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THE WHITE HOUSE
WASHINGTON

Jim Cannon & Bill S.
Seems to me on #1,

(a) + (b) one could argue
that Sec. 7 DOT should
have both authorities. The
availability of such flexibility
would give him option to
meet the different problems
that are bound to arise.

Reaction?

THE WHITE HOUSE

WASHINGTON

April 29, 1975

MEMORANDUM FOR THE PRESIDENT

FROM:

JIM CANNON *JC* AND BILL SEIDMAN *BS*

SUBJECT:

Railroad Revitalization Act

The purpose of this memorandum is to get your decision on the three outstanding items proposed by Secretary Coleman for inclusion in your railroad bills.

These outstanding items are discussed in our April 24 memorandum to you and are further modified here as specified in the decisions on the April 25 memo (Tab A).

The outstanding issues are:

- a) Should an interest subsidy be a part of the loan program?
- b) Should a direct grant to railroads be included within the \$2 billion loan program?
- c) ICC - Bypass.

The outstanding questions are:

- 1) Should the already announced \$2 billion loan program include provision for payment of interest on the loans?

OPTIONS:

- a) Include a provision which enables DOT to pay, under certain conditions, up to one-half of the interest costs on any loans.

Support: Coleman.

Oppose : Simon, Dunlop, Seidman, Lynn, Cannon.

Approve _____ Disapprove _____

b) Provide for DOT to defer payment of the interest costs in certain specified cases such as when a restructuring or reorganization is clearly in the national interest and such restructuring could not be accomplished without an initial interest rate less than the going rate.

This proposal would also include authority for the loans to be accomplished through the Federal Financing Bank. Use of the bank automatically provides the borrower with a considerable interest break.

Support: Simon, Dunlop, Lynn, Cannon.

Oppose: Coleman.

Approve _____ Disapprove _____

2) Should you propose additional (beyond the \$2 billion loan guarantee program) railroad aid to provide emergency rehabilitation?

OPTIONS:

a) Permit a portion of the already budgeted \$2 billion loan guarantee program (approximately \$600 million) to be used for direct grants at the Secretary's discretion to any railroad involved in restructuring. This would be a new spending program, the justification for which would depend on the energy exception.

Support: Coleman.

Oppose: Simon, Lynn, Cannon, Seidman.

Approve _____ Disapprove NE7

b) The \$2 billion loan program should remain as originally proposed; that is, not include a grant program.

Support: Simon, Lynn.

Oppose: Coleman.

Approve NE7 Disapprove _____

3) What procedures should govern authority to bypass normal ICC procedures in cases where the Secretary determines assistance is in the public interest?

Compromise (between Justice and DOT) bypass provision that forces the ICC to act on the Secretary's restructuring within 6 months.
(See Tab B for draft proposal.)

Support: Levi, Coleman, Dunlop, Cannon, Hills, Seidman.

Oppose : None.

Approve RR7 Disapprove _____

TAB A

THE WHITE HOUSE
WASHINGTON

April 25, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

JIM CANNON
BILL SEIDMAN

FROM:

JERRY H. JONES

SUBJECT:

Railroads (Emergency Railroad
Revitalization Act)

Your memorandum to the President of April 24 on the above subject has been reviewed and the following decisions were approved:

Decision #1 -- The Secretary of Transportation should be given the authority to condition, where appropriate, loan guarantees and interest subsidies (if authorized) upon successful completion of a railroad restructuring plan (e.g. a merger).

Decision #2 -- The railroad legislation should not be submitted to the Hill until an administrative plan has been formulated giving the Secretary of Transportation the authority to "trigger" either a bypass of the ICC or the use of an expedited newly created regulatory process.

It is unanimously recommended that you direct the formation of a drafting committee with representatives of your Counsel's Office, DOT, the Attorney General, OMB and the Domestic Council to submit such a plan for your approval no later than May 4.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld

THE WHITE HOUSE

DECISION

WASHINGTON

April 24, 1975

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON AND BILL SEIDMAN *JS*

SUBJECT: RAILROADS (EMERGENCY RAILROAD
REVITALIZATION ACT)

I. PURPOSE

At your economic meeting tomorrow, Secretary Coleman will seek your decisions on proposed administration legislation designed to help the railroads.

