to throw any taxpayer's money away. Far from it. The

Reorganization Act as previously passed required that there be local benefits in excess of cost of the subsidy program. This is very good and there is sufficient restriction on the program that money should not be wasted. It should save the public money if the program is continued.

Our highways are in real trouble. In Pennsylvania alone our annual highway insufficiency—there is no accounting deficit you can look to as in private business—but nevertheless the annual insufficiency in our highway program is \$500 million a year.

As a result of that insufficiency the price of using the highway has gotten lower than the cost. Coal, for example, is moving by highway, destroying both bridges and pavements when it should be moving by rail. The taxpayer cannot afford to tolerate these heavy loads on the highways. They are too destructive. We must not allow rail type of weight to be diverted to highways; they can't take it.

Now, commerce using these branch lines usually saves a good deal of money, anywhere from \$300 for transshipment at a nearby railhead or \$1,000 if it goes all the way nonrail. The branch line makes available to the communities it serves a much lower cost transportation. This bill will preserve these savings to the community if the bill is enacted.

Now, there must be, of course, enough capital money in the bill that the work may be done. But I would estimate that there is anywhere from 100 to 300 million dollars' worth of benefit to the consumer in having this bill passed due to the savings that will come to the people using the transportation. So long as the bill does not cost more than that it will have a positive anti-inflationary value.

We agree with the RSPO and with the other States that the formula proposed for allocating the funds is too subjective in terms of applications from reality, well, nonobjective parties. We don't particularly benefit from the 5 million gross ton-mile formula, but we do agree that it is objective and that type of formula is needed rather than a subjective one.

I would also like to warn the committee that we have been unable to carry some of the actions of the Congress through into public benefit because of difficulties with the Federal Railroad Administration. For example, the original 3-R Act provided a bank for banking rail coal branch lines so that as the mining picked up the coal could again move by rail. We never got that program. The program was subsequently amended to give us a second chance at it. We were promised in the spring that the matter was solved and we would be able to draw down some help. We have again never received it. We have not been able to penetrate regulatory defenses created by FRA. We have not been able to get what Congress has provided for the people.

I would suggest therefore that there might be a consideration in this bill making an effective date for the program, whether FRA is ready or not.

I would like to again thank you for attending to these difficulties. Each line by itself may be a small matter, but taken collectively they become very important to local business, to local industry, to local taxpayers, even to highway users who may suffer destruction of their property if the heavy loads are not kept on rail.

Thank you, Mr. Chairman. Thank you very much.

[Mr. Tennyson's prepared statement follows:]

Before the
Subcommittee on Transportation and Commerce
Committee on Interstate and Foreign Commerce
July 13, 1978

The Pennsylvania Department of Transportation is most appreciative of this opportunity to present the needs of many communities and industries for rail branch line service. The subcommittee is to be commended for its effort in preparing H.R. 11979.

I am E. L. Tennyson, Deputy Secretary of the Department of Transportation in charge of local and area transportation. I am a registered professional engineer in Ohio and Pennsylvania and have nearly 35 years experience in transportation.

Act 120 of the Pennsylvania General Assembly for 1970 authorizes me to conduct matters involving interstate commerce. My office is in 1207 Transportation & Safety Building, Harrisburg, Pennsylvania 17120.

Pennsylvania is one of the most heavily impacted states with respect to rail branch lines. We have 40 under contract. Almost one-third of them have proven profitable by accounting standards, even though they would have been abandoned had we not acted. The other two-thirds require assistance, largely for maintenance of way, but even so, they are of positive dollar value to the communities they serve as well as to the taxpayers generally. As specified in the Rail Reorganization Acts, these branch lines save more than they cost.

Congress must understand that transportation is a costly competitive business, essential to the nation. Except for certain railroads, most transpor-

tation facilities involve huge tax subsidies. Roughly one billion tax dollars per year are poured into water transportation, without direct recovery. The lower rates that result are destroying the viability of our vital railroads, which receive no such direct subsidy.

Our highway system costs roughly \$6 billion more per year than users pay in taxes. The interstate highway system is 75% subsidized. States can no longer afford these huge unsupported costs. Coal is moving from railroad to truck to take advantage of the tax supported roads, destroying many of the roads in the process. Clearly, rail lines are needed to save the roads, to reduce the costs, to avoid highway congestion, and to preserve local industry and payrolls.

The Congress should take cognizance of the fact that rail freight moves for 2½¢ per ton-mile, but truck freight costs 10¢ per ton-mile, or at least 6¢ for the least costly bulk commodities. As a nation, we cannot afford to give up 2½¢ per ton-mile transportation for 6¢ or 10¢ transportation. Each rail carload involves 30,000 ton-miles on the average, so that we are talking about saving \$1,000 per carload for each rail car that is kept in service. Even a minor light density branch line with only 250 cars per year will save someone \$250,000 a year if we keep it alive. The savings show up in many and various places. Local payrolls are preserved, commodity prices will be lower, highway damage will be less. Fewer accidents will result.

This nation faces several serious crises involving energy, pollution, inflation, safety and employment. All of these vital issues will be favorably impacted by rail branch line preservation, where the branch line has any use at all. Where there is no use, or no future need, the lines should be sold for salvage.

There are several serious problems that HR 11,979 must solve, beyond the general problem of branch line preservation.

First is the problem of denial of low cost benefits by subsidy to competitors. This problem will not go away. As a result, branch line assistance must continue indefinitely. It will save money overall to continue the program.

Second, branch line costs must be figured more fairly. At present, we actually have branch lines under contract where we are forced to subsidize the main line to save the branch. This is an unfair penalty on branch lines. To avoid this, Congress should direct the Interstate Commerce Commission to disallow main line losses in assessing branch line subsidies.

Third, to hold down the cost of the program, grants in aid should be limited to lines with less than 750,000 gross ton miles per mile per year, loans, rather than grants, should be provided at 6% interest after the first year.

Fourth, it is essential that the writing of federal regulations not take precedence to the provision of service. Congress must make it clear that the grants will become effective on a certain date, and the regulation writing process may not be used to delay this date. The tracks are in such bad condition they cannot wait.

In summary, let me reiterate that Congress has the opportunity here to reduce the cost-of-living by providing support for a more economical service. It does not save money to truck freight to rail heads. It wastes \$300 per carload, on the average. The branch line program, in general, is a great success. It is saving the nation \$300 million a year, on the basis of \$1,000 per carload as cited earlier in my testimony. The cost is so much less than that that its continuation is essential.

I thank you for your attention and will answer any questions you may have.

Mr. ROONEY. Thank you. I can assure you, Mr. Tennyson, we are going to take a look at that railroad problem, the rail banking, that you talk about in your testimony.

Mr. ELKINS. We now have Mr. Corder from the Virginia Department of Transportation and Highways.

STATEMENT OF ROBERT G. CORDER

Mr. CORDER. I am Robert G. Corder, State transportation coordinator, Virginia Department of Highways and Transportation. With reference to that particular section of the bill which relates to in-kind benefits, I think the bill as written would deny contributions of service and materials as counting toward the local share of the cost involved in a specific project.

Contributions of staff time that are involved with administering the Eastern Shore Rail project, office space for the project inspector and program manager, and various work related services, have been allowed in the past, and currently as well, as counting toward the local share of the total cost. Denial of these contributions would eliminate approximately \$70,000 worth of in-kind services from consideration in Virginia's Eastern Shore project. It should be noted that this proposed amendment is more restrictive than the current OMB regulations.

With regard to the section concerning formula allocation, the proposed formula allocates two-thirds of the available funds according to the amount of rail mileage which is potentially subject to abandonment and one-third to the amount of rail mileage which has been granted a certificate of abandonment. Virginia is mainly concerned with abandoned lines as opposed to those subject to abandonment. We are fortunate in the State of Virginia in having a very good system of railroads and in this instance, the formula certainly works against the State. In Virginia's case the formula should be weighted just to the contrary, the two-thirds factor applied to abandoned mileage and one-third to that potentially subject to abandonment.

Now, realizing that situations vary from State to State, as has been indicated in testimony previous to mine, certainly a more realistic approach would be to either have a minimum such as 1 percent which has been proposed, which, of course, in Virginia's case still would not be enough, or my personal opinion would be that the best thing to do is to keep the allocations which are currently in effect.

As I think Mr. Elkins pointed out, we in the 17 original States are working under different circumstances than the other States. The proposed formula would be most detrimental to the programs of those 17 States, especially, after 3 years of working on projects and getting to the point of turning a project around and then having the funds cut, as would be the case proposed in this bill.

In Virginia's case our funds would be cut exactly in half. We have projected that by the end of the current 5 year rail program the Eastern Shore Rail project will result in a viable railroad. Certainly I think in testimony Thursday Mr. Withuhn stated that for the first time in many, many years the railroad has realized an operating condition which has put it in the black for the month of May.

We are very well on the way to resurrecting that railroad and making it become viable. Cutting our funds next year, which would be in the fourth year of the program, would be very detrimental to not only our rail project on the Eastern Shore but to the States of Maryland and Delaware as well, which certainly depend upon that rail service.

Insofar as project eligibility is concerned, I think this project on the Delmarva Peninsula once again illustrates that more than 2 years is needed to turn a rail project around. I think the language proposed in the bill stating 2 years as the maximum is certainly not enough time in most cases to rehabilitate a rail line to the extent it could be continued without Federal assistance.

I personally would recommend that a minimum of 4 years be instituted.

That, Mr. Chairman, concludes my statement. I appreciate the time allowed and I appreciate your consideration of my testimony.

Thank you very much.

Mr. ELKINS. We now have Mr. Killoran with us through the courtesy of Piedmont Airlines. He is executive Director of the West Virginia Railroad Maintenance Authority.

STATEMENT OF JOHN P. KILLORAN

Mr. KILLORAN. Thank you very much.

I have filed a separate statement. I request it be made a part of the record [see p. 175].

Mr. ROONEY. It may be. By the way, why didn't you take the train?

Mr. KILLORAN. The train schedule is a little bit later sometimes than the airline schedule. I thought I made the better gamble.

I would like first to endorse and support the statement which Mr. Elkins made on behalf of the National Conference and its content. I think that the consensus of the conference which he presented is one that certainly West Virginia supports.

What we are basically concerned about in our States is that our program must now be carried out without restrictions and must be allowed to function freely. What I mean by that is that basically we have had only two projects in West Virginia, being very fortunate, like Mr. Corder's State of Virginia, that we have minor branch line problems and minor main line problems.

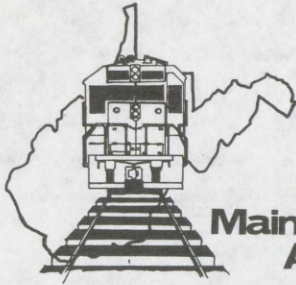
Therefore, we have decided that we wish to concentrate our efforts on solving these problems with the long range goal of viability for both Federal and State governments. In doing this we had to face the reality of the present law which requires ICC approval of abandonment. So we have seen nearly \$2 million in Federal entitlement which we could have utilized to rehabilitate these lines lost to us because of that 3-year period roughly in one case, 2 years in another process in the abandonment. We are now free to discount this program. In the words of your own legislation policy statement the fact that the Congress expects to commit themselves to long-term solutions that will make the projects viable, we believe that our two projects in West Virginia are ones that are ringing endorsements of these goals.

Therefore, within the context of the legislation that is presented here we are very much in general support of it.

We do stress one other thing—and really I am saying the same thing Mr. Corder said—that we need a current funding level for future years that is relatively equal to the present funding level of the program. Certainly, his case is more aggravated than our case because we are just beginning now, this fall, to utilize the entitlement funds for rehabilitation programs that are going to cost probably in excess of \$3 million. We intend to have this over and done with, when the project is finished, by the time the project would become ineligible in the fall of 1981. Obviously, if the funds are not available for us, to do so, we are going to run into very obvious conflicts between actual funding and the need before the eligibility expires. In summation, then, I appreciate, on behalf of the National Conference of State Rail Officials and the various States before you today, the opportunity that we have had to appear before you.

I turn it back to Mr. Elkins.

[Mr. Killoran's prepared statement follows:]



**West
Virginia
Railroad
Maintenance
Authority**

John P. Killoran,
Executive Director

922 Quarrier Street
Charleston, West Virginia 25301
(304) 348-3980

TESTIMONY OF JOHN P. KILLORAN REGARDING

"H.R. 11979", the "Local Rail Service Assistance Act of 1978"

July 13, 1978

The West Virginia Railroad Maintenance Authority, which is the designated state agency for state rail planning and programs under terms of the Railroad Revitalization and Regulatory Reform Act of 1976 (4 R Act), and other laws, within our state, is vitally interested in the passage of this legislation.

West Virginia supports the position of the National Conference of State Railway Officials regarding needed improvements in this bill. Like many other states, we have grave reservations concerning certain portions of the bill which would reduce the state flexibility to solve its railroad problems. Others have testified regarding those points which I am certain will receive full consideration from this Committee.

We believe that it is mandatory that this legislation be enacted during this session of the 95th Congress. It is particularly important to West Virginia that credit for state or third-party donations be allowed to carry forward into successive fiscal years if unexpended balances occur.

year to subsequent fiscal years in cases where excess credit is earned by the State is paramount to our state's major program, as I shall discuss later.

I earlier testified that West Virginia has only two projects which now are approved for local rail service assistance programs. We are, fortunately, spared from the havoc of other states which have thousands of miles of branch lines - many of which are needed - as candidates for abandonment. Our planning process has not identified any other rail lines as future candidates for such assistance need.

These two lines began their itinerary through the Interstate Commerce Commission's (ICC) abandonment process on March 15, 1975 and October 28, 1976, respectively. The Authority devoted its full attention to solving the long-term transportation needs of these communities who would be affected by removal of railroad freight services. Our solution was, and is, unique among the several methods used by states to solve these problems.

We supported the abandonment of the South Branch of the Baltimore and Ohio (B&O) Railroad through the ICC abandonment procedures. Due to our state commitment to continue and improve service not one protest from any source whatsoever was entered into the ICC proceedings. Our program was clearly and publicly established, agreed upon by all parties, and followed precisely in its execution.

In the words of the policy statement to this bill that is the subject of today's hearing, "...The Congress expects the States, local communities, shippers, and all elements of the railroad industry to commit themselves to long-term solutions which will enable the continued provision of adequate transportation service after the completion of the federally assisted projects."

That policy statement is a ringing endorsement of the goals which we have set for our South Branch project. Let me summarize some of the major things which have happened to date:

1. Governor John D. Rockefeller IV, acting as a member of our Board of Directors and as the state's Chief Executive Officer, secured agreement from the Chairman and Chief Executive Officer of the B&O that the railroad would donate the 52-mile branch

along with all track, bridges, and land to the Authority upon abandonment.

2. The Authority commissioned, with federal assistance, a major economic and engineering study of the line and the community needs. This document formed the basis for the program adopted by our Board of Directors.

3. The ICC Administrative Law Judge found that abandonment of the line, which she authorized, does not presuppose lack of need for service, but rather would allow legal qualification for the State of West Virginia to maintain continued service for which there was a need. The clear picture as developed in the record of public ICC hearings was that the B&O did not wish to continue operating the line, would support the state's program, and could not itself recover the cost of rehabilitation had the line remained in private ownership. The Commission (ICC) itself upheld the judge's decision, and a final order was issued on February 27, 1978.

4. The Authority then filed a project application with the Federal Railroad Administration (FRA) for acquisition, rehabilitation, and operating subsidy for the South Branch. This application was promptly approved by the FRA, and an initial grant application totalling \$1.7 million dollars was signed by the FRA and the Authority.

5. After six months of investigation, discussion, study, and public input, the Board of Directors of the Authority unanimously decided that the railroad would be operated by the Authority itself. Subsequently, all necessary interchange, traffic and other agreements with the B&O were signed by the Authority.

6. In June 1978 the Authority applied to the ICC for authority to acquire and operate the line as a common carrier railroad. The Authority and the B&O have jointly supported this application and B&O has requested that the ICC issue the "certificate of abandonment" to them. The Authority intends to assume actual ownership and operation of the South Branch on September 15, 1978.

This project is clearly undertaken with long-term self-sufficiency in mind. We support a finite end to our eligibility for federal assistance, which is proposed as September 30, 1981. After that date, the State of West Virginia intends to continue its obligation of providing this service. Our philosophy is that with maximum efforts and attention now the need for taxpayer support of this branch line will decline, and disappear no later than 1983. At that time the Authority will consider returning the railroad to the private sector; however that decision will have to be made based on the situation at that time.

Commitment of three major industries, employing hundreds of persons and representing millions of dollars in plant investment, to locate and expand in this branch line's service area were made following the solemn promise of the State of West Virginia, Governor Rockefeller, and this Authority that rail service would continue and be improved. Such commitment would have not been possible unless we had stepped forth with a positive program. Anything whatsoever that would hamper our execution of the final phase of that plan would literally decimate the economy of three entire counties of West Virginia and render hundreds of persons jobless. Such is the dependency of this area on railroad service.

We do not see the operation of the South Branch line by this Authority, using state employees, and operating as would any other state government service, as a trend nationally. Rather, we see it as a rather unique opportunity we had based on a rare set of circumstances that developed in West Virginia. By continuing this program to completion, we believe that the essential goals of the federal assistance program for branch rail lines will be met in the precise manner that Congress intended.

Frankly, we would have moved earlier but the present law requires ICC abandonment approval before we are eligible for federal assistance. In the long process of that ICC action we lost over \$1.5 million dollars in entitlement funds. Now that we are eligible, we pray that Congress will allow us to continue this program to successful completion.

Our other assistance project, while not of the magnitude of the South Branch, is nevertheless vital. Ninety-two miles of the Greenbrier Branch of Chesapeake and Ohio (C&O) Railway have been approved by the ICC Administrative Law Judge for abandonment. Of this length, seventeen miles is necessary for continued freight access by communities who will lose service at other points. This line is located in one of the most remote geographical regions in Eastern America. In addition, one of the largest recreation and resort investments in West Virginia, which includes several million dollars in federal investment, is located on the line.

The Authority's local rail assistance project on the Greenbrier line calls for, again, donation of real estate and bridges to the Authority by the C&O. Federal assistance will be used to purchase the steel rails only. After this project is concluded in late 1978 another unit of state government - the Cass Scenic Railroad - will assume responsibility for:

- a. maintenance of the line using their funds and personnel,
- b. operation of all necessary freight service,
- c. any other requirements of the ICC or state law.

This scenic rail line depends on outside rail access for survival. It is one of the oldest, and largest, such restorations in the United States. Their inability, as an example, to move one hundred ton locomotives to outside repair shops from time to time would eventually cause this vital economic cornerstone of a large segment of West Virginia to close. Unless we can acquire this steel rail using our federal assistance funds, Cass Scenic Railroad will indeed become isolated, freight needs of that region will not be met, and the economy of our eastern highlands will be in jeopardy.

Again, in one single step, we will assure the long-term needs for rail transportation will be met without undue strain on the taxpayers. Any Congressional limitation on our flexibility to do this will be tragic and unfortunate.

Thank you.

Mr. ROONEY. Thank you.

Last week, Mr. Killoran, the State of New York testified before this committee and said that it would be preferable to delay enactment of emergency legislation for 1 year. If this suggestion were implemented, I wonder what effect it would have on the State of West Virginia?

Mr. KILLORAN. That is a fair question. From what I know the State of New York probably does not have a major problem at this point in the game. In our case our key problem is, for example, in our major project that we now have in the program, we have a situation where Governor Rockefeller worked with the chairman of the railroad which now owns the line, that is the Chessie System, to secure donation of most of the property and rail and everything involved as part of the cooperative program that is being developed between States and the railroads. In other words, in-kind benefits were built into the formula. If the in-kind benefits are continued as they presently are in the legislation we would have to utilize all of them before the end of the particular year that it was executed or lose them. The carryover of in-kind benefits therefore is very critical to our program. Without it we would have very viable and very normal and certainly a very integral part of our branch line subsidy program lost to us simply because we could not carry over any unexpended balances. West Virginia is a critical example of where we would be hurt if we don't have some corrective legislation this session, sir.

Mr. ROONEY. Mr. Murphy.

Mr. MURPHY. I have no questions, Mr. Chairman.