The general issues are:

- Should you submit railroad legislation limited to
 - 1) regulatory reform; and,
 - 2) \$2 billion in loan guarantee;

Or, should all or any of the following be included

- A) ICC by-pass authority;
 - B) interest subsidy;
 - C) additional \$1.2 billion in emergency aid?
- What additional legislation and programs will be required to solve the overall railroad problem?

II. BACKGROUND

The Nation's economy depends on a functioning U. S. railroad system. Unfortunately, over one-half of the trackage in the country is unfit for high-speed operations and accidents and derailments have nearly doubled since 1967.

Eight Northeast and Midwest railroads are bankrupt (including the Penn Central), the so-called Granger roads in the Plains States are in precarious condition; average rates of return are extremely low; and, we have just had the largest quarterly deficit in rail history.

This very serious financial condition has led to a nationwide deferred maintenance problem which will cost between \$5 and \$10 billion to remedy.

Current and proposed Federal activity is concentrated in four general areas:

- . efforts to help the bankrupt railroads of the Northeast and Midwest through the Regional Rail Reorganization Act of 1973;
- . financial assistance for all railroads to buy rolling stock and to improve the roadbeds and other capital investments (through direct grants and loan guarantees);
- . regulatory reform; and,
- . emergency programs of grants and loans for specific railroads (including those in bankruptcy) to overcome the current unemployment, energy and cash flow problems.

There is a strong sense in Congress that something needs to be done to help the railroads, but that there is a danger that the government will end up pouring massive Federal funds into the railroads without solving the problems.

See Tab A for additional background information and Congressional situation.

III. ISSUES AND ALTERNATIVES

You are committed to sending Congress your Railroad Revitalization and Energy Transportation Act consisting of regulatory reform and \$2 billion for loan guarantees.

Secretary Coleman has asked you to add interest subsidy, ICC by-pass authority and \$1.2 billion in additional aid (which he calls the "Emergency Railroad Rehabilitation Program").

One of the reasons for decision now is that hearings begin on the railroad rehabilitation issue in the Senate Commerce Committee on May 1.

In addition to this proposed program, other very significant railroad issues will be coming to you for decision. For example:

- the financial problems of the utilities may require some form of government refinancing and additional railroad aid may be required in the energy independence context.
- many in Congress want to attack our current unemployment problem by creating railroad jobs with Federal grants.

See Tab B for a memorandum from Secretary Coleman on the issues presented.

The following are the specific decisions required at this time:

FIRST ISSUE - Should an Interest Subsidy be Added to the Loan Guarantee Program?

Secretary Coleman recommends that an interest subsidy be included as a component of the \$2 billion loan program. This added financial incentive might also enable railroads who are in such bad financial condition that they cannot apply for a loan without a loan subsidy to take advantage of the program. Under this proposal, the Secretary could agree to pay up to one-half of the interest costs on the loans. This program would cost up to \$80 million a year for each of the 20 years.

ALTERNATIVES

1. Propose an interest subsidy program as a part of the \$2 billion loan guarantee proposal.

Pro: Would create a highly leveraged program which, when tied to the ICC by-pass provision, permits the Executive wide latitude in restructuring the railroads of loan applicants.

Con: There are other Federal loan guarantee programs which have proponents arguing for interest subsidy. It could be argued that this is a new spending program.

2. Permit some form of interest payment, or deferred payment, under an existing mechanism but avoid a direct interest subsidy. (This could involve the Secretary allowing railroads to finance their loan under the Federal Financing Bank or defer interest payments in the initial years.)

Pro: This essentially accomplishes the objectives of the proposal by Secretary Coleman for interest subsidy without the obvious precedent of an interest subsidy program.

Con: This alternative for direct interest subsidy would likely be perceived as such among the special interest groups who would argue for equal treatment for their loan guarantee programs.

3. Provide no interest subsidy but state that we recognize that some railroads will have a problem participating under the loans and that we will study the issue and propose remedial legislation, if required.

Pro: Avoids all the problems of interest subsidy and candidly admits that additional Federal action will likely be required.

Con: Results in the Congress taking the initiative and, therefore, may result in a worse bill than the Secretary's proposal.