Mr. ROONEY. Our last witness, Mr. Fitzwater, indicated that the States were going to have difficulty with the 2-year, 80-percent limitation. Is this the problem that it is purported to be?

Mr. ELKINS. Yes, sir, it is and it isn't. It is difficult for many States to come up with a 20-percent match. But stepping back, looking at the program objectively, most States are willing to incur that burden because we have found out when we had 100 percent Federal and zero percent State, we got absolutely no cooperation with FRA. Indeed, it was constantly heard that the States have no interest and are only using Federal money. We are almost out of the 90-percent year. We find out if other modal programs are treated equally on 80-20, we are willing to live on an 80-20 basis.

Undoubtedly, it causes hardship. We have found out that the Golden Rule of Washington is he who has the gold rules, there is no way to get around that. We are, therefore, willing to live with a 20-percent State contribution.

Before, during, and after Mr. Rossi's testimony, I had several conversations with our member States, and we see a way of making the best of both worlds regarding allocation formulas. This would be to implement eligibility requirements with this session; should this legislation pass, the eligibility to use funds for a pre-abandonment program. Our Midwestern and Western States, while they need the funds urgently, most would be willing to defer an adjustment in the allocation formula until October 1979. New York would have no objection to that. That would allow the States to trade their funds that they have now and to apply them where they need them the most. It would in no way impair the existing

Northeast program because the formula allocation would stay in place.

We would be willing as a conference to attempt to come up with a unified position on what that formula allocation is, again bringing the other game players in. RSPO should have a role in it and obviously FRA.

Any change in allocation has to hurt some State. We think we can get a consensus opinion. We would suggest the way to do it is wait until October 1979. Most Western and Midwestern States would be willing to do this, not with great enthusiasm but to keep a State coalition and to get an urgently needed program they would be willing to make that sacrifice.

Mr. MURPHY. Will you comment on Commissioner O'Neal's statement on page 3 of his testimony where he says:

The transitional need in the Northeast has already been met by 100 percent of Federal funding of the first year of subsidized operations in the region, which helped mitigate the impacts of the massive line abandonments associated with the implementation of the final system plan.

Mr. ELKINS. We agree with that partially. A key thing that was accomplished in the Northeast was operating subsidy. The portion of the program they wanted to be used for rehabilitation was delayed in the 100-percent year into a good part of the 90-percent year.

Having some familiarity with the New York program I know in two areas that projects were delayed, one of which was in northern New York in the so-called Hojak Line where projects which would have been able to reduce the operating subsidy were not able to be accomplished and indeed resulted in a higher expenditure of funds. For operating subsidy I have been told by the State that on the Brooklyn waterfront several of those projects have been delayed because they had trouble getting them eligible.

I believe Mr. Killoran's statement refers to my testimony, sir, where the situation was not all operating subsidy of Penn Central or ConRail lines. Our particular abandonments in West Virginia are evidence of this in that they began as early as March 1975, that trip through the regulatory process of ICC, and became eligible in February of this year.

The second line has not yet been eligible but we expect it within the next 30 to 60 days. We have been unable because of the present legislation to take advantage of one dime in Federal assistance to do anything which particularly we wanted to do, which is rehabilitation.

Mr. MURPHY. If the State advanced funds through the UDA process in areas that this legislation would probably cover, I think we probably would have a little intransigence on the part of Government as far as New York is concerned, and Brooklyn particularly in trying to realize the benefit of the 3-R Act programs. Therefore, the statement is not fully correct.

Mr. ELKINS. One thing that has happened, Mr. Murphy, the way this program has worked which we think is contrary to the intent of Congress—I know both New York, Illinois, and Pennsylvania are examples of this—basically it has been functioning as a reimbursement program—to get projects done States having front-ended

projects without Federal funds being there so as to get the urgent needs done.

The problem of having it nationally, Oklahoma would be an example, it has a constitutional prohibition to putting money into private industry. They are attempting to change this. Georgia had a constitutional change where they could avail themselves of this program. The 4-R program came on rapidly. The States found they had it without knowing too much about it and have been working triple time to catch up with it.

Mr. TENNYSON. Pennsylvania also has a constitutional prohibition against putting money into private business.

Mr. CORDER. As does the State of Virginia.

Mr. ROONEY. You state that grants in aid be limited to lines less than 750,000 gross ton-miles per year. I believe Mr. Elkins testified that the criteria should be less than 5 million gross ton-miles per year. Why are you proposing a lesser amount?

Mr. TENNYSON. Thank you, Mr. Chairman. I was afraid that would come up in that the testimony of course was prepared prior to the meeting that was scheduled for last Thursday. It was my considered judgment, and still is, that any line in excess of 750,000 gross ton-miles per year is unlikely to actually run the abandonment process and therefore people are served although possibly in very deteriorated form.

In discussing the matter with the other States I agreed that a 5 million gross ton-miles per year figure is a good one for formula distribution rather than abandonment.

The other States agree with me that they don't hope to abandon anything in anywhere near 5 million gross ton-miles per year. I can agree with them as a formula matter and then leave it to Pennsylvania what we actually abandon.

I stick with my 750,000 as a good rule for apportioning the aid but in Pennsylvania I would use that rule. I go along with the other States in using the 5 million as a denominator which would allocate the funds.

Mr. ELKINS. Mr. Chairman, due to the peculiarities of the way railroading works in this country in many portions of the country it is highly unlikely that any line with 3 or 4 million would be unprofitable and would be likely to be abandoned.

In areas where there is heavy agricultural or in some cases mineral traffic the key to those States is getting 100-ton hopper capacity or economical usage of that line. Iowa brought that out very well. In Iowa's case most of the lines they want need 100-ton hopper car capacity. This requires rehabilitation with higher density. In other States it is unlikely they would take advantage of that because the emphasis would be something under 1 million because everything else is profitable.

Indeed, referring to what AAR said in Mr. Freeman's testimony, where you talk about an eligibility of lines 5 million gross ton-miles or under, this includes almost all category one and two lines, so we have no problem with the categories as you refer to them. We know of no instance where a category one or two line is carrying over 5 million gross ton-miles. So, hence, it would be eligible. It is just the economics of railroading in this country.

Mr. ROONEY. Mr. Tennyson, on page 2 of your testimony you state that rail freight moves for 2½ cents per ton-mile, whereas, truck freight costs 10 cents per ton-mile. With this being the case, why has there been such a general shift to truck rates resulting in the sparsity of traffic on the branch lines?

Mr. TENNYSON. Mr. Chairman, that is a very logical question. I will answer it with a story brought to me by a gentleman calling at my office a month or so ago. He was located on a railroad which has been saved by the reorganization process but also at the intersection with one profitable railroad but one which has not maintained a 100-mile line across middle Pennsylvania. They want to create an unprofitability in order to avoid rehabilitating it. It is still profitable but it has not had new crossties for years.

I asked this gentleman how it is working out. He said he does not use rail any more. The reason is that it took 6 weeks to get his last car there from Virginia. He explained the difficulties.

I said, "Doesn't it cost you a lot more to use truck?"

He said, "It sure does. It is costing me \$200 to load more."
"Is that a truckload or carload?"

He said, "truckload," meaning \$400 more a carload. He said, "I would go out of business if I can't get delivery from ConRail."

Mr. ROONEY. Why did you bring up ConRail?

Mr. TENNYSON. ConRail is the railroad which is staying in business and not delivering.

Mr. ROONEY. There are other railroads that serve that part of Pennsylvania.

Mr. TENNYSON. The other railroad is one that is not maintaining the property and letting it run down until they can prove their abandonment case.

Mr. ROONEY. Mr. Murphy.

Mr. TENNYSON. Did that answer your question?

Mr. ROONEY. You did very well.

Mr. MURPHY. Just referring back to Mr. Tennyson's response when we talk about rail equalization to the East, one of the benefits of rail equalization is that we give the shipper, particularly the Chicago shipper, the opportunity to catch sailings from any one of the eastern ports at an equalized rail rate. Fortunately, the ICC has, I think, been making policy, which is not a function of its role, in permitting a break in the rail equalization that had been arrived at finally in a Supreme Court decision.

We see a greater gap in rates coming between the ports in the Northeast vis-a-vis Baltimore. Of course, it does not apply to Chicago traffic. However, it does apply to all other traffic. That factor, and the question of car service, certainly is another factor in the mind of the shipper. It adds additional costs and additional problems for him as he tries to compete in the export market.

Mr. Elkins, on page 7, with regard to the elimination of the 1-percent minimum, we have received complaints from those States which would receive less funds than presently allocated. By eliminating the 1-percent minimum, is it not true that some States would not receive sufficient funds to undertake a single project? That being the case, why is it necessary for funds for planning purposes since they cannot undertake any project under the plan?

Mr. ELKINS. Mr. Murphy, that is an excellent question. To answer it in several parts, the problem of how much money is available gets back to what is appropriated or what is authorized. In the fiscal 1978 budget there is \$67 million which gives 1-percent to the State, \$670,000.

One of the problems with the 1-percent is that the 1-percent did not come into being on a national level until April of last year because the Northeast program was merged in a national program. In the Northeast program there was a 3-percent minimum with certain funds allocated only to the Northeast.

We have had lengthy discussions among ourselves and DOT. We think it may be possible to come up with a fixed dollar amount since the exact amount of money available in a given budget is unknown, and 1-percent States are certain of their funds. We are hopeful that a supplemental bill will bring fiscal 1979 to approximately \$100 million. The one problem theoretically with the 1-percent minimum is that it may be too high in some instances and cause States to spend money only for the sake of spending money.

Again, if there is no minimum some States will not have projects. Getting back to the planning question, rail planning, has been accomplished, and I think both the States and DOT have gone the right way, it is for the States to have a good thorough look at its transportation to allow it to form rail policy which in a vast majority of States has not happened before.

Granted, New York, Pennsylvania, Illinois have been longtime game players, going back to the fifties and forties, but many States have been frankly highway dominated in their thinking and realizing that they have railroads in their States and need a comprehensive look at rail problems.

So, the planning money to a large extent has been used for other than projects. One of the controversies and dilemmas is building a rail plan that is comprehensive in nature, but being hamstrung by being severely restricted to the low needed projects. It highlights the problem between rail planning and project eligibility.

Mr. MURPHY. I appreciate your answer. However, I will take exception to the remark that States are not rail oriented vis-a-vis truck orientation. I think there has been a pretty strong case made as to the rivalries in States you have mentioned, particularly in the State legislatures, between both methods.

Mr. ELKINS. Unfortunately, what is happening in the rail and trucking approach has been in the legislative end and it has missed a good part of the executive branch, particularly when States have created DOT's. I think a good way to focus is to point to New York State which has led the Nation many years in rail activities.

As early as 1958 Governor Rockefeller had the Purcell report which provided the New York State's rail taxation as an example of the type of a positive thing the State has done. It has completely changed the method by which railroads were taxed.

In too many instances the rail solution has been met in the State legislature with the various lobby entities focusing on such things as truck weights. An example how this is changing, in some States that still have primarily highway orientation the directors of State highway departments are beginning to oppose higher truck weight limitations not solely to help the railroads out but the realization

that these heavy trucks and long trucks are doing something severely detrimental to their highways and they have to find another mode.

Mr. MURPHY. I will not belabor the truck weights in this bill. We will save that for something else.

On page 4, you indicated the program is critically underfunded. It is my understanding that the purpose of liberalizing eligibility for branch lines was to provide needed flexibility on the part of the States and the railroads. There has never been any intent to increase the funding for this program, so, is it your interpretation that by liberalizing the eligibility, pressure can be brought to fund all of the lines in order to become eligible?

Mr. ELKINS. No, sir, I don't think any States intend to go after complete funding for all the lines that would be eligible. A rough calculation would indicate if a 5-million-gross-ton-mile eligibility were enacted the States probably judiciously could spend up to \$300 million a year.

It is the States' intent not to go after all lines but only the better of those categories. By saying the program is underfunded, taking into consideration the Northeast's needs and the rest of the country's for fiscal 1979, the States could judiciously spend \$130 million.

We realize we are never likely to get that type of funding. Indeed, our people and, of course, State Governors and transportation directors are fully aware of the competition for funds. If you put money in a rail project today you may be denying a mental health need, another transportation need, a social need that the State does not have money for.

So with an 80-20 split the States are aware of money competition. So we don't believe that will greatly increase it and put severe pressure on Congress to fund everything. We think this is the type of program that is judicious funding because it is pump priming and it is going for economic development as well as strictly financial aid to the railroads.

Mr. HARSH. Mr. Murphy, as I indicated in my remarks, what this program actually will do is allow the State to make more improvements with the same number of dollars because it is much less expensive to rehabilitate a line before it has been allowed to get into a state of advanced physical deterioration than it is to restore that line afterwards, since the latter instance often involves investment in the rail itself and paying for a period of time for restoring shipper confidence.

That is why the preabandonment proportion of this program is necessary. There are a number of lines in Illinois which are not in very bad physical condition overall but which are owned by railroads that are in weak financial condition that are allowing the lines simply to deteriorate for the purpose of getting abandonment.

If we can intervene in this process early we cannot only save the shipper, such as Mr. Tennyson was describing, the inconvenience he is currently undergoing but also rehabilitate that line for a great many fewer public dollars.

Mr. ROONEY. Thank you, gentlemen. You have been a great help to this committee. We appreciate your appearance.

Mr. ELKINS. Thank you very much, Mr. Chairman.

Mr. ROONEY. Our next witness will be Mr. Edward B. Friedman, Esq., Railway Labor Executives Association.

STATEMENT OF EDWARD B. FRIEDMAN, COUNSEL, RAILWAY LABOR EXECUTIVES ASSOCIATION, ACCOMPANIED BY HAROLD RITTER, LEGISLATIVE REPRESENTATIVE, UNITED TRANSPORTATION UNION

Mr. FRIEDMAN. Mr. Chairman and members of the committee, my name is Edward B. Friedman. I am accompanied here today by Mr. Harold Ritter, who is with me to assist in the presentation of the views of the RLEA. Mr. Ritter is legislative representative of the UTU.

We share the concerns expressed by the previous witnesses over the need to improve the branch line program by expanding its rehabilitation assistance to failing lines.

As the committee knows, the RLEA is an association of 20 standard railway labor organizations which in turn represents virtually all of the organized work force employed by railroads in this country. Its purpose is to promote the common interest and welfare of railroad employees and their families. I have listed the names of each of these 20 associated railway labor organizations, as required by the rules of the House. [See p. 190.]

We share the concerns of the States over the need for improving the branch line continuation program by expanding it to provide rehabilitation assistance to failing lines which, but for early assistance, may collapse altogether.

It is our purpose in and out of the Congress to support all measures which contribute to the restoration of a healthy railroad system, nationwide in scope. We support the proposition that the railroad industry should be maintained as an intact national transportation network, with the capacity to absorb an increasing share of the Nation's freight as the most energy efficient mode of all, and as the mode which is most compatible with the EPA standards. We have a large stake in promoting a healthy, competitive, and effective rail system. We will support any group and any measure that will enhance this prospect.

The administration's bill, in most of its features, is a step in this direction. In our view, however, it is seriously deficient in its failure to provide for labor standards, in its treatment of abandoned lines, and in its failure to lay the foundation for new approaches to the branch line problem.

The problem was and remains a difficult one. I doubt if any of the interested parties have yet found a completely satisfactory solution.

Branch lines, of course, are the tributaries of the main lines and must be evaluated in terms of their impact on the system. A branch line may be financially troubled as a direct or indirect result of a number of factors.

Inadequate service must be regarded as a major cause of a loss of markets to other modes or in the inability to win or attract new markets.

Inadequate service may be the result of policies of deferred or neglected maintenance of right-of-way, of equipment, of rolling stock, or of power. These policies of deferred or neglected maintenance

nance may be the result of a deliberate program to downgrade service in order to create a record for a planned abandonment, of inadequate revenue or financing, or a combination of these and other factors.

Inadequate service on a branch line may be the result of inadequate terminal vitality or car movements, or inefficient or ineffective terminal operation, insufficient or inefficient car supply or car utilization or related factors.

In this connection, we are told that ConRail loses contact with something like 600 cars daily. These various factors to which must be added misshipments, faulty handling, poor supervision and inefficient use of manpower contribute to low employee morale and in turn may serve to explain decline in traffic and loss of revenue.

Emphasis on cost cutting rather than initiatives in seeking new markets or in improving service may be other factors. Poor or inadequate labor relations clearly would bear on branch line or system weakness on some of the troubled carriers.

All of this adds up to management malfunction.

Loss of markets, on the other hand, may be due to changes in the economic character of a region served by a branch line.

By the time a carrier has decided to identify a branch line as one which it will seek to abandon—category 1—or as one which it has designated as a possible subject for future abandonment proceedings—category 2—or as the subject of an abandonment application—category 3—it has obviously given up on allocating its resources to the improvement of service on lines in any of these categories or to the maintenance of track and roadbed and facilities on such lines or to the development of new markets.

In those cases where a certificate of abandonment has been issued, these conditions will have deteriorated even further.

The aim of any legislation dealing with this subject should be to reverse this process in those cases where the loss of revenue may be due to management malfunction as we have defined it.

H.R. 11979, the DOT bill, seeks to provide the means for the States to deal effectively with some of these problems, but in our view, falls short of the requirements of a well-balanced program of rail rehabilitation and rail revitalization.

The DOT bill appears to place its major emphasis on the rehabilitation of branch lines in their preabandoned or category 1 or 2 States; that is, run-down lines which will continue to deteriorate unless corrective action is soon taken to restore vitality. This is something like preventive medicine and there is no disagreement with this approach.

We, however, feel that H.R. 11979 is seriously deficient in its proposal to place the abandoned line on death row. The DOT bill, as we read it, contemplates a 2-year transitional period to enable the affected communities to find other modes of transportation after which all service on the abandoned branch line will cease. It accordingly decrees that during this 2-year period of reprieve, the subsidy for an abandoned line would, on that account, be limited to operating costs with no rehabilitation support.

We see no justification for this.

Apart from this death-sentence approach, a 2-year test period is too short. There should be a longer period of perhaps 30 or 36

months to provide the States, the shipper, the local communities and all of the interested parties an opportunity to determine whether the subsidized short line has made reasonable progress toward financial self-sufficiency. If there has been reasonable progress, projecting the probability that the line will sustain itself, the social and economic considerations for maintaining service might indicate that the subsidy program should be continued for another 30 or 36 months.

It should be for each State to determine in the first instance whether a subsidy program on any given line is warranted and, if so, whether the record of progress after a reasonable test period warrants continuation of the program for an additional limited period of time. Particularly in those cases where the State decides that some part of its allocation should be applied to the rehabilitation of a branch line, the short period of subsidy suggested by the DOT bill would not be warranted.

That the State should not and will not necessarily abandon hope for an abandoned line is drastically shown by the rehabilitation of the Providence-Worcester Railroad. The Providence-Worcester took over branch lines of a bankrupt carrier. These lines had either been certificated for abandonment or were the subject of an abandonment proceeding. The P. & W. has tripled in size in the 5 years since it began its independent operations. It now provides rail service in Connecticut, Rhode Island and Massachusetts. It enjoys outright ownership of all of its trackage and building. It borrows money at prime rates. It repaid its loan to cover the initial purchase within 3 years. It paid more than \$500,000 in cash in 1976 for the purchase of additional Penn Central lines which had been excluded from the final system plan.

I should like to refer briefly to the testimony P. & W. offered to the Senate Committee in Boston last March in testifying upon this aspect. At this point I emphasize that P. & W. is exhibit 1 with respect to the rehabilitation possibilities even though the line has already been abandoned. They testified that their

five years of operating experience have convinced us that the railroads in the northeast and anywhere else will grow and prosper only if they:

- [1] Provide efficient reliable service that responds to rail user needs;
- [2] Invest significant capital in fixed plant, equipment and related facilities;
- [3] Establish a sound and progressive partnership between railroad management and railroad labor.

Improvement of the quality of service is the keynote to the success of this or any other comparable operation. Deliveries by P. & W. to and from shippers are made within 12 hours of the time from the receipt of the inbound car from ConRail or Boston & Maine or of the outbound car by ConRail or Boston & Maine.

The Providence & Worcester underscored the point that, in its experience, it is essential for management and labor to have a strong partnership if successful railroad operations are to be established and maintained.

The DOT bill is grossly insufficient on this point. It overlooks the subject of labor standards.

We have discussed this point with the Department, however, and it apparently acknowledges that this is a deficiency in its bill which should be corrected.

The jobs on these branch lines are railroad jobs. They are and have always been performed by railroad employees.

It has long been established under our national labor policy that a successor employer has the obligation to recognize and to bargain in good faith with the union which represented its predecessor's employees. The successor employer is acquiring and using substantially the same facilities to produce the same basic products or service for essentially the same customers in the same geographic area, and thus has the obligation under Federal law to continue recognition of the duly authorized bargaining representative of the employees who have been engaged in producing the products or services taken over by the successor.

This is Hornbook law. The established policy of the Congress, in this respect, has been to require, as a condition to financial assistance, assurances of a continuation of collective bargaining with the duly authorized representative of these employees.

In the context of this bill, the obligation should be to negotiate an agreement with the duly authorized representative of these employees "to offer such employment, subject to such wages, rules and working conditions, and afford such employment protection as shall be agreed upon between the successor and representative."

The other bills on this subject recognize this policy and include provisions establishing labor standards. In our view, a labor standards provision based upon the labor policy expressed by the Congress over many years is essential.

Earlier in our testimony we identified one of the deficiencies of the DOT bill as its failure to give any more than lip service to the concept of a cooperative action program. We feel that an experimental program of this kind might point the way to a new approach which would not be marked by the anomalies of the existing program.

We feel that the corrective action approach should rest on the initiatives of the States and the carriers with built-in incentives to stimulate cooperation by all interested groups to contribute to the success of the effort. Planning would identify measures to improve service; which as pointed out earlier, covers a broad range of possibilities, including correction of management malfunction, development of new markets, commitments by shippers as to rates and use, adaptation in manpower to accommodate special conditions on the branch line as suggested by the experience in the P. & W. tax relief, to mention only some of the more obvious areas which can be covered by cooperative action. Perhaps there should be a standing commission in which all groups are represented to establish this program and to oversee its development.

Each of these programs should include the category 3 branch lines. If a category 3 line should be selected for cooperative action, further processing of the abandonment petition should be suspended pending the outcome of the experiment.

Finally we should like to comment briefly on the cost benefit criteria which the DOT bill would seek to impose on the States as a condition for use of allocations: We feel that the Department is exhibiting its distrust of State competence and seeks to lay its restraining hand on decisions which have been and should remain

essentially local. No criteria exists in the current program and none should be imposed as a condition to the use of funds.

We are grateful to the committee for the opportunity to appear before it and offer these views.

Thank you very much.

[Attachment to Mr. Friedman's prepared statement follows:]

RAILWAY LABOR ORGANIZATIONS

(1) American Railway Supervisors' Association, (2) American Train Dispatchers' Association, (3) Brotherhood of Locomotive Engineers, (4) Brotherhood of Maintenance of Way Employees, (5) Brotherhood of Railroad Signalmen, (6) Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, (7) Brotherhood Railway Carmen of the United States and Canada, (8) Hotel & Restaurant Employees & Bartenders' International Union, (9) International Association of Machinists and Aerospace Workers, (10) International Brotherhood of Boilermakers and Blacksmiths, (11) International Brotherhood of Electrical Workers, (12) International Brotherhood of Firemen & Oilers, (13) International Organization Masters, Mates & Pilots of America, (14) National Marine Engineers' Beneficial Association, (15) Railroad Yardmasters of America, (16) Railway Employees' Department, AFL-CIO, (17) Seafarers' International Union of North America, (18) Sheet Metal Workers' International Association, (19) Transport Workers Union of America, and (20) United Transportation Union.

Mr. ROONEY. Thank you, Mr. Friedman, for a fine statement.

On page 5 of your testimony you state that the 2-year test period for operating subsidies is too short. I certainly concur with you. Isn't it true that the reduction from 5 years to 2 years was a compromise with the Department as a trade-off emphasizing rehabilitation of the tracks as a criteria for eligibility? Wasn't that the deal they made?

Mr. FRIEDMAN. Not to my knowledge, Mr. Chairman. I think what the Department has done is to depart from what I understood to be the approach of the bill in its present form and simply to write off the abandoned programs, providing for a 2-year transition.

In our conversations with the Department they have indicated that they would consider expanding the period to perhaps 30 months or 36 months but we feel more than that is needed. It should not only be expanded but there should be some provision for a review of the experience at the conclusion of that first period and that if the experience justifies a continuation in the view of the States, the States should have the authority to apply their allocation to a continuation. I don't know that the DOT has gone quite that far, but they have agreed, I think, that the period is too short.

Mr. ROONEY. I concur with you.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Mr. Friedman, looking at the balance sheet of P. & W. with their operating revenue of \$5,520,000 and their expenses of \$6,570,000 a gap of \$1,050,000, then adding some rental income balance and some negative railway operating costs, we come up with a gap of \$2.5 million last year. That does not sound like it is a very profitable operation.

Mr. FRIEDMAN. I must confess I have not seen the balance sheet. I do know that they have a profit-sharing plan with their employees in which they allocated part of their profits to the employees and there was a distribution of \$1,600 to each employee this March.

I do also know they have some problems with ConRail which is now in the process of litigation with respect to per diem.

Mr. MURPHY. They are not the only people having problems with ConRail.

Mr. FRIEDMAN. I understood that they had made a \$1,600 distribution on a per capita basis to each and every one of their employees from the lowest to the highest this year. Certainly in Boston they testified to the point that I have made. Perhaps that balance sheet could stand some analyzing. I have not seen it.

Mr. MURPHY. There are some interline settlements withheld and a grant subsidy of \$948,000 that is not included. If that gap exists, I think we are back to really questioning whether or not an operation between Boston and Maine and ConRail, with its 12-hour delivery, which is OK, however, what is happening on the other end which also affects service?

Mr. FRIEDMAN. I have had discussions with them. They tell me that is their problem. They have problems in retrieving their cars once they deliver them to ConRail. They do have a 12-hour record they told me. I think you are perfectly right. The problem is what happens after the car is delivered to Boston & Maine and to ConRail? In that sense we see that and we recognize in our statement we are dealing with the whole situation.

A branch line or small segment serving a main line cannot be viewed in isolation. It is part of an entire rail network.

Mr. MURPHY. Thank you.

Mr. ROONEY. I might say the purpose of this hearing is to discuss branch lines, not ConRail.

I have no further questions. I thank you very much, Mr. Friedman, for appearing here today.

Mr. FRIEDMAN. Thank you.

Mr. ROONEY. Our final witness will be Mr. Eric D. Gerst, representing Hillsdale County Railway Co., Philadelphia, Pa.

Before we hear from our next witness we were to have had a representative of the National Limestone Institute here this morning. Unfortunately, due to the postponement of these hearings from Thursday to today, these representatives are unable to attend due to previous commitments that could not be changed.

I regret very much that we are unable to hear from these representatives but, without objection [see p. 206] I would like to have their prepared testimony placed in the record.

STATEMENT OF ERIC D. GERST, GENERAL COUNSEL, HILLSDALE COUNTY RAILWAY CO., INC.

Mr. GERST. Good morning, Mr. Chairman, and members of the subcommittee.

My name is Eric Gerst. I am general counsel for Hillsdale County Railway Company, Inc., commonly referred to as Hillsdale Railway.

John Marino, the president of Hillsdale Railway, was unable to be here today due to the rescheduling of the meeting. He was here on Thursday to present his portion of the testimony.

He desired to indicate to the committee the substantial success that Hillsdale Railway has had as a designated operator operating

under the ICC designated operator certificated D-OP3 and wanted to point out specific experiences with the railway.

Mr. ROONEY. Do you have a copy of his testimony?

Mr. GERST. Yes, sir, I do. I would like to request the committee have it formally submitted for the record. [See p. 206.]

Mr. ROONEY. Without objection, it will become a part of the record.

Mr. GERST. By the same token, Mr. Chairman, I would like my formal remarks to be submitted for the record. [See p. 195.]

Mr. ROONEY. It may be done.

Mr. GERST. Hillsdale Railway operates 55 miles of rail freight service in southern Michigan and northern Indiana pursuant to the 3-R and 4-R Acts. Hillsdale's headquarters are in Michigan in Hillsdale. Hillsdale began rail freight operations on April 1, 1976. My purpose today is to present the views of Hillsdale Railway which is a short-line operator regarding House bill H.R. 11979, the Local Rail Service Assistance Act of 1978, introduced on April 10, 1978, by Congressman Staggers for himself and Congressman Rooney by request of the Department of Transportation.

The points that I desire to emphasize in this testimony deal not only with the items of the bill we feel should be changed or clarified, but with certain important items which were not included in the bill and which in our opinion should be included.

In regard to the purposes clause of H.R. 11979, it is respectfully submitted that the purposes clause of the bill as proposed fails to include as a purpose the provision for rehabilitation, operating subsidies, or other assistance which has a long-term goal revitalizing rail freight service in the United States.

The way the purposes clause reads now, to wit, to provide "short-term rehabilitation or other assistance" and "short-term transitional operating subsidies," it appears that the Department of Transportation desires to phase out branch line feeder routes, without considering the devastating effect this would have on many communities across the country which desperately need and can hardly exist without rail freight service.

In many cases, using short-term transitional operating subsidies to arrange for alternate means of transportation means that shippers in communities on branch lines (1) will either be forced to go to truck transportation—which in most cases, is more expensive than rail and clearly more energy-consuming—passing the increased costs along to the American consumer: This clearly is avoidable inflation; or (2) shippers will go out of business and/or relocate elsewhere: This clearly is poor economic planning.

Therefore, consideration should be given to funding such programs as are necessary to insure the revitalization of the rail system in this country, one of the United States' greatest assets. This, of course, should include a hard look at some of the light density lines, utilizing reasonable cost-benefit criteria, and an allowance for continued subsidies to essential lines as long as funds may be necessary, in order that they can continue to provide essential rail freight services for the citizens of this country.

As of March 20, 1978, the Interstate Commerce Commission has identified 16,623 miles of track that the Nation's railroads want to abandon or are considering for abandonment. This figure repre-

sents almost 10 percent of the total railroad trackage in the United States, and may be a conservative figure, since many railroads know that mere announcement of a potential of abandonment will have an immediate adverse effect on their revenues. In most cases, these are branch line feeder routes, the so-called light density lines. And while in many cases, such light density lines may in fact be unprofitable, and perhaps nonessential, no matter who operates the line, in many other cases, certain light density lines can eventually become economically viable feeder routes without subsidy, by the initial infusion of some financial assistance, new management and marketing techniques, and economies of service.

Many of the short-line railroads which came into existence as designated operators as a byproduct of the Penn Central reorganization, have made great strides toward providing exactly what America's rail system needs today, that is, a viable main line rail network, supported by self-sufficient feeder routes.

Just as the main body of a tree depends upon its nourishment from the healthy roots feeding the tree trunk's vital system, so do the light density lines feed the major class I railroad carriers. Without a healthy root system a tree would die and without a healthy branch line system, so could the entire rail system die.

Why spend millions of dollars in revitalizing the main trunklines and at the same time, cut off the nourishment through the feeder roots. The legislation therefore, in our opinion, is short-sighted in this regard. In order for the legislation to have some real meaning and real life, and make a meaningful contribution of the U.S. tax dollars, it is respectfully submitted that the legislation as proposed, must be changed.

One of the critical problems of this legislation, is that it arbitrarily cuts off, on certain dates, or eliminates completely, the eligibility for financial assistance to operators of light density lines that were eligible under the RRR Act.

Mr. ROONEY. Mr. Gerst, I thought you were summarizing your statement. I have had an opportunity to read the statement and so have the members of the committee. I think it is a very fine statement and it has become part of the record. Perhaps you can summarize it.

Mr. GERST. Yes, sir, I will.

The statement, Mr. Chairman and members of the committee, indicates there are some significant oversights in the bill which apply to all areas, that is to say, to operational subsidies to which I have addressed myself, to the question of rehabilitation which appears in the legislation to cut off entirely light density lines from being eligible.

The section regarding improvements also only allow improvement to those lines which are potentially subject to abandonment and does not apply to 3-R lines such as Hillsdale Railway.

Mr. Chairman, I do want to state that the bill does have some fine aspects. They have been covered before by Mr. Elkins in regard to the 80-20 ratio for the Federal-State subsidy and we support that.

We also support initiatives for innovative ideas and a desire to see increased operating efficiency and productivity.

The one major issue that remains in my testimony which I would like to cover is the important question of who gets Federal subsidy dollars at the time of an abandonment. The way the present section 1[a] of the Interstate Commerce Act reads as well as section 7 of this proposed bill, it only provides for a subsidy to be entered into between the carrier that desires to abandon and an entity that wishes to give the subsidy. There is no mention at all of the concept, as there was in the 3-R act, of a designated operator.

Our suggestion is that the bill include a designated operator concept because in that regard the abandoning carriers will be relieved of the responsibility of handling a line that it feels is not profitable to it. But by the same token a designated operator who is in fact an entity which operates this line perhaps as its sole business would have a much more efficient operation and desire to succeed than an abandoning carrier, which is ready to leave. Therefore, the designated operator could include either a railroad whose properties connect with such line being abandoned, or any responsible person including a Government entity, that is willing to operate rail service over such property.

This is exactly the way Hillsdale Railway came into effect when we started operations on April 1, 1976. I think that if you check with the State of Michigan and with the constituents in the State you will find, and also in Indiana for that matter, because it does operate in Indiana, you will find that the success of the program is a keynote and a model for the United States, we feel.

Mr. Chairman, Mr. Marino's statement does cover some facts and figures concerning Hillsdale's operations and indicates that Hillsdale has over 5,000 carloads of freight a year. It has increased its service to the customers and it has also attracted new industry, including a new power plant which may be located on that line. They have selected a potential site which would increase the traffic by over 1,000 carloads a year.

This I think is in some measure due to the fact of the desire and the impetus of the State of Michigan has given to this program and to the desire of the management that is operating the company.

Thank you very much for your time and consideration.

[Testimony resumes on p. 215.]

[Mr. Gerst's prepared statement and attachment follow:]

TESTIMONY OF ERIC D. GERST, GENERAL COUNSEL
HILLSDALE COUNTY RAILWAY COMPANY, INC.
REGARDING HR11979, "LOCAL RAIL SERVICE ASSISTANCE ACT OF 1978"

BEFORE THE

HOUSE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

JULY 13, 1978

I. INTRODUCTION

Mr. Chairman, my name is Eric D. Gerst, and I am General Counsel of Hillsdale County Railway Company, Inc., commonly referred to as Hillsdale Railway. With me today is John H. Marino, President of Hillsdale Railway. Hillsdale Railway is a Designated Operator, (ICC Designated Operator Certificate D-OP 3), operating 55 miles of rail freight service in Southern Michigan and Northern Indiana, pursuant to the RRR Act and RRRR Act. Its headquarters are at 50 Monroe Street, Hillsdale, Michigan 49242.

My purpose in testifying is to present the views of Hillsdale Railway, a short line operator, regarding House Bill HR11979, the "Local Rail Service Assistance Act of 1978", introduced on April 10, 1978 by Congressman Staggers (for himself and Congressman Rooney) (by request).

The points that I desire to emphasize in this testimony deal not only with those items of the Bill which should be changed or clarified, but with certain important items which were not included in the Bill, and which in our opinion, should be included.

II. SPECIFIC CHANGES TO THE LEGISLATION

A. Purposes clause: It is respectfully submitted that the purposes clause of HR11979 fails to include as a purpose, the provision for rehabilitation, operating subsidies, or other assistance which has a long term goal of revitalizing rail freight service in the United States.

The way that the purposes clause of HR11979 reads now, to wit,

to provide "short term rehabilitation or other assistance", and "short term transitional operating subsidies", it appears that the Department of Transportation desires to phase out branch line feeder routes, without considering the devastating effect this would have on many communities across the country, which desperately need, and can hardly exist without, rail freight service.

In many cases, using short term transitional operating subsidies to arrange for "alternate means of transportation" means that shipper communities on branch lines (1) will either be forced to go to truck transportation (which in most cases, is more expensive than rail and clearly more energy-consuming), passing the increased costs along to the American consumer: this clearly is avoidable inflation; or (2) shippers will go out of business and/or relocate elsewhere: this clearly is poor economic planning.

Therefore, consideration should be given to funding such programs as are necessary to insure the revitalization of the rail system in this country, one of the United States' greatest assets. This, of course, should include a hard look at some of the light density lines, utilizing reasonable cost-benefit criteria, and an allowance for continued subsidies to essential lines as long as funds may be necessary, in order that they can continue to provide essential rail freight services for the citizens of this country.

As of March 20, 1978, the Interstate Commerce Commission has identified 16,623 miles of track that the Nation's railroads want to abandon or are considering for abandonment. This figure represents almost 10% of the total railroad trackage in the United States, and may be a conservative figure, since many railroads know that mere

announcement of a potential of abandonment will have an immediate adverse effect on their revenues. In most cases, these are branch line feeder routes, the so-called light density lines. And while in many cases, such light density lines may in fact be unprofitable, and perhaps non-essential, no matter who operates the line, in many other cases, certain light density lines can eventually become economically viable feeder routes without subsidy, by the initial infusion of some financial assistance, new management and marketing techniques, and economies of service.

Many of the short line railroads which came into existence as Designated Operators as a by-product of the Penn Central reorganization, have made great strides toward providing exactly what America's rail system needs today, that is, a viable main line rail network, supported by self-sufficient feeder routes.

Just as the main body of a tree depends upon its nourishment from the healthy roots feeding the tree trunk's vital system, so do the light density lines feed the major Class I railroad carriers. Without a healthy root system, a tree would die and without a healthy branch line system, so could the entire rail system die.

Why spend millions of dollars in revitalizing the main trunk lines and at the same time, cut off the nourishment through the feeder roots. The legislation therefore, in our opinion, is shortsighted in this regard. In order for the legislation to have some real meaning and real life, and make a meaningful contribution of the United States tax dollars, it is respectfully submitted that the legislation as proposed, must be changed.

B. Eligibility Criteria: One of the critical problems of this

legislation, is that it arbitrarily cuts off, on certain dates, or eliminates completely, the eligibility for financial assistance to operators of light density lines that were eligible under the RRR Act.

(1) Operating Subsidy: Section 7 of the proposed House Bill 11979, (to amend DOT Act, §5K; 49 USC 1654 (new (K) (1)) imposes an arbitrary maximum period of 24 months during which any line scheduled for abandonment could receive financial assistance through an operational subsidy. And any line which was operated by a Designated Operator pursuant to §402 of the RRR Act of 1973, would be, under the proposed legislation, automatically cut off from an operating subsidy on September 30, 1981.

The cut off date mentioned above, of September 30, 1981, would apply to subsidized short line railroads, such as Hillsdale Railway, which were in existence prior to the enactment of this Bill. Consider also the impact of this legislation on new short line railroads, which are not yet in existence. Such railroads would be discouraged from taking on the task of rebuilding the light density line, unless they knew that they had a reasonable chance of success. We submit that 24 months of assistance does not provide sufficient time to overcome years of poor management and neglect. At least four years should be allowed to provide these lines with a reasonable chance of success, and to instill on the part of the shipping public, renewed confidence in the rail system.

(2) Purchases: Also in §7 (New 5 (K) (2)) as to purchases of rail lines or properties, the proposed Bill again cuts off on September 30, 1981, eligibility to lines operated by Designated Operators. Clearly, there should be no artificial distinction made

on eligibility for these funds. Monies required for purchases contemplated under this Section, should be available, based upon need.

(3) Rehabilitation: In § 7 (New 5 (K) (3)), the new proposed Bill incredibly appears to cut out entirely, rehabilitation or improvement funds for light density lines presently being operated under the RRR Act. In its place, it provides rehabilitation or improvement funds only to those lines which are "potentially subject to abandonment", or identified as a line with respect to which a carrier plans to submit, but has not yet submitted, an application for a certificate of abandonment or discontinuance. It is here that we take the position that if a need is shown, any line, whether it be a major line haul carrier, or a short line feeder route, be eligible for rehabilitation or improvement funds, as well as those described as available for assistance in the proposed Bill. By broadening the scope of those lines eligible for rehabilitation and improvement funds, the Bill in this respect, would have a salutary effect, in that funds would be used for preventative maintenance for any railroads attempting to revitalize service, instead of a restricting use of funds of this kind for emergency or stop-gap transitional procedures.