DECISIONS

1. Propose an interest subsidy program as a part of the \$2 billion loan guarantee proposal.

Approve _____ Disapprove _____

2. Permit some form of an indirect interest payment but avoid a direct interest subsidy.

Approve _____ Disapprove _____

3. Provide no interest subsidy but recognize the problem and leave options open for a possible later proposal involving an interest subsidy.

Approve _____ Disapprove _____

SECOND ISSUE - Additional (not in your FY 76 budget)
Railroad Aid to Provide Emergency
Rehabilitation.

Secretary Coleman has recommended a \$1.2 billion, 15-month program to help stabilize the deteriorating rail roadbed, as well as generate employment in productive tasks. The proposal involves additional loan guarantees and direct grants.

All railroads would be eligible to participate.

The program is in addition to the \$2 billion loan guarantee program described above.

No one questions the need for additional Federal support for the railroads beyond the \$2 billion loan guarantee, regulatory reform and efforts to salvage the bankrupt railroads in the Northeast and Midwest. The issue is whether this new program proposal is the proper response at this time and in this form.

We do not have any firm analysis on the extent to which the railroad problem is impacting our energy objectives. Therefore, we do not have a firm recommendation at this time on the extent to which the Federal Government should assist the railroads primarily for energy reasons.

ALTERNATIVES

1. Include additional funding (approximately \$1.2 billion) over and above the \$2 billion loan guarantee.

Pro: This will help prevent deterioration of the railroad roadbeds and make your railroad bill a major new initiative.

It will tend to preempt other legislation being proposed in Congress to link the railroad and unemployment problems by providing emergency grants for railroad jobs.

Con: We should not send up legislation beyond that to which we are already committed until we have a better understanding of the total railroad problem and its relationship to other railroad initiatives.

Such a grant program will not really help unemployment in the short term.

There are difficult issues involved in giving taxpayers' funds to solvent railroads.

There would be potential labor problems depending on whether force account or contract labor is used.

2. If you decide in favor of the new Railroad Rehabilitation Program, the only way to justify it under your "no new spending program" decision is by relating it to energy.

A way of explaining the impact of this on your "no new spending" decision would be to state that the \$1.2 billion will be offset against funds you have asked the Congress to rescind from the Highway Trust Fund.

Accordingly, if you decide to go with the new program, it can be explained as having energy impact and is thus an energy exception.

3. Provide up to \$600 million in grants within the \$2 billion funding level already established.

This is the amount of grants in the Senate's Emergency Employment Appropriation Act, reported out of Committee on April 22. Would leave \$1.4 billion in loan guarantees.

Use of grants would be restricted to bankrupt railroads and a limited number of special purposes designated by the Secretary (e.g., as incentive for merger or joint use of track).

Pro: Would have same basic benefits as Alternative 1 (prevent deterioration, preempt other-legislation), while avoiding some of the drawbacks. For example, it would pinpoint

the assistance where needed most -- on bankrupts. Avoids most of the problem of giving taxpayers' funds to solvent railroads. There is already a precedent for funding bankrupt lines.

Con: It could be argued that the \$600 million in grants would violate your policy of no new spending programs.

DECISIONS

1. Include additional funding (approximately \$1.2 billion) over and above the \$2 billion loan guarantee.

Approve _____ Disapprove _____

2. If you approve number 1 above, justify the program addition by relating it to "energy independence."

Approve _____ Disapprove _____

3. Provide up to \$600 million of program grants within the \$2 billion loan program.

Approve _____ Disapprove _____

Some of your advisers believe that the railroad issue must be considered in total and that an intensive examination of alternative approaches such as the controlled transfer system discussed briefly in Tab B should first be completed.

THIRD ISSUE - "By-Pass" or Reform Existing ICC
Authority Over Railroad Restructuring
When Federal Financial Assistance Is
Offered.

There is general agreement within the Executive Branch that the railroads are in serious need of restructuring to eliminate excess capacity. The problem is the cumbersome regulatory procedures administered by the ICC. Efforts to restructure through merger or various cooperative agreements in the past have failed, in part, due to the length of time involved in getting ICC approval.