(4) Improvements: Section 7 of the New Bill (New 5 (K) (5)) reveals another oversight, in that it allows assistance for the cost of new improvements, only on lines described as potentially subject to abandonment, or on lines which a railroad plans to submit, but has not yet submitted, an application for a certificate of abandonment.

Much needed improvements, including new connections between two or more existing lines of railroad, intermodal freight terminals, sidings, and track extensions to serve new rail users, should also be afforded to lines operated under the RRR Act. The language of the Bill does not appear to cover this situation. In addition, eligibility should be expanded to also include the situations where a railroad may have discontinued service on a certain branch line, prior to the RRR Act enactment, and it is desired to reactivate those lines for purposes of making connections to other operational lines, or for providing service to new shippers, or for other valid reasons that will contribute to the carrier's viability.

III. LAUDATORY ASPECTS

I would like to emphasize that the Act as proposed does have some excellent aspects. In fact, the Act gives credence to the belief that innovative ideas can and should be supported, and that the quality and efficiency of local rail freight service can be improved by increasing operating efficiency and productivity.

The Bill further provides that the Federal-State funding shall remain at an 80/20 ratio, Federal to State respectively, which is an acceptable and fair formula of allocation of funds. As the RRRR Act presently stands, the sliding scale allocation formula is presently scheduled to become a 70/30 ratio, Federal to State respectively, in the fourth and fifth years of the program.

Maintaining the ratio at 80/20 as proposed in the Bill, makes more sense, and puts less of an economic burden on the States, than

the presently enacted RRRR Act.

IV. ADDITIONAL SECTIONS NEEDED

A. Adding Designated Operator for an abandoning line

Finally, an important concept has been entirely omitted from the legislation. This has to do with the question of to whom financial assistance is to be given when a carrier is permitted to abandon or discontinue rail service.

Section 1a of the Interstate Commerce Act (49 USC 1a), as well as Section 7 of the proposed Bill HRL1979, provides for a subsidy agreement to be entered into between the carrier who desires to abandon or discontinue, and a financially responsible person (including a government entity), who has offered such financial assistance.

Both sections (Section 1a of the Interstate Commerce Acts, as well as Section 7 of the proposed Bill), however, failed to include language similar to the language in the RRR Act, to wit, to allow a subsidy in such cases, to be alternatively provided to a "Designated Operator".

It is respectfully submitted that both the Interstate Commerce Act, Section 1a, and the Department of Transportation, Section 5K, should be amended to provide, in the case of an abandonment or discontinuance of service of a branch line of a solvent carrier, similar language to that which appears in the RRR Act, 45 USC §744D (1), which allows a financially responsible person (including a State), to offer a subsidy to a Designated Operator, who may be (1) any railroad whose property connects with such line being abandoned or

discontinued; or (2) any responsible person (including a governmental entity) who is willing to operate rail service over such rail properties. The Designated Operator should be selected by the appropriate State agency, and would operate such rail services in accordance with all applicable Federal and State safety standards.

The concept of the need to designate an operator, in an abandoning line situation, has already been voiced by State officials by competent rail planners, and by Daniel O'Neal, Chairman of the Interstate Commerce Commission.

It is obvious that once an abandoning carrier determines it can no longer efficiently and economically operate a certain line, it thereafter desires to get rid of the obligation as quickly as possible.

If the abandoning carrier is successful in its abandonment petition before the ICC, and thereafter is offered a subsidy under Section 1a of the Interstate Commerce Act, it is even more obvious that the cost to the public to pay for the subsidy to the abandoning carrier, would be high, and management incentives to achieve viability would be at best half-hearted, and the quality of service performed could be unsatisfactory. Furthermore, offering a subsidy to an abandoning carrier would just postpone the inevitable collapse of the branch line, and the communities it serves, as soon as the subsidy is terminated.

Therefore, the appropriate State agency should be permitted to select the most qualified operator for a line to be subsidized.

A Designated Operator, upon proper selection, would effectuate economies of service, and could provide improved and efficient service

to the communities in danger of losing such service. In the case of short line railroads who are so designated, the operator would have only that line to operate, and therefore would be able to concentrate management attention to improving the viability of the line, and actually aid the abandoning carrier, by accepting the responsibility for operation of the line, while at the same time, continuing as an important feeder of rail traffic to the abandoning carrier.

By providing subsidies to Designated short line Operators, the abandoning carrier and the employees of the abandoning carrier may actually have a better opportunity for long range growth, since the short line, if it can attract additional traffic, will of necessity, route such traffic via a line haul carrier. Therefore, increased carloads mean increased revenues to the abandoning carrier, and increased revenues mean more permanent and useful jobs.

Thus, it seems extremely shortsighted and uneconomical to limit the offer of subsidy only to an abandoning carrier.

It is respectfully submitted that the legislation be modified to include the possibility of offering subsidies to an operator as designated by the appropriate State agency, or any railroad whose property connects with such a line being abandoned or discontinued.

B. Abandonment Hearing Procedures - Technical Procedural Suggestion.

It is further suggested that to insure that the abandonment hearing procedures are not colored with the possibility of another

carrier taking over the line proposed for abandonment, that evidence of interest on the part of a governmental entity in subsidizing the abandoning carrier's branch line should not be allowed to be introduced prior to the approval of such abandonment. In this way, the abandonment decision can be reached solely on the economics and merits of the abandoning railroad's petition with, of course, an opportunity of all parties to be heard at the time of the hearing.

Thereafter, should an abandonment petition be approved, the States, notwithstanding the abandonment ruling, could make their own determination, upon a proper hearing, of the need for a subsidy for such line to allow it to continue to operate and provide service, and said subsidy could then be authorized to a Designated Operator, which Designated Operator would be any railroad whose property connects with such line being abandoned or discontinued, or any responsible person (including a governmental entity) which is willing to operate rail service over such rail property with the approval of the State. Under this procedure, the abandoning carrier would receive a reasonable return on value for the use of its abandoned facility, as provided under the financial assistance program of the RRRR Act.

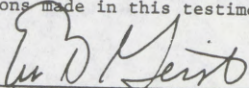
V. SUMMARY

To sum up my testimony, if you, as our elected representatives, are willing to commit millions of tax dollars to a local rail service revitalization program, then we respectfully submit that you should create a program which has as its primary purpose, revitalization, rather than a transitional phase-out. Furthermore,

the focus should emphasize the local nature of such services, and provide proper financial aid to the small, privately-financed, local operators, who, when given an even break, will use their best efforts to turn these lines around and spend this money wisely.

To take the action as requested in our testimony, will, we believe, give a strong indication to your constituents, that you are really concerned about the local nature of such rail service, and about the proper revitalization of the United States' rail system.

Thank you for your time and consideration. It is our sincere hope that you will implement the suggestions made in this testimony.


Eric D. Gerst, General Counsel
HILLSDALE COUNTY RAILWAY
COMPANY, INC.
c/o ANAPOL, SCHWARTZ, GERST & WEIS
1515 Locust Street, Sixth Floor
Philadelphia, PA 19102
(215) 735-2476

TESTIMONY OF
JOHN H. MARINO, PRESIDENT
HILLSDALE COUNTY RAILWAY COMPANY, INC.
BEFORE THE
HOUSE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
REGARDING
HR 11979, "LOCAL RAIL ASSISTANCE ACT OF 1978"

JULY 13, 1978

INTRODUCTION

Mr. Chairman, my name is John H. Marino, President of Hillsdale County Railway Company, Inc. Hillsdale County Railway operates 55 miles of former Penn Central rail branch lines under contract with the States of Michigan and Indiana, as a Designated Operator.

Our Company serves more than thirty customers in Hillsdale, and Branch Counties, in Michigan and Steuben County, Indiana. We are the only railroad in Hillsdale County and serve as a life-line for several communities with a combined population of more than 40,000. Our line serves a major grain-producing area, and we also serve a number of small manufacturing plants, a large flour mill, several lumber retailers, agricultural distributors of fertilizers and supplies. We originate and terminate approximately 5,000 carloads of freight each year.

Mr. Eric Gerst, Hillsdale Railway's Legal Counsel has addressed himself to a conceptual analysis of the problems in the proposed legislation, HR 11979.

Now, I wish to illustrate, through specific experiences at Hillsdale, why the proposed legislation, HR 11979 is of great concern to us. The problems which I will address myself to are:

- (1) The duration of the proposed program
- (2) Eligibility for lines discontinued under the RRR Act
- (3) The need for the "Designated Operator" concept

I.

The Bill, as presently drafted, proposes that rail assistance

subsidies be made available for a period of twenty-four months. We maintain that twenty-four months is not an adequate period of time to physically rebuild these deteriorated rail lines, to eliminate years of deferred maintenance. Nor is twenty-four months an adequate time to restore shipper confidence in rail service, in order to increase rail usage, and achieve self-sufficient viability caused by years of "deferred management."

In Hillsdale's case, on April 1, 1976, we inherited 55 miles of deteriorated, unsafe track, that had not been maintained properly for twenty years. When we took over operations, the railroad failed to comply with minimum FRA Class I safety standards, and was placed under safety waivers by the FRA. We had more than a dozen locations at which speeds were limited to 5 miles per hour, which contributed to excessive overtime payments to employees, and prevented us from offering truck-competitive service. The former owners had placed a gross weight limitation on much of the line, preventing grain shippers from using more economical volume grain rates.

However, I am pleased to state that in June, 1978, twenty-seven months after taking over the line, after having installed more than 33,000 new cross ties, 25,000 tons of crushed stone ballast, and replacing 4 miles of worn out rail, we were finally able to remove the FRA safety waivers. Our operating costs have consequently been reduced, and customer service improved.

While much more work remains to be done, such as rebuilding and repairing bridges, yard tracks and highway crossings, we are now in a position to offer potential rail users an improved, more reliable service.

Our marketing program is keyed to attracting new business that presently moves by highway. Several new customers are now using rail who formerly had shipped by truck.

A major new coal-fired power plant, owned by five Southern Michigan Counties, will be located on our line now that continued

rail service has been assured. This plant will require more than 1,000 carloads of coal annually.

In addition to providing adequate lead time for physical improvement and rehabilitation, Hillsdale has found that another factor to be considered is the lead time required on light density rail lines to procure an adequate freight car fleet for users. The acquisition of such cars takes in many cases, a year or more. Thus, for all of the above reasons, a rail assistance program as proposed, limited to two years duration, would begin to be phased out soon after rail users were furnished new equipment, and upgraded facilities. We therefore request that the duration of proposed rail assistance programs be extended, to provide adequate lead time to rebuild these branch lines, and to attract new and increased traffic which is essential to long-term viability.

II.

My second point of concern is the limited eligibility of rail lines, such as Hillsdale County Railway, that were not conveyed to the Consolidated Rail Corporation. As the Bill stands now, rail lines that were eligible for assistance under the Regional Rail Reorganization Act of 1973 (the "3R Act") will not be eligible for assistance beyond September 30, 1981.

Many such lines provide essential services to local communities. Without such continued rail services, these communities would be faced with the loss of industrial jobs, reduced payrolls and reduced tax ratables, and increased costs of alternate transportation. The net social cost of the loss of rail service therefore, is many times the cost of providing rail service continuation subsidies.

For example, in Hillsdale's case, retention of rail service has permitted companies employing more than 460 people, with a payroll of more than \$5 million per year, to remain in Hillsdale County. The Hillsdale County Industrial Development Commission has estimated that the total economic impact of the loss of rail service to Hillsdale County (including spending for goods and services and taxes, in addition to lost wages) would be more than \$15 Million

per year.

Over the past twenty-seven months, Hillsdale County Railway has reduced its costs, and increased revenues, with a gradual reduction in Federal and State subsidy funds, and while we hope to achieve a viable level of operations in the near future, we submit that an arbitrary cut-off in terms of our eligibility for such subsidies, as a "3R" line, would be short-sighted, and detrimental to our long-range plans.

Much of the accelerated maintenance performed on our line has been done just to comply with minimum safety standards, which permit a top speed of 10 miles per hour. The scope of these projects is such that this minimum safety standard may be held for only two years. During that time, continued deterioration will normally occur, requiring the future expenditure of funds to maintain minimum safety standards. If it is decided at a later date to upgrade the line from Class I to Class II (e.g., 10 mph to 25 mph), additional funds would be needed.

We propose that 3R lines such as ours be eligible for assistance for the duration of the program. The legislation should consider any rail branch line for assistance, and allocate available funds on a prioritized basis, considering the cost-benefit ratio of such expenditures.

Furthermore, the Bill as presently drafted precludes lines such as ours from receiving funds for capital projects, such as new track connections, track and siding extensions, and construction of intermodal facilities.

There are several important and necessary projects on our line that fall in these categories, which should be eligible for assistance and which under the proposed legislation as drafted, are not eligible.

The expenditure of capital funds for such projects on the "3R" lines can attract new business, and reduce operating costs, and thereby reduce the need for future subsidies. Projects like these are often

beyond the financial resources of smaller, short-line railroads such as ours, and thus should be considered for Federal-State assistance.

III.

My last area of concern is the lack of the "Designated Operator" concept in the present Bill.

We believe our success in Hillsdale demonstrates the role that a locally-owned and locally-operated Designated Operator short line railroad, can play in the preservation and restoration of essential rail services.

I have attached as an exhibit to this testimony, a copy of an article that appeared in the August, 1977 issue of Area Development, that highlights the proven benefits of preserving local rail services in Hillsdale County.

Our railroad is owned by rail users and concerned local citizens, those who benefit the most by retention of such rail services. We believe this community involvement is a vital factor in attaining long-term viability. Active participation with the railroad, both financially, as well as in planning and policy-making, will insure that community goals and objectives are properly considered.

In many cases, the nature of the market, or the physical characteristics of the line, do not justify the formation of a new, independent railroad, but conditions may be such that an existing adjoining railroad would be the logical operator for such a line, rather than the present owner or operator. In either case, that of formation of a new railroad, or allowing an existing adjoining carrier to operate a branch line, should be encouraged.

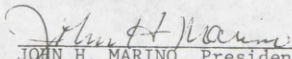
We recommend that the Bill be modified, to include among the alternative solutions to light density, branch line problems, the "Designated Operator" concept, which has worked so well under the "3R" Act. We believe that the subsidizer of these lines should be able to select the operator for such lines. This concept increases

the opportunity to achieve a local solution to a local problem. Such community involvement is essential if rail branch line service is to be preserved over the long term.

IV.

In summary, we have found that rebuilding and restoring essential rail services takes time, and a considerable financial commitment "up front". Many projects of a capital nature, such as track rehabilitation, and construction of new facilities, can aid in achieving long-term viability. In many cases, new, independent short-line railroads, acting as "Designated Operators" for the subsidizer, can provide cost-effective solutions to the problems of light density rail branch line services.

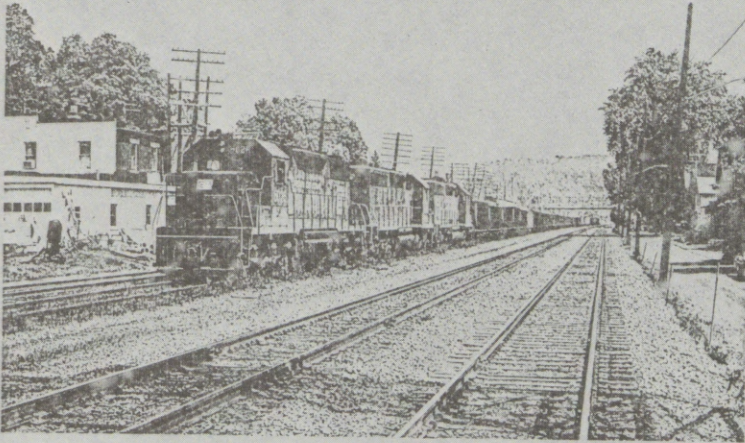
Respectfully submitted,


JOHN H. MARINO, President
HILLSDALE COUNTY RAILWAY
COMPANY, INC.
50 Monroe Street
Hillsdale, MI 49242

area development

august 1977

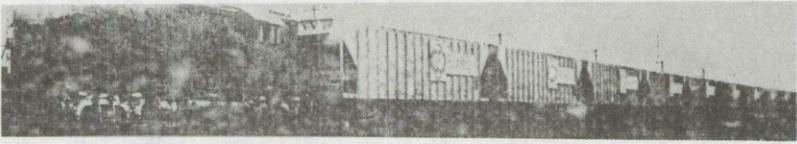
SITES & FACILITY PLANNING



Preserve Your Local Rail Service, You May Need It. Three Cases in Point:

1. New York's Mohawk Valley Tries New Approach
2. Pennsylvania Firms Turn to Railroading
3. Michigan Companies Set Example

THINK RAILROAD—to Assure Survival AN EDITORIAL



In Preserving Local Rail Service

Hillsdale County, Mich. Companies Set Example

By William E. Mears
Executive Director
Hillsdale County (Mich.)
Industrial Development Comm.

AFTER BEING PULLED from Paducah like a common box car, the green and yellow diesel locomotive sat on a siding with Hillsdale County standing tall on each side of the engine. Even at rest, however, the Hillsdale County Railway Co. engine represents a new twist in the development of rail freight transportation for 50 miles of track in Hillsdale County, Mich., and northern Indiana. Hillsdale, like so many other communities, has watched miles of railroad disappear. Along with the disappearance of the rail, the shippers began to feel the evaporation of service. Companies once located on or near main lines were now isolated on branch lines.

Switching, shipping and car availability dropped to the point that rail users cut back on rail and supplemented with trucks, or discontinued rail use entirely. Those companies that depended on rail freight managed to get by with a combination of rail and truck.

While service was not what it should have been, industry and agribusiness had some form of rail freight option. When Penn Central went bankrupt, however, a real threat to continued rail freight operations was felt. After the United States Railway Assn. Preliminary Systems Plan was made public, the threat became real. With the traffic count down due to Penn Central's lack of interest in serving its rail users on branch lines, the USRA found the 50 miles of rail line in Hillsdale County and northern Indiana unprofitable and not worthy of

inclusion in the Final Systems Plan. The study did find, however, that the line should be considered for subsidy due to the economic impact on the communities.

The shippers and the Hillsdale County Industrial Development

Commission recognized the subsidy as prolonging the inevitable, total loss of rail service. While the county awaited the State of Michigan's decision on its subsidy program, John Marino, a former intermodal planning manager at USRA, was studying the Final Systems Plan in the hope of finding a potentially profitable abandoned line in which he might base a small short line railroad. "Two things caught my eye

continued on next page

Short-Line Railroads

Advantages

1. Lower costs.
2. Better labor productivity by eliminating restrictive work.
3. Improved service.
4. More effective shipper-carrier communications.
5. Opportunities to generate supplemental income (car hire income, freight car maintenance, etc.).
6. Cooperative programs to attract new industry.
7. Increased local income due to local procurement of services, materials, wages, etc.

Disadvantages

1. May require subsidy or local assistance to start up.
2. Requires substantial revenue base to provide fixed overhead and administrative services; May require outside support services, such as accounting, traffic, engineering, etc.
3. Revenues are dependent on negotiated divisions with line-haul carriers.
4. Dependency on connecting carriers for equipment and line-haul service.
5. May be difficult to attract qualified supervision and management.

about the Hillsdale line," commented Mr. Marino: "The traffic density, 230 carloads a mile per year and the location on the line of one customer whose only alternative was relocation."

Mr. Marino's first contact concerning his idea for starting a railroad was Frank Macomber, a retired transportation engineer from A. T. Kearney. Together, they studied several geographical areas. "In addition to carloads a mile, the main criterion for the selection of the Hillsdale County branch line was that there was a rail-users group looking for a solution. Local cooperation and the numbers (carloads) made the difference," Mr. Marino pointed out.

During the time Messrs. Macomber and Marion combed the Final Systems Plan and toured different communities, a "new twist" in railroading began to emerge. Armed with the idea that a short line railroad financed by rail users and the local community could provide rail service superior to that of a large railroad, the principals began presenting it to the shippers.

"What makes the HCRC unique among short line railroads organized in the past is that this one is locally owned," Mr. Marino explained. "We have an operating manager, shippers and private individuals involved in the financing of the line. The employees take great interest in shippers; they own the railroad. There is a definite benefit in local versus, absentee ownership—greater identity with the customer."

Another advantage the HCRC possesses is the lack of a union. Without being compelled to have four-man crews, the HCRC is allowed the flexibility to serve customers who would go without service unless smaller crews delivered their cars. "Being a locally-based railroad without craft lines affords great flexibility. We can run special trains to expedite hot cars and switch on demand. (The HCRC switches DCA, a flour mill, two to three times a day.) As soon as cars arrive, they are delivered." Mr. Marino further pointed out, "We sometimes wait for the cars to be unloaded." On occasion, even the general manager can be seen switching the mill.

The community and the shippers

were eager to study alternatives to state-subsidized service by Conrail. Many felt that Conrail would be no different than Penn Central. They would still be a branch line served by a long-haul-oriented railroad.

With service as the main selling point, the shippers endorsed Mr. Marino's concept of a locally-owned-and-operated short-line railroad. But, to put the concept in operation, someone was going to have to throw the switch on the Penn Central trustees' refusal to sell or lease trackage. The switchman turned out to be Michigan.

Michigan was hardest hit by the Final Systems Plan. Twenty-two percent of the total lines not included in the final plan lay in the state. The Department of Highways & Transportation heard the hue and cry of industry and agriculture and moved swiftly to attack the needs of individual communities. The department most responsible for the development of the State of Michigan's rail reorganization plan was the Bureau of Urban & Public Transportation and its rail freight division. "They were very receptive and encouraged us," Mr. Marino commented.

The Department of Highways &

Transportation could see the proposed short line as a viable long-term answer for rail freight service in Hillsdale County, as well as being a potentially cheaper prospect than subsidizing ConRail. Michigan's proposal was for them to lease the track from the Penn Central trustees and pay the railroad a management fee until such time that they were making enough money to operate at a profit.

On April 1, 1976, a new railroad, financed locally and partially subsidized by the state, started operations. Truly an April Fool's day for those who see branch lines as non-profitable. And, as if a prophecy of things to come, the opening ceremonies had to be delayed so that the big green and yellow locomotive could finish switching the flour mill.

The advantages for the Hillsdale community are clear and the implications the HCRC has for others is evident. The short-line railroad concept may serve as a catalyst for others to reevaluate their position of dependency on carriers who are interested only in the long haul. □

Mr. ROONEY. Thank you, Mr. Gerst.

Where does this operation begin and where does it end? How many States does it cover?

Mr. GERST. It covers two States. It covers the Southern Michigan area 40 miles, and it goes into Indiana 15 miles.

Mr. ROONEY. Who previously operated this railroad?

Mr. GERST. Penn Central. Well, Michigan Central—Penn Central.

Mr. ROONEY. Is your railroad presently a profitable one?

Mr. GERST. It is under subsidy. The subsidy has been reduced each year from the time we started. Our new estimates are that the subsidies will continue to decrease. The revenues will continue to increase and our costs are going down.

Mr. ROONEY. In organizing the Hillsdale Railway how many former union employees lost their jobs?

Mr. GERST. No one lost their job directly as a result of Hillsdale coming into effect. It was a reorganization that took place. We were selected as designated operator. So it was not directly the result of Hillsdale Railway. You ask how many people were operating that particular segment of the Penn Central line?

Mr. ROONEY. Yes.

Mr. GERST. I think it was one or two crews and they had an agent there in Hillsdale.

Mr. ROONEY. When you were designated to be the designated operator was there any other competition?

Mr. GERST. I don't know that. We presented our proposal and we met with the States of Michigan and Indiana a number of times, with a number of significant detailed outlines of what we planned to do. And they did give us a thorough check as far as our abilities.

Mr. ROONEY. In what way is your railway able to attract more revenue than the previous operator, Penn Central or Michigan Central?

Mr. GERST. I don't think Penn Central is a fair example because at the time we took over, Penn Central was, I think, in a state of decline and disrepair. I think the concept of a locally owned and locally managed railroad which we brought to Hillsdale Railway caught the whole State and perhaps the whole county by surprise with the concept that people can do an "operation bootstrap" and make it work and invest in it, see that it works. The shippers on the line and the stockholders in the company have an interest in making the vital rail service work.

Penn Central is a bad example. If we had taken over from another rail line it might have been an equal service, at first, but we would have attempted to create economy and good service on a month's notice.

Mr. ROONEY. Thank you very much, Mr. Gerst. We appreciate your testimony here today. I regret very much that the operator was not here but his statement will become part of the record.

Mr. GERST. Thank you very much, Mr. Chairman.

Mr. ROONEY. That concludes our hearing.

[The following letters and statements were received for the record:]

COMMITTEES:
ARMED SERVICES
MERCHANT MARINE AND
FISHERIES

COUNTIES:
ACCOMACK
CHARLES CITY
ESSEX
GLOUCESTER
JAMES CITY
KING GEORGE
KING AND QUEEN
KING WILLIAM
LANCASTER

CITIES:
HAMPTON
NEWPORT NEWS
POQUOSON
WILLIAMSBURG

GUS EDWARDS
ADMINISTRATIVE ASSISTANT

PAUL TRIBLE
1ST DISTRICT, VIRGINIA

Congress of the United States
House of Representatives
Washington, D.C. 20515

August 3, 1978

OFFICES:
512 CANNON BUILDING
WASHINGTON, D.C. 20515
(202) 225-4261

EXECUTIVE TOWER
Box 59
2101 EXECUTIVE DRIVE
HAMPTON, VIRGINIA 23666
(804) 836-3287
P.O. Box 897
TAPPANHOCK, VIRGINIA 22560
(804) 443-4740
P.O. Box 158
TABLEY, VIRGINIA 23441
(804) 787-7836

Honorable Fred B. Rooney, Chairman
Subcommittee on Transportation & Commerce
Interstate & Foreign Commerce Committee
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

We appreciated the opportunity to appear before your Subcommittee at its hearings on H. R. 11979. The opportunity which you provided to us allowed us to express our grave concerns about several sections of this bill.

We recommend to you the testimony of Mr. William Withuhn, a vice president of the Virginia & Maryland Railroad, and of the Maryland & Delaware Railroad. His testimony sums up the serious impact which this bill, in its present form, would have on the three states of Virginia, Maryland, and Delaware.

In addition, we would suggest that thought be given to two substantive amendments to the bill. In each case, we feel that Legislative Counsel can work out appropriate language. The rationale for the two amendments we suggest is given below:

(1) The most serious problem with H. R. 11979, in our judgment, is that it so adversely affects ongoing track rehabilitation programs now going forward under the "4R" Act. For example, Virginia's share of the appropriated funds for branchline assistance would be cut sharply by this bill. The U. S. Department of Transportation estimates the loss to Virginia to be at least half of current funding. Even if less than half, the impact would be disastrous. We are concerned,

collectively, because such a cut in Virginia's share would seriously undermine the health of the Virginia & Maryland RR, which is the key link in the rail planning of all three Delmarva states.

The bill, in its current form, is a clear signal to all states that, no matter how well they plan for long-range rehabilitation goals, the rug can be pulled out by a "new formula" at any time. For the safety of our citizens and for the long-run health of the V&M, all the applicable Federal agencies have recommended that certain track safety standards be met on the V&M line, and current funding would provide these track standards during the stipulated life of the 4R Act. But H. R. 11979 would render this impossible and hamstring the V&M at just the point when it is turning the rail situation around on Delmarva. Midwestern states, for example, have no assurance under this bill that the same thing could not happen to them later on, the next time someone suggests a revised allocation formula.

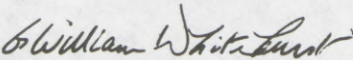
Therefore, we urge the Subcommittee to insert amended language in Section 104 of the bill which would have the effect of protecting ongoing, fully-approved programs now underway. After three years of planning, the dollar amounts required to finish these programs are well known. All this planning was done, at Federal urging, under the stipulation of a funding stream ending in 1981. Therefore, a "hold harmless clause," protecting the integrity of ongoing track rehabilitation programs in the several states having such programs, should not be difficult to work out.

All the states, we feel, should be in favor of such a clause, so that the long-range planning mentioned so often in this bill will not be done in vain. DOT should also be agreeable to such a change, since the basic formula in Sec. 104 can be preserved, with provision for the successful completion of programs now well advanced.

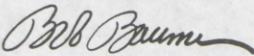
(2) We also feel that there should be an amendment to facilitate interstate sharing of rehabilitation funds, on a regional basis, as provided in the language in H. R. 8225. The present DOT-sponsored bill is silent on such a provision. DOT spokesmen, however, state that they have no serious objections to interstate sharing, and have approved several such arrangements in several areas. Unfortunately, with a change in Administration, this policy might change. Therefore, the bill should explicitly provide an interstate, regional sharing policy. Such sharing was an all-important element in the viability of the Delmarva rail plan.

We are grateful for your attention to our concerns. Delmarva has become a national model for the sort of rail "turnaround" envisaged by the 3R and 4R Acts. We want to see that model succeed.

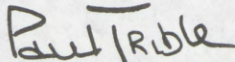
Sincerely,



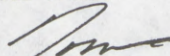
G. William Whitehurst



Robert E. Bauman



Paul Tribble



Thomas B. Evans, Jr.



Louis J. Gambaccini
 XXXXXXXX
 COMMISSIONER

STATE OF NEW JERSEY

DEPARTMENT OF TRANSPORTATION

1035 PARKWAY AVENUE
 TRENTON, N. J. 08625

July 11, 1978

Honorable Fred B. Rooney, Chairman
 Subcommittee on Transportation & Commerce
 House Committee on Interstate & Foreign Commerce
 2125 Rayburn House Office Building
 Washington, DC 20515

Dear Congressman Rooney:

The following comments on HR 11979, the Local Rail Service Assistance Act of 1978, are submitted by the New Jersey Department of Transportation (NJDOT) for inclusion in the official record of hearings to be held on July 12 and July 13, 1978.

The NJDOT currently has an active Light Density Line program and generally supports legislation which authorizes continuation and expansion of the existing federal-local rail service assistance program. As a member of the National Conference of State Railway Officials, we fully support the following positions that will be taken by the Conference before your subcommittee during the aforementioned hearings:

- States should be allowed more than two years to support projects if it is determined that such additional time would be in the public interest.
- States should be given greater freedom in determining which projects they wish to sponsor; and,
- A program should be established to provide financial assistance to light density lines before they are forced to file for abandonment.

In addition, we would like to offer the following recommendations concerning several portions of HR 11979 which we feel need strengthening or modification.

1. Section 7 of this bill amends section 5(k) of the DOT Act (49 USC 1654(K)) by setting forth new eligibility criteria for rail programs eligible for financial assistance specified under section 5(f) of the DOT Act.

We suggest that section 7 further amend subparagraph (3) of section 5(k) by adding an eligibility criterion which would render rail lines operated by railroads in reorganization under Section 77 of the Bankruptcy Act (11 USC 205) eligible under certain conditions for financial assistance for rehabilitation projects funded pursuant to section 5(f)(3) of the DOT Act.

In New Jersey, one such railroad, the New York, Susquehanna and Western, has been steadily deteriorating while still providing valuable service and benefits to its users and to the State's economy. As a result of a recent FRA order, the shipment of hazardous materials on this line was temporarily halted due to the poor condition of its tracks. The NJDOT asked the FRA whether this project was eligible for the rehabilitation of this railroad to assure the continued movement of hazardous materials. The FRA determined it was not eligible. The NJDOT subsequently executed an agreement with the railroad on June 6, 1978 granting up to \$225,000 in State funds to the railroad to correct this condition on an emergency basis.

In order to restore the New York, Susquehanna and Western to a reasonable condition to avoid further embargoes caused by FRA rail safety orders, additional work, beyond the scope of the current emergency project, is required. Since a rail line such as the New York, Susquehanna and Western would be ineligible for rehabilitation assistance under this bill because it is not "potentially subject to abandonment" as specified by section 1A(5)(a) of the ICC Act—we believe an amendment is needed to render such rail lines eligible for assistance. Such assistance would permit rehabilitation of viable rail lines operated by railroads being reorganized under Section 77 to the extent necessary to permit the continuation of adequate and efficient rail freight service. Viable rail lines operated by bankrupt companies should not have to be officially designated as "potentially subject to abandonment" before they are deemed eligible for financial assistance under this program.

Please find attached a suggested amendment to accomplish these ends which has been prepared by my staff, (Appendix A).

2. Section 4 of this bill amends section 5(g) of the DOT Act (49 USC 1654(g)) by allowing states to provide their local share of financial assistance under this program through two types of in-kind benefits.

While we support this amendment, we find that neither benefit covers facts pertinent to the State of New Jersey which would give rise in New Jersey to a local share credit for in-kind benefits.

First, the in-kind benefit concept should be expanded to credit a state for investments in rail assistance projects begun since April 1, 1978, which were ineligible for federal aid under Section 5 of the USDOT Act until the enactment of this bill; viz, the emergency rehabilitation project on the New York, Susquehanna and Western during this period. We believe such efforts should be recognized as a State commitment to local rail services. Such expenditures should be treated as a State's local share of program costs in FY'79 and subsequent fiscal years.

Second, the in-kind benefit concept should be expanded to include the forgiveness of claims by states against the trustees of the lessor estates to the extent a settlement, set-off or other form of financial arrangement between the parties results in the reduction of rental payments for light density lines due and owing since April 1, 1976. For example, where a state forgives the repayment by a railroad of a rail passenger subsidy overpayment in exchange for forgiveness of past due or anticipated light density freight line rental payments to the railroad by the state, the state relieves the federal government of its share of such rental payments as elements of reimbursable program costs. The federal government will therefore be asked to finance a smaller portion of rail service assistance costs incurred in a state. Hence, a state's local share should be credited to the extent it reduces costs, such as rental payments, which otherwise would have been reimbursed by the federal government.

Please find attached suggested amendatory text prepared by my staff concerning these two recommendations, (Appendix B).

3. Section 7 amends Section 5(k)(2) of the DOT Act by specifying new eligibility criteria for the rail property acquisition program provided under Section 5(f)(2) of the DOT Act. Under section 402(c)(5) of the 3R Act, certain commuter rail properties (feeding traffic into the Northeast Corridor) are eligible for financial assistance toward their purchase. We believe that this bill provides for continuation of this program but requires clarification. In addition, we believe the program should be expanded to include federal reimbursement for all commuter rail properties acquired by states which would

not be eligible for such assistance under this bill as drafted. Specifically, we recommend that section 5(k)(2) of the DOT Act be amended to clarify the continuation of the assistance program authorized under section 402(c)(5) of the 3R Act and to render all other commuter rail properties that may be acquired by states under section 206(d)(5)(C) of the 3R Act (known as 900 day option properties) eligible for financial assistance provided pursuant to section 5(f)(2) of the DOT Act.

In addition, we think that because of the extraordinary opportunity posed by the 900 Day Option, it is necessary to exempt such properties from the application of the benefit/cost criteria proposed under this section.

Please find attached suggested language prepared by my staff concerning these recommendations (Appendix C).

4. HR 11979 should assure the continuation, expansion and modification of commuter rail service operated by Conrail pursuant to an agreement imposed upon Conrail pursuant to section 303(b)(2) of the 3R Act, when a local subsidy is offered to provide such services. Such assurances were provided in the forerunners of HR 11979, namely, S.1793 and S.1890.

a. Continuation of Service

The 3R Act contains provisions assuring that Conrail be bound to contracts which were in effect at the time of its enactment. Currently, it is unclear whether the provisions of section 304(e) of the 3R Act govern the continuation of commuter service subject to such contracts when such contracts expire.

In New Jersey, the NJDOT's agreement with the former Erie Lackawanna Railway is one example of such a contract. Upon expiration of this contract, there is no assurance that the provisions of Section 304(e) govern the continuation of such service according to RSPO standards.

We therefore recommend that section 304(e)(4) of the 3R Act be amended by adding a new clause (c) which would provide that Conrail continue operating commuter rail service (if a local subsidy is offered in accordance with RSPO compensation standards) for a rail line after its Section 303(b)(2) service contract expires. If this legislation is enacted, State and

regional transportation agencies would be protected from Conrail's use of a threat of discontinuance proceedings as a lever to obtain financial concessions beyond those contained in RSPO standards.

b. Expansion and Modification

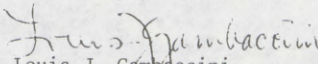
The NJDOT, as well as other governmental transportation agencies, has been considering the expansion and modification of service beyond the level which existed at the time of conveyance. The NJDOT has been experiencing continuing problems with Conrail regarding the implementation of such service changes. During the nearly-concluded contract negotiations between Conrail and the NJDOT, Conrail has refused to agree to make service changes even when offered subsidies pursuant to RSPO standards.

To assure that Conrail is responsive to service expansion or modification requests made by a local body, we recommend that section 304(e) be amended by adding a new subparagraph (7) which would require Conrail to be responsive to such requests when a local subsidy is offered in accordance with existing RSPO standards. I have attached copies of these amendments as they appeared in the last Committee Staff Print of S.1793 (Appendix D).

5. A provision should be added to this bill which would create a federal insurance pool to provide liability insurance for the operation of light density line service. Currently, liability insurance costs are extremely expensive in certain areas of the country because of the high risks inherent in the operation of this type of service. If, through the mechanism of an insurance pool, these risks were borne on a nationwide basis, insurance costs would be reduced and overall operating costs would consequently decline.

Thank you for the opportunity to present our comments on this important legislation. My staff and I are available for any further discussions the committee may deem necessary.

Very truly yours,


Louis J. Gambaccini
Commissioner

LJG:smc

cc: Honorable James J. Florio
Honorable Andrew D. Maguire
Honorable Matthew J. Rinaldo
Honorable James J. Howard
Clifford Elkins
Jack Fryer
Joseph Capalbo
Larry Gurman

APPENDIX A

Section 7 should amend section 5(k) of the DOT Act (40 USC 1654(K)) by inserting a semicolon in the amended subparagraph (3)(A) after "potentially subject to abandonment", and by adding at the end of subparagraph (A) after the last semicolon the following: "or the line of railroad related to the project is operated by a railroad being reorganized through section 77 of the Bankruptcy Act (11 USC 205) and without rehabilitating and improving rail properties on such rail line the railroad would not be able to continue to provide adequate and efficient rail service;"

APPENDIX B

Section 4 should amend section 5(g) of the DOT Act (49 USC 1654(g)) by striking the period at the end of the second sentence and inserting a semicolon in lieu thereof, and by adding after this semicolon the following: "or (3) the use of set-offs, settlements, other forms of financial arrangements to the extent such actions cause a reduction in the federal cost of rail service assistance under Title VI of the Regional Rail Reorganization Act of 1973 since April 1, 1976; or (4) monies paid toward rehabilitative programs entered into between April 1, 1978 and October 1, 1978 would have been eligible under this act after such date."

APPENDIX C

Section 7 should amend section 5(K) of the DOT Act (40 USC 1654(k)) by striking the period in the amended subparagraph (2)(A)(iii) after "(45 USC 762 (c)(3))" and inserting a semicolon in lieu thereof, and by adding after this semicolon the following: "or (iv) a line or part of a line of railroad, or rail properties on such a line of railroad which was eligible for acquisition pursuant to section 206(d)(5)(C) of the Regional Rail Reorganization Act of 1973, as amended."

Amended subparagraph (2)(B) of subsection (k) should be amended by striking the period at the end of the sentence and inserting a semicolon in lieu thereof, and by adding after this semicolon the following: "provided, however, that this requirement is not a condition for the eligibility of a project involving acquisitions pursuant to section 206(d)(5)(C) of the Regional Rail Reorganization Act of 1973, as amended."