The Secretary of Transportation proposes that the ICC be "bypassed" wherever a railroad restructuring proposal approved by the DOT also requires federal financial assistance. Thus, the Secretary would impose a restructuring plan (merger or other cooperative agreement) as a condition to his grant of a loan guarantee or interest subsidy and the ICC would have little or no authority to approve or disapprove such restructuring plan. Instead, the approval procedures would be moved, by legislation to the DOT which would conduct appropriate, but more expeditious, hearings.

Secretary Coleman feels strongly that the impetus for restructuring reform needs additional Federal financial assistance such as the "interest subsidy" discussed elsewhere.

The ICC would retain authority in all railroad restructuring that did not require Federal financial assistance.

The Attorney General raises these issues:

1. Should the Secretary of Transportation, who creates a railroad restructuring plan as a condition of a loan guarantee or interest subsidy, also have the authority to resolve all third party (shippers, competitors, public representatives) complaints about that plan.

2. He states that basic questions ("not mechanical details") have not been resolved as to how regulatory action can be expedited and still protect the legitimate interests of third parties in an expedited hearing procedure with fast judicial review.
3. Finally, he strongly states that before any legislation is sent to the Hill, decisions must be made on which he wishes to be heard, as to the appropriate relationship between the Secretary and the Attorney General. Specifically, what type of consultation or concurrence from the Attorney General will be required? He states that, at the least, the Attorney General must be required to give specific reasons in writing to backup his advice or consent.

All your advisers agree that your railroad legislation should not be submitted without proposals for effective reform of the ICC or for bypassing the ICC.

The legislative office believes there may be a better chance to drastically reform the ICC with a "super" new hearing panel than to give ICC control over railroad restructuring (where Federally financed) to DOT.

The Counsel's office agrees that existing ICC procedures must be bypassed as a condition for granting loan guarantees or interest subsidies and that the Secretary of Transportation should have the authority to "trigger" the bypass procedures but believes that both the Attorney General and the Secretary must clarify their positions before a decision can be made as to whether the bypass should be to:

- (i) the DOT;
- (ii) an expedited "super" ICC hearing panel; or
- (iii) a separate agency.

Decision #1

The Secretary of Transportation should be given the authority to condition, where appropriate, loan guarantees and interest subsidies (if authorized) upon the successful completion of a railroad restructuring plan (e.g. a merger).

Pro: all the reasons set forth above which suggest that such inducements are necessary to preserve a privately operated rail system.

Con: the use of federal financial assistance to foster mergers between privately owned companies is anti-competitive and bad public policy.

Favor: DOT, OMB, Domestic Council, and Counsel's Office.

Oppose: No one

APPROVE

DISAPPROVE

Decision #2

The railroad legislation should not be submitted to the Hill until an administrative plan has been formulated giving the Secretary of Transportation the authority to "trigger" either a bypass of the ICC or the use of an expedited newly created regulatory process.

All your advisers agree that such a plan must be formulated except the Attorney General who reserves judgment, and Secretary Coleman insists that the "plan" be formulated within one week.

It is unanimously recommended that you direct the formation of a drafting committee with representatives of your Counsel's Office, DOT, the Attorney General, OMB and the Domestic Council to submit such a plan for your approval no later than May 4.

APPROVE

DISAPPROVE

BACKGROUND

1. Condition of the Railroads and Statement of the Problem

The American railroads are essential to the nation's economy and are in danger of collapsing. Most freight is transported by the railroads (38% of ton-miles transported) and many basic products and commodities rely nearly exclusively on the railroads. For example, they transport 70% of the coal produced, utilizing 81% of the nation's mainline tracks.

Over one-half of the trackage in the country is unfit for highspeed operations. For safety reasons, trains are operating under Federal "slow orders" on nearly 50% of their tracks and at speed under 10 miles per hour for 20% of the tracks. Accidents and derailments have nearly doubled since 1967. Because of inefficient equipment and operating methods, a typical freight car moves loaded only 23 days a year.

The railroads are in very poor financial condition. Eight Northeast and Midwest railroads are bankrupt (including Penn Central), the so-called Granger roads in the Plains States are in precarious financial condition; average, industry-wide rates of return are 3% or less; and, they just had the largest quarterly deficit in rail history. Among the principal factors that have caused this dismal financial condition are:

- A) Outdated government regulation,
- B) Archaic work rules,
- C) Government subsidies to competing modes (such as barges and motor carriers).