5 (k) Section 304(e) of the Act (45 U.S.C. 744(e)) is
6 amended:

7 (1) in subparagraph (4) thereof by:

8 (A) striking the comma at the end of clause
9 (B), and inserting “; or” in lieu thereof;

10 (B) adding a new clause “(C)” thereto as
11 follows:

12 “(C) offers a rail service continuation pay-
13 ment, pursuant to subsection (c)(2)(A) of this
14 section and regulations issued by the Office pursuant
15 to section 205(d)(5) of this Act, for the operation
16 of rail passenger service provided under an agree-
17 ment or lease pursuant to section 303(b)(2) of this
18 title or subsection (c)(2)(B) of this section where
19 such offer is made for the continuation of the serv-
20 ice beyond the period required by such agreement
21 or lease: Provided, That such services shall not be
22 eligible for assistance under section 17(a)(2) of
23 the Urban Mass Transportation Act of 1964 (49
24 U.S.C. 1613(a)(2)), as amended.”;

1 (2) by adding at the end thereof the following new
2 subparagraph:

3 “(7) If a State (or a local or regional transportation
4 authority) in the region offers to provide payment of the
5 provision of additional rail passenger service (as herein-
6 after defined), the Corporation shall undertake to provide
7 such service pursuant to this subsection (including the dis-
8 continuance provisions of paragraph (2) hereof). An offer
9 to provide payment for the provision of additional rail pas-
10 senger service shall be made in accordance with subsection
11 (c)(2)(A) of this section and under regulations issued by
12 the Office pursuant to section 205(d)(5) of this Act, and
13 shall be designed to avoid any additional costs to the Cor-
14 poration arising from the construction or modification of
15 capital facilities or from any additional operating delays or
16 costs arising from the absence of such construction or modifi-
17 cation. The State (or local or regional transportation author-
18 ity) shall demonstrate that it has acquired, leased, or other-
19 wise obtained access to all rail properties other than those
20 designated for conveyance to the National Railroad Passenger
21 Corporation pursuant to sections 206(c)(1)(C) and 206
22 (c)(1)(D) of this Act and to the Corporation pursuant to
23 section 303(b)(1) of this title necessary to provide the addi-
24 tional rail passenger service and that it has completed, or will
25 complete prior to the inception of the additional rail service,

1 all capital improvements necessary to avoid significant costs
2 which cannot be avoided by improved scheduling or other
3 means with other existing rail services, including rail freight
4 service and to assure that the additional service will not detract
5 from the level and quality of existing rail passenger service.
6 As used in this subsection, additional rail passenger service
7 shall mean rail passenger service (other than rail passenger
8 service provided pursuant to the provisions of paragraphs
9 (2) and (4) of this subsection) including extended or ex-
10 panded service and modified routings, which is to be provided
11 over rail properties conveyed to the Corporation pursuant to
12 section 303(b)(1) of this title, or over (i) rail properties
13 contiguous thereto conveyed to the National Railroad Pas-
14 senger Corporation pursuant to this Act or (ii) any other
15 rail properties contiguous thereto to which a State (or local
16 or regional transportation authority) has obtained access.
17 Any provision of this subparagraph to the contrary notwith-
18 standing, the Corporation shall not be required to operate
19 additional rail passenger service over rail properties leased
20 or acquired from or owned or leased by a profitable railroad
21 in the region.

MICHIGAN RAIL ACTION ASSOCIATION

Suite 836, One South Capitol Bldg., 111 S. Capitol Ave., P.O. Box 20247, Lansing, Michigan 48901

Phone: (517) 482-1851 Messages: (517) 372-6550

William Mears,
President

Charles Lapp,
Vice President

James Bennett,
Sec./Treasurer

JULY 13, 1978

TESTIMONY OF BARBARA CLARK, EXECUTIVE DIRECTOR
MICHIGAN RAIL ACTION ASSOCIATION
REGARDING HR 11979, "LOCAL RAIL SERVICE ASSISTANCE ACT OF 1978"

BEFORE THE HOUSE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE
OF THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

The Michigan Rail Action Association is a non-profit organization whose membership includes business and industry that use rail transportation. Our purpose is to promote the preservation and improvement of rail service necessary to Michigan's economy.

We first wish to emphasize that we support maintaining the ratio of Federal to State funding at 80/20, as proposed in the bill. However, we believe the purpose of the bill should be a long term goal of revitalizing rail service rather than to provide short term rehabilitation and transitional operating subsidies. Short term rehabilitation will only result in continued decline in usage and postpone eventual abandonment of light density lines. Shippers and communities must be assured of continued long-term rail service in order to plan their futures and utilize rail service to its fullest potential.

Furthermore, we believe a new competent operator in many cases will perform a better service to the shippers than the abandoning carrier, and therefore should be allowed the opportunity to receive financial assistance. The abandoning carrier has little incentive to achieve viability but will do the minimum to operate the line as long as the subsidy is there. On the other hand, a new designated operator, having only his line to operate, will concentrate his efforts on revitalizing the line, and consequently help the abandoning carrier by providing it with traffic yet taking all responsibility for the light density line.

In summary, we believe this bill should emphasize the long term revitalization of the railroads in the United States. Rail users cannot commit themselves to increased use of rail service if the government and rail operators are not also committed to preserving the rail line.

Respectfully submitted,

Barbara Clark
Barbara Clark
Executive Director
Michigan Rail Action Assoc.



THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

PROMOTER OF SOUND
ECONOMICAL TRANSPORTATION

Office of the President • 900 Long Ridge Road • Stamford, CT 06902

July 17, 1978

PRESIDENT

J. ROBERT MORTON
Vice President, Corporate
Transportation and Distribution
Combustion Engineering, Inc.
900 Long Ridge Road
Stamford, CT 06902

VICE PRESIDENT

W. K. SMITH
V.P. / Dir. of Transportation
General Mills, Inc.
P. O. Box 1113
Minneapolis, MN 55440

TREASURER

STANTON P. SENDER
Transportation Counsel
Sears, Roebuck and Co.
1211 Connecticut Ave., NW No. 802
Washington, D.C. 20036

CHAIRMAN

EXECUTIVE COMMITTEE
DONALD BOYES
Director of Transportation
Reynolds Metals Company
P. O. Box 27003
Richmond, VA 23261

VICE CHAIRMAN

EXECUTIVE COMMITTEE
HARRY D. GOBRECHT
Vice President, Transportation &
Physical Distribution
United States Gypsum Company
101 South Wacker Drive
Chicago, IL 60606

JAMES E. BARTLEY

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JOHN A. McQUAID

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LYNNETTE CLEMENS

ASSISTANT TREASURER

DONALD E. TEPPER

DIRECTOR OF INFORMATION

JEFFREY C. KLINE

DIRECTOR OF ECONOMICS

JOSEPH W. AYRES

DIRECTOR OF
LEGISLATIVE SERVICES

Suite 410
1909 K Street, NW
Washington, D.C. 20006
(202) 296-4535

The Honorable Fred B. Rooney
Chairman
House Interstate and Foreign Commerce
Committee's Subcommittee on Transportation
3150 House Office Building Annex No. 2
Washington, D.C. 20515

Dear Chairman Rooney:

The National Industrial Traffic League submits this statement for the record of hearings on H.R. 11979, the "Local Rail Service Assistance Act of 1978." The bill amends Section 5 of the Department of Transportation Act (49 U.S.C. 1654) to allow the states more flexibility to assist in rail service on certain branch lines before the lines are abandoned. The bill also sets the cost of sharing at 80 percent Federal and 20 percent matching for the states and lifts the five-year limitation on the life of the program.

The League is a voluntary organization of 1800 shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation services of all carrier modes. It is the only shipper organization which represents all types of shippers nationwide. Its members include large, medium and small shippers who use all modes of transportation and who ship all types of commodities. The League is not a panel or committee of a trade group, nor a spokesman for a particular commodity or transportation point of view, and does not permit carrier membership.

The League's primary concern is to provide for the nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated.

To arrive at positions reflective of the broad range of shipper interests within the League, the League membership at its annual and special meetings considers, debates and votes on actions to be taken. During its more than seventy years of existence, the League has frequently been the spokesman for the nation's shippers before Congress on proposed transportation and regulatory reform legislation.

The League is already on record in Policy D-1, *Subsidies to Carriers*, as approving "rescue" operations such as subsidies to the northeast railroads. The League members believed in 1975 and still believe the entire United States could have been seriously affected by the cessation of rail service of bankrupt regional railroads. League Policy D-1, *Subsidies to Carriers*, reads:

"The government should not subsidize transportation agencies except during the development period or to achieve other social and governmental services on a basis approved by the Interstate Commerce Commission. When subsidies are provided, they shall be separated from transportation charges. This policy position does not apply to

railroad passenger train services which are required to be performed by governmental order or mandate, and which cast a direct out-of-pocket cost burden on other users of the railroads involved.

Where government subsidy is necessary to maintain essential rail public passenger train service, regulation and economic control in those circumstances should be with the funding agency or some other appropriate agency other than the Interstate Commerce Commission, except in cases where carrier and contracting agency cannot agree upon amount of compensation for required services.

Passenger train services if required in the public interest should be paid by the public and not by freight shippers."

The National Industrial Traffic League has supported bills similar to H.R. 11979 and has appeared before the Subcommittee on Transportation and Commerce on numerous railroad matters dating back to the early 1970's in strong support of this type of legislation.

The League, however, opposes *long term* subsidies to carriers. The Interstate Commerce Commission and a number of states started late on the implementation of the rail service assistance programs involving rehabilitation, maintenance, and improvement of rail properties. The League recognizes this and therefore is *supportive* of the 80 percent Federal and 20 percent matching for the states, *on a short term basis only*. It cannot, however, support the lifting of the five-year limitation on the life of the program which will make it permanent.

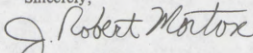
It is the League's position that these programs should retain their initial purpose to provide limited temporary assistance to shippers and communities faced with discontinuance of rail service until studies and planning can develop long term solutions to the freight transportation needs of local rail users.

Additionally, the League believes the states should be given the maximum amount of flexibility by the Federal government to do their own planning and implementation of programs. The numerous states involved in the rail assistance program are in the best position to make decisions on these matters wherever possible. League members also believe light density lines should be preserved where economically possible. No abandonment should occur without first carefully studying all possible alternatives to provide economic service.

As far back as January 30, 1975, then President August Heist wrote the House Interstate and Foreign Commerce Committee urging the Committee to take prompt and favorable action on legislation to provide emergency grants and loan guarantees to finance operations of the Penn Central and other bankrupt railroads in the northeastern states. President Heist wrote, "I have heard from many, many League members who are concerned about any delay in enacting the pending financial aid plan. It has been indicated that the Penn Central will embargo shipments in mid-February and could possibly close down operations unless it receives some additional financial aid. It is extremely important to shippers that rail service be continued. Any disruption in the rail network as a result of a Penn Central shutdown would be disastrous in view of the current economic situation." Congress went on to pass the legislation (P.L. 94-5) and averted a northeast shutdown.

League members strongly favor continuation of the interim program for the reasons stated *but not a permanent* subsidy to the carriers.

Sincerely,


J. Robert Morton
President

JRM:mah

cc: Members, House Interstate and Foreign Commerce Committee
Mr. William Druhan ✓
Mr. J. Paul Malloy
Mr. W. E. Williamson
Mr. Thomas Ryan



NATIONAL RAILWAY UTILIZATION CORP.

1100 Centre Square East / 1500 Market Street / Philadelphia, Pennsylvania 19102 / (215) 569-2220

JOHN H. REES
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

July 18, 1978

The Honorable Fred B. Rooney, Chairman
Subcommittee on Transportation and Commerce
Room 3150, House Office Building
Annex #2
Second and D Streets, S.W.
Washington, D.C. 20515

Dear Mr. Chairman:

My name is John H. Rees, President of National Railway Utilization Corporation, which is the "designated operator" of the former DeKalb Line (USRA Line 89RA). National Railway Utilization Corporation operates the railroad properties of the former Ogdensburg Bridge and Port Authority Railroad as well as the DeKalb Line under the name of the St. Lawrence Railroad. These lines together compile sixty (60) miles of main line track in the northwestern portion of New York State in the vicinity of the town of Ogdensburg. My purpose in writing this letter is to present our views regarding H.R. 11979, the "Local Rail Service Assistance Act of 1978".

As a matter of background, National Railway Utilization Corporation operates several short line railroads and, as a part of that operation, provides fleets of freight cars for the National Rail System. We are not, as are some other investors, interested solely in return on investment resulting from Incentive Per Diem. We feel strongly that light density rail lines can, and do, make an enormous contribution to the health of the National Rail Transportation System and can keep hundreds of thousands of cars of freight on the rail and off the highway.

We are, therefore, committed as a general philosophy, to programs which will retain the maximum utilization of such light density lines. While we recognize that the Bill before the Committee at this time does not attempt to deal with the United States rail problems as a whole and cannot, therefore, be all inclusive, we hope that the Committee will institute maximum flexibility in the Local Rail Assistance Program. We ask not only that the specific areas of limited project eligibility and short time frames for operating assistance (addressed later in this testimony) be broadened, but also that the Committee frame language so as to draw local communities and shippers, states, and private interests to the preservation of rail service. Artificial limitations in the law might well inhibit useful and innovative combination of public and private support for rail service. States should have full discretion to fit matching Federal dollars into those projects where the dollar will do the most good and not be limited to definition, which will undoubtedly be even further narrowed by Federal Railroad Administration Regulations, of "rehabilitation" and "operating subsidy". For example, an industrial area

within a state may be short of a certain type of railroad car to service local traffic. Railroads may have such cars available, but in bad repair. Perhaps the Federal dollars would be well spent in construction of shops to repair those bad ordered cars. States should be allowed to make that kind of program decision.

Further, we feel the ability of state and local governments to work with private investors and shippers to expand and improve service on presently unprofitable lines should not be limited to simple financial assistance. We would recommend that H.R. 11979 be used as a vehicle to clear regulatory and administrative impediments to making a weak line strong. We propose that once a line under five million (5,000,000) gross ton miles is registered by a railroad as potentially abandonable, that states, localities and private individuals and organization be given maximum encouragement to take ownership of these lines whenever an acceptable arrangement with a main line carrier can be made. This should be done free from regulatory restraint so long as the Interstate Commerce Commission receives a guarantee that service will continue on the line for a given period, for instance - five (5) years.

Our first specific concern in H.R. 11979 is the short period of time the Bill allows for receiving financial aid on a line. The "Declaration of Purpose and Policy" section provides only; (1) short term rehabilitation with the ultimate objective being to provide future adequate transportation service, no further federal assistance, and (2) short term transitional operation subsidies while shippers look to other modes for transportation. This short term policy is too limiting and does not afford appropriate consideration to the fact that some lines with potential economic development in increased traffic need a longer time period to realize profitability. A line may be just at the point of showing successes and need continued assistance to achieve profitability. We urge that the Subcommittee provide in the Bill for longer time frames during which the states may continue to authorize operating assistance to rail lines.

Secondly, we are particularly concerned with the portion of the Bill relating to "Project Eligibility". It is almost bizarre to us that in order for a project to be considered eligible for financial assistance, either rehabilitation or operating subsidies, it must have been declared by the ICC that the public interest warrants abandonment or discontinuance of rail service or that the railroad has indicated that the line is potentially abandonable. The process or even threat of abandonment is too drastic and

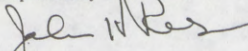
negative in requirement for financial assistance. This process could only impair the confidence of shippers in rail service on the line and would unduly hazard the chances of the eventual revival of the railroad. We urge that eligibility for federal assistance not be limited to railroads whose major interest is the abandonment process.

We write these suggestions as a result of our experiences in operating the St. Lawrence Railroad. The St. Lawrence Railroad operates various properties in New York State for which we receive a rail operator subsidy for the DeKalb Line portion from the State of New York with a portion of such subsidy being paid from Federal funds under the Department of Transportation Act (49 U.S.C. 1654). We began our operation in New York State on April 1, 1977 as the designated operators of the DeKalb Line, a portion of the old Penn Central, because of the pressure from shippers on this line who did not wish to see their service terminated. Since the beginning of our operation in New York State we have been able to improve service and now provide trailer-on-flat car operations on the adjoining line from the St. Lawrence Seaway Port of Ogdensburg, New York, to interchange with Conrail at Norwood, New York. In handling this intermodal traffic, we have acquired ten new shippers in the few weeks since the opening of the TOFC Terminal. An important outgrowth is that the Port of Ogdensburg is now the gateway into and out of Canada. This is an entirely new, direct benefit for Conrail. In our short time of management, we can see that the small operation has made positive contributions to the overall rail system in the United States. Although such traffic may travel on a branch line for only a short distance, it may then travel on someone else's main line for thousands of miles. In addition to the direct assistance to Conrail, we expect that this revival of this line will lead to additional industrial development and increased employment in this area. These benefits have been aided by the financial assistance afforded to keep that DeKalb portion of this railroad line in operation. The benefits that short lines make to the overall rail system is a positive contribution in the American Railroad System. They play a continuing role for the American public in maintaining a low cost, energy efficient form of transportation. We believe our suggestions to modify the two aspects of the Bill which limits periods for financial assistance and links aid to the abandonment process would be in the interest of a more productive and positive legislation for the railroads nationally as well as in the communities locally.

In conclusion, we are in favor of financial aid to projects and activities that play a part in the returning of the railroad industry to health after many years of neglect. The railroads have urgent needs and we appreciate the concern of the Chairman and the Subcommittee in solving the problems of American transportation.

We thank you for receiving our letter and hope you will consider our views as you continue your proceedings on "Local Rail Service Assistance Act of 1978".

Respectfully submitted,


JOHN H. REES
President

/cmh

THOMAS B. EVANS, JR.
DELAWARE

COMMITTEES:
BANKING, FINANCE AND URBAN
AFFAIRS
MERCHANT MARINE AND
FISHERIES

1113 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-4165
844 KING STREET
WILMINGTON, DELAWARE 19801
(302) 571-6181

Congress of the United States
House of Representatives
Washington, D.C. 20515

June 22, 1978

Honorable Fred B. Rooney
Chairman, Transportation and
Commerce Subcommittee
Interstate and Foreign Commerce Committee
House of Representative
Washington, D. C. 20515

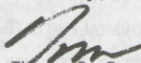
Dear Mr. Chairman:

I have recently been contacted by the Director of the Delaware Transportation Authority, Mr. John B. Wallace, regarding the Railroad Amendments Act of 1978, S. 2981.

It would be appreciated if Mr. Wallace's statement could be made part of the hearing record on S. 2981 during your Subcommittee's consideration.

With kindest regards,

Sincerely,



Thomas B. Evans, Jr., M.C.

TBE:ja

Enclosure



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
DELAWARE TRANSPORTATION AUTHORITY
P.O. Box 778
DOVER, DELAWARE 19901

OFFICE OF THE
DIRECTOR

PHONE (302) 678-4306

MY NAME IS JOHN B. WALLACE. I AM DIRECTOR OF THE DELAWARE TRANSPORTATION AUTHORITY, THE DESIGNATED AGENCY FOR RAIL PLANNING IN DELAWARE. I THANK YOU FOR THE OPPORTUNITY TO READ THE FOLLOWING COMMENTS INTO THE RECORDS:

SECTION 104 - FORMULA ALLOCATION:

PLANNING

THE PROPOSED \$100,000 ALLOCATION FOR RAIL PLANNING IS A REASONABLE FIGURE FOR THE RAIL PLANNING NEEDS OF DELAWARE. HOWEVER, TWO IMMEDIATE PROBLEMS SURFACE. FIRST, THE POSSIBILITY OF THE AVAILABLE PLANNING FUNDS NOT BEING SUFFICIENT TO FULFILL THE \$100,000 FIGURE CREATES A SITUATION OF UNCERTAINTY AND SKEPTICISM ABOUT THE FINANCIAL STATUS OF THE PROGRAM AMONG THE STATES. THE SECOND PROBLEM IS MUCH LARGER IN ITS IMPACT ON OVERALL STATE PARTICIPATION. DELAWARE, AS WELL AS MANY OTHER SMALLER STATES MAY WELL BE TRAPPED IN THE DILEMMA OF HAVING A SUBSTANTIAL RAIL PLAN, WITH INSUFFICIENT FUNDING TO IMPLEMENT THE PLAN BECAUSE OF THE ELIGIBILITY ALLOCATION FORMULA.

IMPLEMENTATION

THE PROPOSED ELIGIBILITY ALLOCATION FORMULA IS BASED ON THE CONCEPT THAT THE RAIL MILEAGE WHICH IS "POTENTIALLY SUBJECT TO ABANDONMENT" SHOULD RECEIVE A GREATER SHARE OF THE FUNDING THAN THE RAIL MILEAGE WHICH HAS BEEN ABANDONED. THIS IS NOT THE CASE IN DELAWARE, AND IT IS NOT THE CASE WITH THE TITLE IV STATES IN GENERAL.

THE PROPOSED $2/3$ AND $1/3$ FORMULA WILL EFFECTIVELY ELIMINATE ANY RAIL PROJECTS THAT DELAWARE HAS PLANNED FOR. THE CONTINUAL CHANGING OF "ELIGIBLE" MILES OF RAILROAD WITH THE ANNUAL ISSUANCE OF SYSTEM DIAGRAM MAPS WILL CREATE A SITUATION OF MASSIVE BUREAUCRATIC GAMESMANSHIP WHEN THIS FORMULA IS IMPLEMENTED.

THE STATE OF DELAWARE REALIZES THAT AN ALLOCATION FORMULA MUST BE BASED ON ELIGIBLE RAILROAD MILEAGE. THROUGH OUR EXPERIENCE WITH THE 3R ACT AND THE 4R ACT, WE HAVE FOUND IT IS ALSO NECESSARY TO HAVE A MINIMUM PERCENTAGE OF THE TOTAL AVAILABLE FUNDING GUARANTEED TO ALL STATES. WE THEREFORE SUBMIT THAT THE EXISTING ALLOCATION FORMULA BE BASED ON THE STATES TOTAL ELIGIBLE MILEAGE AS A PERCENTAGE OF THE TOTAL ELIGIBLE MILEAGE WITHIN THE UNITED STATES, WITH THE MINIMUM ONE PER CENT GUARANTEED TO EACH STATE, BE MAINTAINED.

ANOTHER PROBLEM WITH THE ALLOCATION FORMULA IS THAT IT DOES NOT ADDRESS THE REGIONAL CONCEPT OF RAIL SERVICE. AS YOU KNOW, WE HAVE BEEN ADDRESSING THIS ISSUE, ALONG WITH OUR NEIGHBORS, MARYLAND AND VIRGINIA, EVER SINCE THE ORIGINAL RAIL ASSISTANCE LEGISLATION WAS INTRODUCED. THE THREE STATES WHICH MAKE UP THE DELMARVA PENINSULA HAVE ALWAYS WORKED TOGETHER AND APPROACHED THE UNIQUE PROBLEMS OF THE REGION AS ONE ENTITY. THROUGH EXTENSIVE EFFORTS WITH THE FEDERAL RAILROAD ADMINISTRATION, WE HAVE SUCCEEDED IN PRODUCING A REALLOCATION SO THAT THE UNEXPENDED DELAWARE FEDERAL FUNDS WOULD BE CHanneLED TO MARYLAND AND VIRGINIA TO SUPPORT THEIR EFFORTS TO CONTINUE TO PROVIDE RAIL SERVICE TO THE PENINSULA. THE PROPOSED ALLOCATION FORMULA WILL ELIMINATE ANY POSSIBILITY OF PROVIDING EXCESS FUNDS TO A NEIGHBORING STATE FOR THE IMPROVEMENT OF THE REGION. IT IS STRONGLY URGED THAT THIS REGIONAL PROBLEM BE ADDRESSED BY THIS LEGISLATION.

SECTION 106 - PROJECT ELIGIBILITY:

THE PROPOSAL TO LIMIT PROJECT ELIGIBILITY TO TWO YEARS WILL NOT ALLOW ENOUGH TIME TO FULLY IMPLEMENT REHABILITATION PROJECTS. THE TITLE IV PROGRAM ALLOWS FOR A FIVE YEAR PROGRAM WITH WHICH TO DETERMINE THE FUTURE NEEDS OF A RAIL LINE. BASED ON OUR EXPERIENCE, IT IS RECOMMENDED THAT A PROJECT BE ELIGIBLE FOR ASSISTANCE FOR A PERIOD OF FOUR YEARS.

JBW:RJT:LD
JUNE 13, 1978

TESTIMONY OF WISCONSIN GOVERNOR MARTIN J. SCHREIBER
for the Transportation & Commerce Subcommittee
of the House Committee on Interstate and Foreign Commerce,
the Honorable Fred B. Rooney of Pennsylvania, Chairman, presiding

Mr. Chairman and Members:

You have before you in HR 11979 a bill of vital importance to Wisconsin and its sister MidWestern states. It represents the intent of the national Administration to take first steps toward facing up to the growing rail crisis which gravely threatens the small cities and towns, the farms and the largely independent businesses, industries and cooperatives so typical of the heartland of America.

Earlier this spring I, along with other governors comprising the MidWestern Governors Conference, was interviewed about the major problems facing chief executives of the MidWest states. I understand that the result of the interviews was an overwhelming consensus of governors and their staffs that one of the major problems in the region was the deteriorating condition of the railroad system.

From my vantagepoint as governor of a state committed to effective multi-modal transportation services for its citizens, I see that the current railroad dilemma is apt to take on calamitous proportion if remedial actions are not soon taken. Wisconsin, and other MidWestern states, in partnership with the Federal government, has made excellent strides in coping with highway and aeronautical problems. Together we are making advances in the mass transit mode.

We have not yet harnessed ourselves, however, to address in tandem the problems afflicting railroad branch line service to communities, shippers, businesses, industries and farms. Only

recently has the bankruptcy of the Milwaukee Road made an impact on the national scene.

And spinning off that troublesome situation is the plight of the branch lines. It is clear that railroads throughout the Midwest are in precarious financial condition and, as a result, they are taking a hard look at the profitability of branch lines.

Abandonment -- a very harsh reality -- looms as a viable alternative to the railroads in many cases; in my opinion, in all too many cases.

We -- the states and the Federal government -- must take action to preserve branch line service where it is both socially and economically justified. At the same time, we in the states will have to acknowledge forthrightly that not all service can be maintained because of the gravity of financial circumstances.

HR 11979 provides an opportunity for the Federal/state partnership to get moving with speed and decisiveness to alleviate, and perhaps eliminate, some of the problems crushing down on affected branch lines.

HR 11979, however, is but one facet of the multi-faceted solution demanded by the pervasive rail crisis. The bill itself, without the necessary financial muscle behind it, will constitute an inadequate band-aid approach to meeting the pressing needs of the branch lines and those they serve.

I am aware that the National Conference of State Railway Officials (NCSRO) has identified by means of a national survey a critical need for \$130 million in Federal support of current efforts to prevent, or moderate, branch line difficulties under existing 4-R Act provisions. We in the Midwest stand strongly for that level of funding and look expectantly to the Congress to move aggressively toward that goal.

I am deeply disappointed that the Federal Railroad Administration saw fit to request but \$67 million for Fiscal Year 1979 for branch line purposes. Wisconsin's anticipated allocation from that amount is about \$1.2 million -- barely enough to enable the state to continue its support of troubled Lake Michigan car ferry service. Our response to NCSRO stated a need of \$4.8 million! The \$67 million level simply is an unrealistically low figure which, in the face of stark reality, justifiably must be increased.

My disappointment is tempered a bit, however, by the realization that the congressional budget committees are alert to the need identified by NCSRO and that those committees are looking to action on HR 11979, for example, as a clear and true indicator of need for additional funds.

Recent action by the House Appropriations Subcommittee on Transportation to raise the \$67 million by \$5 million of unobligated funds is a most modest step in the right direction. On behalf of Wisconsin I already have filed with Senator Bayh's subcommittee a statement in support of the \$130 million level. I urge the House to advance toward the \$130 million level.

Permit me to provide you some background information which persuades me to address you so forcefully.

In 1920 Wisconsin was criss-crossed by 7,500 miles of railroad track. Today, 5,500 miles remain. About one-fifth of that mileage is threatened with abandonment.

From the time that I assumed office about a year ago until now, more than 150 miles have been approved for abandonment. That is only the tip of the iceberg.

Presently, there are 11 applications for abandonment pending before the Interstate Commerce Commission (ICC) totaling more than 436 miles. There are 15, totaling more than 300 miles, for which

abandonment applications are expected within three years, and there are 12 others, measuring more than 275 miles, that are potential abandonment subjects. Many of these lines would be principal candidates for the pre-abandonment assistance that HR 11979 would authorize.

Wisconsin has the unenviable ranking of third among all states in rail mileage under formal consideration for abandonment. Its total about doubles the national average. The abandonments are proposed in all sections of the state.

In addition, the ICC currently is considering applications to abandon three Wisconsin-to-Michigan car ferry routes totaling about 215 miles. A fourth, totaling about 90 miles, just this week was authorized for abandonment. A fifth route has been saved by a 4-R Act subsidy.

Along with abandonments, Wisconsin is concerned about the bankruptcy proceedings filed last December by the Milwaukee Road. This railroad provides nearly one-fourth of Wisconsin's rail mileage, carries about one-fourth of our total rail traffic, serves all but four of our largest 20 cities -- and is the only rail service for 184 of our communities!

The impact of abandonments and bankruptcy upon the communities served by Wisconsin railroads worries the state, the communities, the companies, farmers, commercial enterprises served, and local governments.

There is the potential harm to the economy through job loss or endangerment, both within the railroad industry and in the industries served. There is concern about potential impact on highways because loss of rails puts more trucks on the roads, leading to higher highway maintenance and construction costs.

There is the prospect of higher future distribution costs. Wise traffic managers know that when one mode disappears, lack of competitive forces opens the way to rate increases.

Wisconsin does not subscribe to reliance upon gloom and doom rhetoric or to looking to Washington, D. C. for all the answers. Indeed, state government has been pursuing an aggressive, deliberate course of action designed to oppose abandonments where the state believes abandonment is not justified.

The state also recognizes that public funds are required to maintain some rail service, where service continuation is economically and socially justified but is not profitable for railroad companies. Wisconsin made substantial advances in the last legislative session in affirming a vital state interest in rail matters.

In addition to directing the Department of Transportation to develop program initiatives for future biennial budget consideration in harmony with a State Rail Plan, the Legislature appropriated over \$7 million in state transportation funds to purchase and preserve rail corridors and to make loans and grants to local governments to purchase rail property for continuing services that otherwise would have been discontinued. The Legislature also increased the state budget provided to match Federal operating subsidy funds for rail service continuation under the 4-R Act.

But Wisconsin and other states cannot solve rail problems alone. Federal leadership in partnership with state and local governments is badly needed. This is why Wisconsin looks with anticipation to such legislation as HR 11979, accompanied by a budgetary commitment to assure that the policy and program initiatives can be implemented successfully.

A key feature of HR 11979, essential to a workable branch line preservation program, would authorize granting of Federal-state aids

for rehabilitation of branch lines subject to, but not yet authorized for abandonment. With a host of emerging branch line problems, Wisconsin sees great merit to taking action to assist troubled lines when the situation still may be turned around.

Since the focus of HR 11979 is on lines in trouble, Wisconsin is pleased to see that the methods proposed for allocating Federal assistance funds are responsive to clearly identifiable trouble situations. Putting dollars where the problems are is a logical and defensible utilization of Federal funds, and I commend to you the use of system diagram map mileages as the basis for allocations.

As to major concerns, I ask that your Committee take pains to assure that the states will have maximum flexibility in responding to demonstrated needs; also, that your Committee examine carefully the prohibition on operating subsidies after two years. The latter point is not necessarily fatal to the bill, however. I do believe the Committee will want to review that feature of the bill at a later session in light of experience.

While we in Wisconsin are working with affected communities, shippers, etc. -- sometimes to the extent of developing shortline service -- our efforts will be enhanced by the passage of enlightened Federal legislation that allows us to act to preserve service before abandonment raises its ugly head.

I state with conviction that Wisconsin is not seeking a Federal hand-out. What we do need is a Federal "hand-up" to vitalize the partnership of the states and Federal government in addressing most effectively the emerging Midwest rail crisis.

If the Congress comes to grips with the identified and documented problems, both from policy and program initiative standpoints, the nation, and especially the Midwest heartland area, will be spared

the inevitable turmoil and citizen discontent which arises in the wake of inadequate responses.

I commend HR 11979 to you as a good first step -- certainly not as an end-all -- in this critical area.

Coupled with sufficient funding, the bill will provide an opportunity for evaluating alternatives for future legislation involving the states and Federal government in striking at the root causes of the problems.

I urge the Congress, through the enlightened actions of your Subcommittee and its parent body, to move vigorously and decisively to assert its interest, concern and leadership in focusing on these critical branch line problems.

Thank you, Mr. Chairman and members, for the opportunity you have given me to provide Wisconsin perspectives for your consideration.

Martin J. Schreiber
Governor, State of Wisconsin



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

TESTIMONY OF PETER J. SOLOMON
DEPUTY MAYOR FOR ECONOMIC POLICY AND DEVELOPMENT
CITY OF NEW YORK

Submitted to the Subcommittee on Transportation and Commerce
of the Committee on Interstate and Foreign Commerce

On H.R. 11979, the Local Rail Service Assistance Act of 1978

Mr. Chairman and Members of the Committee, I wish to thank you for giving the City of New York this opportunity to testify concerning the important features contained in the proposed Local Rail Service Assistance Act of 1978 (H.R. 11979). The City has long argued the importance of high quality rail freight service for the Northeast and in particular, for New York City:

- efficient and viable rail freight service is a vital component of the City's continuing role as the nation's leading business center
- efficient and viable rail freight service is a vital component of the City's intermodal and containerized transport network, serving new port development, commercial, and industrial activities.

The City would like to express its strong endorsement of this bill to liberalize and make permanent the federal government's branchline assistance program. In particular we welcome the

change of emphasis from one providing temporary operating subsidies to one which places the greater emphasis on rehabilitation.

In New York City there are several important branchlines that desperately require a timely and adequate infusion of capital and could, at the same time, meet rigorous cost-benefit criteria justifying this assistance. Unfortunately, state and local funds are too often inadequate and hence many worthwhile improvements must be postponed.

H.R. 11979 will provide much needed aid to provide states and localities with the opportunity to prove the viability of certain branchlines within a reasonable amount of time. It is an important step in the right direction.

Specifically the City welcomes those sections allowing monies to be spent on intermodal freight terminals as well as those for innovative experimental programs. The City recognizes the growing importance of intermodal (piggyback) service. Accordingly we have sponsored with New York State and the Port Authority of New York and New Jersey the current Metropolitan New York Intermodal Rail Freight Study to assess the feasibility of new intermodal facilities in the City and adjacent suburbs. In addition, as a Congressman Mayor Koch sponsored a measure directing the Federal Railroad Administration to undertake a study project to design a new light-weight, low-profile trailer-carrying rail car that would reduce operating costs, improve fuel efficiency, and, most important, overcome most if not all of the clearance obstacles currently precluding this service from operating directly into the City.

Under the proposed legislation, two important rail lines in New York City could benefit. They are the West Side Line in Manhattan and the Bay Ridge Line in Brooklyn. Rehabilitation money will permit a more expeditious and extensive improvement of these lines. Possible improvements include new piggyback and freight forwarder facilities that otherwise could not be afforded.

The rehabilitation and improvement of rail facilities cannot be totally effective if agreements between connecting carriers discourage the interchange of traffic over selected rail lines. Unfortunately, it appears that there are several instances where Conrail has imposed unnecessarily restrictive routings into the New York City area which have precluded connecting service to some or all sections of the City. For example, one of Conrail's rates for building, paving, and roofing materials to the New York port area destined for export specifically applies only to Port Newark, New Jersey, and not to any other location in New York. The result has been a decrease in revenues to local switching lines in the City and, in several instances, a resultant decrease in service quality. We wish also to cite the fact that Conrail has on occasion established long distance rates to competing areas close to but outside the City at rates considerably lower than those for New York City, thereby imposing hardships on industrial activity in our City.

The long established principle of rate parity to all points within the Port of New York must be again restated by the Congress. It is apparent that Conrail has chosen to misconstrue the message previously given to it in the Murphy amendment to the Railroad Revitalization and Regulatory Reform Act. This is particularly

important since the competitive rail service that Congress anticipated in this region when it approved the final system plan has not yet materialized.

In addition, the City of New York is still suffering from the inequities of inland rail container export rate discrimination which unfairly favors certain other Eastern ports. I am told that the Port Authority of New York and New Jersey will discuss this problem at great and persuasive length during subsequent testimony.

New York City is very concerned about the effects of these rate practices and hopes that they will be constructively addressed in the legislation under consideration.

The City of New York would like to have the Federal Railroad Administration study the problem of rail freight service along the Northeast Corridor.

It is widely recognized that continuing, and improved, through and local rail freight service on the Northeast Corridor is important to the economic recovery of the Tri-State Region. Accordingly, rail freight service must not be considered as a subsidiary service whose presence is merely suffered while attention is concentrated on improved passenger service.

There is substantial evidence that, in the last few years, freight trains in the Northeast Corridor have been delayed and in some instances switched to more circuitous and less efficient routings. As a result, industry has come increasingly to consider other transport modes or, in drastic circumstances, to move out of the region altogether.

The City of New York strongly endorses rehabilitating and improving rail passenger service. We feel, however, that this need not be done at the expense of rail freight. Both can be improved simultaneously if there is proper planning and cooperation among Amtrak, Conrail and other affected and concerned parties. Indeed, there is a strong possibility that improved freight service along the Corridor could make a significant financial contribution toward the goal of establishing effective high speed passenger service. This result, of course, would be to lessen the burden that this project places on the already hard-pressed taxpayer.

The City will support legislation that will produce a balanced examination of rail transportation in the Northeast rail corridor, and certain adjacent connecting services. We would, however, like the following issues, among others, examined as to their impact on Northeast Corridor freight services:

1. Current freight trackage fees.
2. Train priority and control policies.
3. Analysis of freight divisions for services originating or terminating along the Corridor.
4. Lack of an adequate Hudson River crossing.
5. General clearance problems.
6. Traffic congestion problems.
7. Impact of improved Corridor rail freight services on lowering highway maintenance costs.
8. Electrification/energy conservation effects including those resulting from traffic diversion to other modes or alternate routes.

In conclusion let me say that:

- 1) New York City applauds the intent of this legislation
- 2) would like to call the attention of the Committee to certain inequities that we believe exist in current practices, and
- 3) urges consideration of measures to shore up the rail freight potential of the Northeast Corridor.

August 1, 1978

STATEMENT OF L. RAY EASTIN, DIRECTOR, NATIONAL LIMESTONE INSTITUTE, INC.

Mr. Chairman and members of the Subcommittee, we thank you for giving us the opportunity to appear before this Committee to give the National Limestone Institute's views on matters affecting H.R. 11979.

The National Limestone Institute is an association of nearly 600 limestone producer companies from 36 states. In 1976, our Industry produced over 660,000,000 tons of stone, about 10,000,000 tons of which were railroad ballast. In fact, crushed limestone accounted for more than 40% of the railroad ballast sold or used in this country in 1976, and has historically been the primary source of ballast aggregate.

For the record, I am L. Ray Eastin, President of the State Contracting & Stone Division, Medusa Aggregates Company. Appearing with me are W. I. Thieme, Chairman of the American Aggregates Corporation; Daniel W. Johnson, Manager of Technical Services, G. & W.H. Corson, Inc.; Charles E. Stimming, Chairman The France Stone Company; Robert A. Wilkinson, Managing Director of the Ohio Aggregates Association; and Robert M. Koch, President, and Christopher G. Hankin, Vice President, of the National Limestone Institute.

Mr. Chairman, we appear before you today as a panel of concerned Industry representatives whose companies have furnished quality railroad ballast since the beginning of railroading in this Nation. Our purpose for testifying during the hearings on H.R. 11979 is out of concern for the proper use of the funds provided. H. R. 11979, as you know, represents a large Federal investment into the maintenance and rehabilitation of the Nation's light density lines. It provides, among other things, Federal tax dollars for the railroad industry to employ in the maintenance and upgrading of their deteriorated roadbeds. A significant amount of this money will necessarily be used to purchase ballast aggregate. With the infusion of Federal funds, our concern is that we not also see the infusion of unnecessary and wasteful specifications by the railroads or by the Federal Government for this material. We have been witnessing, unfortunately, such an infusion and resultant misuse of Federal funding under another Federal subsidized program: ConRail.