These difficulties have resulted in the critical problem of redundant rail facilities and excess competition. P The magnitude of this problem is most clearly demonstrated by the severe physical deterioration in the rail industry. Recently, expenditures on track maintenance have fallen short of the amount needed by \$1 billion per year.

This has led to a deferred maintenance problem which will cost between \$5 - 10 billion to remedy. There is widespread sentiment in the rail industry and Congress that the Federal government should pay for a major part of this expense. The deferred maintenance problem is concentrated mostly in the Northeast and Granger states. Thus, a sound solution to the Northeast bankruptcy problem should go a long way toward achieving a nationwide solution.

2. Current Situation

Based on the history of government involvement in the railroad problem over the last several years, it is perhaps easiest to view the current situation in four categories of existing or proposed Federal involvement:

- A) Efforts to help the seven bankrupt railroads in the Northeast and Midwest -- through the Rail Reorganizational Act of 1973 and the attempts to create Conrail;
- B) Financial assistance for all railroads to buy rolling stock and to improve the roadbeds and other capital investments (through direct grants and loan guarantees);
- C) Regulatory reform; and,
- D) Emergency programs of grants and loans for specific railroads (including those in bankruptcy) to overcome the current unemployment, energy and cash flow problems.

These efforts and this memorandum do not consider the Federal involvement in rail passenger service. Essentially, AMTRAK and the Federal efforts to upgrade the Northeast Corridor are being dealt with separately.

Briefly, the following is a snapshot of where we are in each of the above categories.

- Bankrupt Railroads. For the past year, the U. S. Railway Association (USRA) has been designing a new rail system for the Northeast, to be owned and run by a new private corporation, the Consolidated Rail Corporation (ConRail). Two months ago, USRA published its preliminary plan, indicating that ConRail would require \$3 billion in Federal financing and would be federally controlled for at least 10 years. The Administration is aiming to develop a position on this plan by early May. An interagency task group has been established by the Economic Policy Board, under Secretary Coleman's leadership, to explore various alternatives to USRA's plan. This should result in an Administration legislative proposal, including both financing provisions and technical amendments to the Regional Rail Reorganization Act. USRA will submit its final plan to Congress by July 26.

- Capital Assistance. There have been a host of proposals ranging from Federal purchase of the railroad rights-of-way to modest loans for the railroads designed to permit all the railroads to upgrade their capital plants. The Administration approach has been to offer \$2 billion loan guarantee program which we attached to our regulatory reform proposal several years ago. These loans would be used by any U. S. railroad wherever located and regardless of their financial condition.
- Regulatory Reform. The proposed bill will: permit increased pricing flexibility; expedite rate-making procedures; outlaw anti-competitive rate bureau practices; and improve the procedures for dealing with interstate rail rates. In addition, the bill will outlaw discriminatory taxation of the rail industry.
- Emergency Programs. Most of the one-shot emergency railroad programs have been designed to cope with the unemployment problem. There are a host of specific proposals before Congress, including a \$700 million railroad employment proposal that has been agreed to by the senior members of the Senate Appropriations Committee. Most of these bills are ad hoc and provide grants and loans to be used by the railroads as a means of putting more track maintenance people to work. They are not designed to deal comprehensively with the overall railroad problem and it is not clear how they fit into other pieces of the solution.

3. Congressional Response

As indicated in the foregoing section, Congress is groping with the overall railroad problem. There is a strong sense in Congress that something needs to be done and that there is a great danger that the government will end up pouring massive Federal funds into the railroads without satisfactory protection of its investment or ever coming to grips with the root causes of the railroad problem. The range of solutions which have been suggested cover the whole spectrum from nationalization to doing nothing. For example, Senators Hartke and Weicker have introduced legislation to nationalize the railroads rights-of-way and Senator Randolph has submitted a bill to provide \$ billion to upgrade the tracks.

Senate Appropriations Committee has included \$700M for Railroad Improvement and Employment in the \$6B Emergency Unemployment Supplemental which will be reported out of committee April 23. The Senate Commerce Committee is expected to have authorization hearings on the rail improvement proposal the week of May 1 and Senate action is expected by mid May. Similar rapid action by the House is expected. Senators McClellan, Bayh, Randolph and Hartke strongly support the \$700M proposed (\$600M in grants and \$100M in loans).

It is cl^aar that Congress has not yet taken a look at the entire railroad problem comprehensively covering the near-term employment and cash flow problems along with the long-term bankruptcy and rights-of-way maintenance issues. More distressingly, there is a strong likelihood that Congress will pass ad hoc emergency grant and loan programs without the necessary regulatory reform.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20506

April 23, 1975

MEMORANDUM FOR ALAN GREENSPAN

FROM: James E. Miller III

SUBJECT: USRA's PSP and The Need for an Intensive Examination
of an Alternative Approach

Background

On February 26, 1975, the United States Railway Association (USRA) issued its Preliminary System Plan (PSP) for restructuring the seven bankrupt railroads in the Midwest and Northeast region. Under the PSP, portions of the bankrupt system would be transferred to the Norfolk and Western (N&W) and Chessie system; the rest, minus some light density lines, would be consolidated into a government-sponsored ConRail system. Although ConRail is projected by USRA to generate positive net income by 1978, needed investments for rehabilitation will cause a negative cash flow for 12 to 14 years. USRA estimates that \$3 billion in Federal government assistance will be needed during this period.

After hearing comments from the Administration, the ICC, and other interested parties, USRA will submit its Final System Plan (FSP) on July 26, 1975. Unless at least one House of Congress passes a resolution rejecting the FSP, it becomes effective on September 26, 1975. According to best information, USRA plans no significant modifications in the PSP.

This memorandum highlights the frailties of the PSP and recommends an intensive examination of controlled transfer of the bankrupt properties to solvent rail carriers prior to the Administration's adoption of a position on the PSP. The controlled transfer alternative has not been seriously considered, mainly because of alleged political infeasibility. The stakes, however, are high. The PSP is likely to involve much higher fiscal support than now envisioned and eventually produce a set of economic and political circumstances leading directly to the nationalization of the system. Controlled transfer appears to be the only viable alternative.

Major Defects of the PSP

1. Although the PSP calls for a competitive three-carrier system in the region, the amount of competitive service surviving under the PSP could be significantly less than exists today.
2. ConRail would not be viable:
 - a) Projections of annual revenue increases of \$200 million are unlikely to be realized because traffic growth and rate increases would not be forthcoming at assumed rates.
 - b) Rehabilitation costs are underestimated; most analysts believe that the \$3 billion estimate is overly optimistic.
 - c) ConRail management is an unknown; it cannot be relied upon to bring about \$100 million in cost reductions from increased efficiency, as USRA has assumed.
3. Given the current negative cash flow of \$30-100 million, a likely result of the plan is the granting of an annual subsidy of \$0.5 to \$1.5 billion. In the end this would lead to Federal ownership, since ConRail would be obtaining its capital and part of its operating subsidy from the Federal budget.

The Preferred Alternative (Controlled Transfer)

1. The objective should be to merge the profitable parts of the Penn Central system with solvent lines in order to create a viable private sector transportation system characterized by a number of competing rail carriers. However, none of the research and policy analysis to date has addressed the problem of specifying those mergers which would secure these ends. (USRA rejected this alternative because it perceived (erroneously) little interest on the part of solvent carriers in purchasing portions of the region's rail system.)
2. There are, however, several promising options:
 - a) Merger of the four western lines to Chicago and St. Louis with: (i) N&W, (ii) Chessie, (iii) "Pennsylvania", and (iv) "Central". By demerging the Penn Central and providing some subsidies for roadbed and capital improvements to the demerged parts, they could be made attractive.

- b) Merger of the profitable links in the Penn Central and Erie Lakawanna into the N&W and Chessie. This leaves only two carriers, since ConRail would be left with the dregs of the Penn Central (50% of the trackage, at least).
- c) Selling off anything anyone wants to buy. Some purchase would be other lines, others would be new railroads.

3. Advantages and disadvantages:

a) The principles are correct:

- (i) Each of the proposed mergers reduce the potential for governmental support and hidden subsidy;
- (ii) Such mergers reduce the likelihood of outright nationalization of the region's rail system five years from now; and
- (iii) The first option, along with deregulation, makes possible effective intermodal competition for bulk freight between regions of the country.

b) There are operational difficulties:

- (i) None of these options have been thoroughly investigated and the time frame for a decision on this matter is extremely short. There has been considerable interest in controlled transfer by solvent Midwest, Western, and Southern lines, although this interest has been dampened by USRA's negative response. Work would have to be done by DOT, Treasury, OMB, and CEA to establish at least the basis for possible transactions before offering any of these options for inclusion in the FSP or proposing them directly to Congress.
- (ii) There are political problems. ConRail would be left with the hopeless lines and the need to go to Congress for an annual subsidy. On the whole, this is less palatable to legislators than is the cross-subsidy implicit in the PSP.

TAB B

DECLARATION OF POLICY

(a) FINDINGS.--The Congress finds and declares that--

(1) Rails are a vital national asset and essential to the commerce and defense of the country.

(2) Preservation of a viable private sector rail industry is in the national interest.

(3) There is a significant and uneconomic duplication of rail facilities in the United States, including main line track and branch line track.

(4) This excessive duplication interferes with the efficiency and economic health of the rail industry.

(5) The time, expense and delay associated with proceedings under the Interstate Commerce Act for consideration of proposals for consolidation of facilities and joint use of facilities has been an obstacle to removing excess and duplicative rail plant capacity.

(6) A vital need exists to streamline this country's rail plant and remove duplicative facilities.

(7) A clear need exists to expedite the consideration of proposals which have the effect of eliminating excessive duplication of facilities.

(8) Preservation of an effective level of competition in the marketplace for transportation is in the national interest.

(b) PURPOSES.--It is therefore declared to be the purpose of Congress in this Act to provide for--

- (1) An efficient, economical, viable private sector rail system.
- (2) Greater efficiency of the rail system through elimination of duplicative facilities and rationalization of the existing rail plant.
- (3) Prompt and fair consideration of voluntary agreements to achieve those objectives.
- (4) The maintenance of an effective level of competition in transportation.
- (5) Federal financial assistance to the railroad industry.

(a) As a condition for receiving financial assistance pursuant to this section, the Secretary may require an applicant to enter into an agreement with another applicant or with another railroad with respect to merger, consolidation, control, joint use of tracks, terminals, or other facilities, or the acquisition or sale of assets. This section does not confer authority upon the Secretary to require non-applicants to enter into an agreement with an applicant.

(b) The Secretary shall publish regulations in accordance with 5 U.S.C. 533 to establish the procedures for applying for Federal assistance pursuant to this Act and the information and data which must be submitted by each applicant.

(c) If an application is made and the Secretary determines to condition the granting of financial assistance upon an agreement for restructuring, the Secretary shall provide reasonable notice in the Federal Register of the application and the proposed agreement. In addition, the Secretary shall provide reasonable written notice to the Attorney General of the United States and to each Governor of a state in which an applicant or proposed party to the agreement operates. The Attorney General shall review the proposed agreement and shall advise the Secretary in writing of his views of the agreement. The Secretary shall provide

an opportunity to any interested person to submit written comments and shall provide an opportunity for an informal oral hearing regarding the proposed agreement.

(d) The Secretary shall review the written and oral comments. He shall then give notice in the Federal Register of any changes in the proposed agreement which he has made after review of the comments and shall provide an opportunity to the public to comment on the changes.

(e) The Secretary and the Commission shall administer the provisions of this Act in light of the declaration and purposes of this Act and shall find a proposed transaction is in the public interest if the efficiency gains substantially outweigh any adverse effects on competition; provided that the proposed transaction shall be determined to be the least anti-competitive alternative available.

(f) After completing the procedures called for in the preceding paragraphs, the Secretary shall make a determination whether the proposed agreement is in the public interest and consistent with this Act. If the Secretary makes an affirmative determination, he shall so certify his findings, the basis therefor, and the proposed agreement in writing to the Interstate Commerce Commission. The Secretary may not certify any agreement unless it provides labor protection at least equal to the protection afforded by section 5(2)(f) of the Interstate Commerce Act.

(g) If the Secretary so certifies in accordance with subsection (f), the Interstate Commerce Commission shall consider the Secretary's findings and the agreement pursuant to section 5(2) of the Interstate Commerce Act, except as hereafter provided. The Commission must complete any hearings it deems necessary within 120 days of the receipt of the certification and must render a final decision within 180 days of the receipt of the certification, unless the