It is perplexing, the difference we've encountered in our business between the use of Federal funds in the purchase of aggregate for the two primary transportation systems: Highways and railways. FHWA procedures have recognized local conditions, and flexible specifications have been used, recognizing local economics and local problems. Research has been extensive, and materials have been, for the most part, evaluated on sound scientific data pertaining to the response characteristics of a particular stone for its specific end use. Empirical judgments, based on opinion, geological type, and non-germane testing procedures, have not been the rule in the highway industry as they have with ConRail. Transportation costs, energy use and economics have been analyzed and used as parameters in the purchase of aggregate for highway construction; they have not for ConRail. The disparity of these approaches makes an interesting comparison, the difference between an excellent use of Federal money and a wasteful use.

If the Federal government -- and ultimately the taxpayer -- is to get its money's worth from the subsidization included in H.R. 11979, the purchase of ballast must be done in an open competitive market with consideration for good economics and good engineering practices.

If it could be proven that limestone ballast was inferior or that another material was superior without question, gentlemen, we would not be here. We intend to lay before this Committee evidence that limestone ballast not only has served well but economically. We believe that empirical judgments have been made by a small number of railroad people which are not consistent with the facts. As this Nation begins to broaden its use of taxpayers' dollars to upgrade the seriously deficient roadbeds of the railway systems of this Country, we believe that there should be a re-evaluation of the present constraints on the use of limestone ballast.

We hope we are not misunderstood. We are not advocating that Congress become involved in the business of writing material specifications as part of H. R. 11979. Rather, we want Congress to be aware of the nature of what persists within its largest subsidized railroad program. Possibly in this way the railroads might be made aware that this Committee expects more prudent use of its money as provided under the "Local Rail Service Assistance Act of 1978."

The Problem

On August 21, 1974, Secretary of Transportation Claude S. Brinegar assembled a group of senior rail industry executives to discuss the problem of Penn Central track conditions. During the meeting, Secretary Brinegar suggested that a special advisory group of chief engineers be established to assist in developing a sound program for rehabilitating the Penn Central system. The chief engineers of six railroads subsequently met, and then conducted a study to: (1) evaluate the general condition of the Penn Central system, (2) review existing plans and programs for maintenance and rehabilitation and (3) formulate a plan for work to be done during the period 1975-1982.

In December 1974, the chief engineers' team submitted their Final Report. In evaluating the physical condition of the roadbed, the chief engineers noted the poor maintenance and badly deteriorating quality of the roadbed. The railroad engineers went on to make the following conclusion concerning ballast materials:

"On lines in the northern, western and southern regions, the ballast material generally is crushed limestone of very poor quality. After a time it pulverizes and becomes impervious to the passage of water. Ties lay in mudholes in the consolidated limestone ballast and constantly absorb the water during rainy times of the year. As a result, tie life is greatly reduced, so is rail life, and the cost to maintain track is higher than it needs to be.

"By contrast, ballast on the eastern, central and northeastern regions normally is a type of trap rock containing mostly basalt or granite material, which is probably among the best ballast obtainable for railroad use. Ballast condition on this part of the railroad is generally good to fair."

Subsequent to the issue of this report, limestone ballast producers noted a sharp reduction in ballast orders from Penn Central and, later, ConRail. Unofficially, since the advent of ConRail, there has been a near total ban on the purchase of any carbonate aggregate as ballast material. Officially, ConRail has adopted specifications which preclude the use of most limestones. As a result, ConRail is now shipping ballast up to 1,000 miles for placement on track adjacent to quality limestone ballast suppliers who had been furnishing hundreds of thousands of tons a year of ballast material in the past. Observations by our members indicate this expensive solution is not curing ConRail's track problems in the Midwest.

This exclusion was a sharp departure from proven purchasing practices, and one which obviously concerned our Industry. It was the feeling of the Limestone Industry that we were being denied the opportunity to furnish ballast based on opinion, not on an engineering evaluation or actual maintenance cost data. Investigation and research have proved us correct. The real cause of poor track performance is not solely related to ballast type, but rather to a heavily loaded, under designed support system, a lack of subgrade stability, excessive track deflections and inadequate maintenance. Under these conditions, even diamonds as ballast could not insure adequate roadbed performance. The crux of the problem is that ConRail continues to follow an illusory and expensive practice which will not significantly improve roadbed performance, but will use excessive amounts of money contributed by the American taxpayer.

What the Facts Show

The greatest truth in this area is that there is a dearth of knowledge concerning the principles and design of railway support systems, particularly as to the effects of ballast type. Although extensive studies and advancements have been made over the years in the performance of highway and airfield support systems, the present methodology for the design of track structures is primarily based on empirical considerations by railway engineers. Rational principle and the mechanistic response of material and structural components as a system are really just now being considered. As Professor Marshall Thompson of the University of Illinois has noted, "Dating to the days of the building of the locomotive engine by George Stephenson in 1814, the design of the railway support systems has been most empirical. In fact, in the early days railway support systems were not designed, but were rather constructed. To a large extent, this is also true today in the U.S. Over the years only sporadic efforts have been made in the United States to develop a better understanding of transient loading behavior of the railway support system."

What research has been done does not support ConRail's practice. Recent engineering studies indicate that subgrade support is vitally important and extremely variable in railbed performance, that the railroads have not paid proper attention to this variable, while no identifiable relationship between ballast type and performance has been revealed.

Three research programs are important to notice:

1. Professor Marshall Thompson's research is perhaps the most widely recognized investigation of ballast and rail track performance. Sponsored by the Federal Railroad Administration and the Association of American Railroads, this research program is in response to the railroad industry's search for a more durable track structure.

One of Professor Thompson's most important findings concerns the interrelationships among all components of a railway track support system. Rail track performance depends on many factors, he notes, such as rail type, ties, tie spacing, ballast quality and depth, wheel loading and subgrade (soil). According to Thompson, no one component can be singled out as a uniquely destructive agent in total rail track performance.

Professor Thompson did, however, pay close attention to subgrade, calling it one of the most variable components in the rail support system. Variation in subgrade can be the result of soil type, moisture content, frost actions, compaction conditions and other factors.

2. For specific data on the field performance of limestone ballast, Professor Kamran Majidzadeh of the Ohio State University was consulted by our Industry. Dr. Majidzadeh was asked to evaluate the engineering and physical properties of limestone ballast and to identify the major causes of performance problems encountered in various track structures.

In preparing his studies, Dr. Majidzadeh took 66 samples from 10 general locations on main line track approved and selected by the railroads. These locations were scenes of both satisfactory and unsatisfactory rail bed performance. It is Dr. Majidzadeh's professional opinion that, if limestone ballast was the cause of poor track performance, then: (a) there should exist distinct differences between the physical properties of ballast from areas showing unsatisfactory performance and satisfactory performance, (b) the poor track performance and pumping problems should be widely distributed rather than limited only to isolated areas.

Dr. Majidzadeh found neither of these assumptions to be true. He found the ballast materials for the unsatisfactory performance and satisfactory performance locations to have an identical range of physical properties. He found the poor performance areas to be isolated, and often separated by sections of several hundred feet exhibiting excellent performance.

In essence, Dr. Majidzadeh found track performance to be a complex function of the total railway support system. Like Professor Thompson, Dr. Majidzadeh found that the quality and nature of subgrade support was most often the determining factor in rail track performance.

Regarding ballast material, Dr. Majidzadeh's research substantiated that quality limestone ballast was performing according to specification in areas where adequate subgrade is available. Actual field observations reveal no indication that trap rock ballast improves track performance. In fact, at locations in Ohio and Indiana where deep sections of trap rock ballast have replaced quality limestone with no other corrective measures, roadbed problems continue to be encountered.

3. The Federal Railroad Administration is sponsoring the Facility for Accelerated Service Testing (FAST), from which a report has been made analyzing the data accumulated for up to 50 million gross tons of traffic. The report notes that the mean rate of deformation for both limestone and granite ballast, after approximately 5 MGT, is approximately identical. No discernible difference in the deformation properties of limestone and granite ballast test sections have been found within the first 50 MGT of traffic at FAST.

The 1974 Chief Engineers' Report was based on visual observations, and thus, it was really impossible for this Report to consider or judge any causal factors. The Report is informative only as an indication to the existing appearance of the surficial track system. It does not mention the subgrade, nor contemplate the railbed as a system of contributing factors. Yet, in the Midwest and South, where the Report indicated the most serious track maintenance problems, most lines run on poor, unstable upgrades. In a report in 1975, a Committee of the American Railway Engineering Association (AREA) observed:

"Some of the clay in the Midwest we find to be most unstable. One member reported it appeared to be excellent subgrade material when dry. When this clay becomes saturated with water, it behaves like an aspirin in a glass of water. Well-ballasted track looks good for months on end; then after one rainstorm, it will settle six to 12 in."

Under such conditions, drainage can be a grave problem, as can pumping but the problem lays not with the ballast.

The Cost to the Taxpayer

To the citizen, the exclusion of limestone aggregate from the ballast market may seem unimportant. But it is costing him big money. For example, in the Midwest, traprock ballast is being delivered from New England (a distance of up to 1,000 miles) to areas where there is a plentiful supply of quality limestone ballast available. Precious natural energy is thus wasted. Existing ballast hoppers are

used inefficiently, raising doubts about the justification for spending \$30 million on new ballast cars for ConRail, as some studies have suggested. In addition to the inordinate number of cars required, the transportation costs are about \$8 per net ton more than for locally available quality ballast. This increase in transportation cost alone more than doubles the original cost of the ballast. Manpower is also wasted, and cars left to long-range, low revenue hauls.

However, there will be larger, long-range costs attributable to this practice. The real causes of railbed deterioration are not being sufficiently addressed. Limestone ballast is being blamed for poor drainage and railbed performance when the true culprits are lack of subgrade stability, under-designed rail support systems, excessive track deflections and insufficient maintenance.

To believe that improved maintenance of the roadbed can be achieved through changing ballast types will serve as an unending posture of appearing constructive while actually wasting taxpayer's money.

The Right Way

A considerable number of self-supporting railroads continue to choose quality limestone aggregate as their primary ballast material. However, they are aware that all limestone aggregate is not the same. There are limestones that make excellent ballast, and limestones that should not be used for ballast. The same is true for any other type of aggregate. Individual materials must be thoroughly evaluated both chemically and physically in order to determine their suitability. The exclusion of a particular stone because of its type is totally without justification -- no aggregate with acceptable properties should ever be rejected simply on the basis of geological origin. A stone can only be reliably judged by sound, scientific data pertaining to the response characteristics of the specific stone for its particular end use.

Each stone is different, and each must be independently evaluated, and its field performance monitored. However, neither the "highest" quality product available nor the "cheapest" product available can automatically be determined as the most economical. In deciding which materials are the "best ballast buy for a buck", it is necessary to complete cost/benefit studies encompassing at least the following criteria:

1. Initial cost of the material at its source;
2. All transportation costs associated with delivering it to its point of use;
3. Best utilization of available ballast hoppers;

4. Energy utilization;
5. Placing costs;
6. Maintenance costs;
7. The economics of contingent effects on other parts of the track structure;
8. The anticipated useful life of the product and the track structure.

The railroads are hampered in reliably evaluating #8 above because the testing procedures they presently use measure ballast parameters which have no real correlation to the performance of railroad ballast. They are useful only to set very broad guidelines. The Manual of the American Railway Engineering Association recommends testing limits which basically realize this fact. A quality ballast material capable of performing adequately under stress conditions will meet their recommended limits, and most railroads use these specification limits, with slight modifications to accommodate locally available quality aggregate. However, ConRail insists on putting far greater reliance on these tests, and has set specification limits which preclude the use of countless quality ballast materials which are acceptable to profit oriented railroads. Meanwhile, research and test track data are showing aggregate characteristics which appear to relate better to the in-service performance of the ballast. It seems to us that test methods which relate directly to performance are far more desirable, and that these methods should be given serious review in order to establish more meaningful specification limits.

Conclusion

In summation, H. R. 11979 notes that the Congress expects the railroad industry "to commit themselves to long-term solutions which will enable the continued provision of adequate transportation service after the completion of the federally-assisted projects". We assume Congress also desires that this be accomplished with the proper utilization of taxpayer's money and our finite energy resources. To do so, the railroad industry must approach their track performance problems far differently than has ConRail. Ballast must be purchased in a fair and competitive market with proper consideration of both economic and engineering factors. Meanwhile, the real problems confronting the maintenance of reliable track performance must be intelligently addressed. One final comment: The privately financed, financially solvent railroads of this Nation; the ones who are vitally interested in the "best ballast buy for a buck" continue to purchase locally available quality limestone for ballast aggregates.

STATEMENT OF DANIEL W. JOHNSON, MEMBER, NATIONAL LIMESTONE INSTITUTE, INC.

With regard to the technical aspect of the problem, it is apparent that the ballast specifications are at the heart of the matter. There are two areas of concern; first, the excessive restrictiveness of the present ConRail specifications and, second, certain test methods which are unrealistic. In the railroad world, there are, generally speaking, two sets of specifications: those of ConRail and those of the other railroads. The private lines use the established specifications of the American Railway Engineers Association. To give you an example of the unrealistic testing procedures, there is a test for abrasion resistance of aggregate. This test, known as the Los Angeles Abrasion Resistance Test, is conducted by taking a sample of the ballast aggregate, placing it in a steel container which holds a number of steel balls, rotating it several hundred times and then measuring the amount of fines generated by the steel balls striking the stone. To date, we have been unsuccessful in our search to finding a location where railroad ballast is subjected to this kind of treatment, i. e., being beat upon by steel balls. You can see that this test has very little resemblance to what actually happens in the field. It should be pointed out that this test is included in both ConRail's specifications and the specifications of the American Railway Engineers Association. Not only is the validity of the test questionable, but the ConRail specifications are over three times more restrictive than those established by the American Railway Engineers Association. Let me try to emphasize this restrictiveness by using some personal knowledge that I have of the aggregate that we produce from the Ledger Dolomite in southeastern Pennsylvania.

Our Ledger Dolomite is classified by the Pennsylvania Department of Transportation as an anti-skid material. This implies a hard, durable, non-polishing aggregate and, in fact, is rated for skid resistance equal to traprock. However, the same aggregate is not acceptable for use as ballast by ConRail under their present specifications.

There has been some work done in recent years to improve both the testing and design procedures used by railroads. However, the extent of this work does not approach

the magnitude of similar research conducted in the highway field. Two of the leading authorities on this work in the Railroad Industry are Professor Kamran Majidzadeh of the University of Ohio and Professor Marshall Thompson of the University of Illinois, both of whom have worked with this Committee. It is interesting to note that their findings have also led them to support our position. The work done by Professor Thompson has been under sponsorship of the Federal Department of Transportation, and one of the things that has come out of this work is a test procedure. This procedure has been designed to duplicate the kind of loading frequencies that are encountered under actual field conditions. Again, I must relate back to my own experience with the Ledger Dolomite from southeastern Pennsylvania. In this regard, our aggregates have been tested by Professor Thompson, and after being subjected to a million cycles of load application, this aggregate generated only .6% of fines. Now keep in mind, this is with an aggregate that has an L.A. abrasion loss on the order of 28-32%. This is far in excess of the limit established by ConRail (12%). However, when traprocks and granites are tested with Professor Majidzadeh's methods, the range of fines generated is on the order of .4 to .8%. This is the same range in which the Ledger Dolomite falls. So you see, in the real world the generation of fines from the Ledger Dolomite, as well as from the aggregate approved by ConRail, is of the same order of magnitude.

The other area that I wish to touch upon is the design of the roadbeds. Here we would advocate a system's approach to design. Now this is not something new; as a matter of fact, the Highway Industry has been using the system's design approach for many years. In the Railroad Industry, the components of the system are: the rails, the ties, the ballast and the subgrade. When I speak of subgrade, I am talking about the ground on which the structure is built. Each of these components is necessary, and each must be considered during the design phase. It is extremely important that all these components be looked at

very carefully. For example, the best rails, ties and ballast that money can buy will not perform satisfactorily if the subgrade cannot support the load. So it is an entire system that must be considered, and if one component is faulty, the entire structure will not perform to design levels.

In the short term, we are suggesting that the specifications of the American Railway Engineers Association be adopted to ensure that locally-available quality aggregates will be utilized under this program. And in the long term, we suggest the development of meaningful specifications and test procedures so that they can be incorporated into a system's approach to the design of roadbeds. I hope you can see that the use of high-priced ballast is not the solution to the problem.

Thank you.

STATEMENT OF WALTER RICH, PRESIDENT, DELAWARE OTSEGO CORPORATION

My name is Walter Rich, and I am President of the Delaware Otsego System which operates four shortline railroads, three in the State of New York which are eligible for Title VIII assistance but are not presently involved in the program, and one in the State of Pennsylvania, the Lackawaxen & Stroubridge Railroad Corp., which received operating assistance under the 3-R Act and is now under the 4-R Act local assistance program.

We have a firm commitment to railroading and are not now involved in any other business. Our goal is to keep industrial shipping on the rails. We serve specific rail shippers that would otherwise leave the area or use truck. We believe that , in the long run, rail service on light density lines can become so responsive and energy/cost/environment attractive that it will attract business back to America's railroads.

We are convinced that shortlines can be an increasingly vital part of the railroad system. Our small lines which total only 83 miles among the four railroads generate 3600 cars of traffic, or 43 cars per mile, for the nation's railroads and, since the major railroads carry the larger part of the haul on each car, the revenue to them is far greater than it is to us. The service is vital to the shippers who are served by our lines. We play a major economic role in our communities and feel that the Delaware Otsego model has a bright future across the country. It is essential that small lines, such as ours, continue to

provide rail service to shippers so that merchandise can be kept on the rails instead of on the already overcrowded and deteriorating highways.

We say this as a philosophic background to our testimony on H.R. 11979. We believe that this legislation, as proposed, leads in the right direction, but falls far short of the incentives needed to provide the necessary momentum for maintenance and expansion of light line railroading.

Specifically, we wish to address four provisions. First, we are very concerned with the proposals which would limit the possibility of assistance to those lines either abandoned, or abandonable under ICC procedures. This would exclude lines which are already being operated by shortlines. Shortline railroads are essential to the future of all railroads and certainly should not be excluded from state rail programs. We are convinced that this is an oversight on the part of the drafters of the legislation proposed by the Administration, and that the discrimination against shortlines was not intended. Nonetheless, the Committee must take affirmative action to insure that shortlines will be included in state rail planning.

Second, we are concerned with the provision in the bill which would limit operating assistance funding to two years. Those of us who work in the business every day realize that two years is a very short time frame in which to change the prospects of any given company after a period of economic decline. For instance, we might in two years make enough track and service improvement be able to obtain commitments for new and expanded business which would make a line viable 3 or 4 years from that

date. However, under the proposed Administration bill, we would be unable to receive assistance from the state after the lead time, which would cast a cloud on the line from the beginning. All industrial decisions involve a great deal of time. The transportation question should be a stabilizing -- not destabilizing -- in those decisions.

Third, and closely related to the preceding issue, we feel that language in the bill would limit the ability of the State to give a line both operating assistance and rehabilitation funding. It seems obvious that both might be necessary to bring a failing line into viability. Artificial restraints between the two programs limit their ability to work in a coordinated way to maintain service.

Finally, we wish to support the testimony of the State of New York with regard to the formula which is proposed in the bill. Obviously, it is wrong to penalize those states which have already aggressively undertaken programs to aid local rail service, when that is the purpose of the program. To limit new federal funding to new lines listed for abandonment is to ignore aggressive programs already underway both in the Northeast and in such states as Iowa. Lines which are presently losing money but have had some rehabilitation funding would be ineligible for added assistance because the state had the foresight to work on those lines before their circumstances became so desperate that they are marked for abandonment. The same logic finally persuaded the Department that it should expand the program from abandoned lines to potentially abandonable lines, should also persuade the Committee that all light

density lines should be included for project eligibility and that the maximum flexibility should be provided to the states.

We appreciate the attention that your Committee is giving to light density railroading and feel that we are moving in the right direction. With the amendments we have suggested, we believe the Local Rail Service Assistance program can play an extremely important part in preserving and expanding our nation's rail service.

[Whereupon, at 12 noon, the subcommittee adjourned.]



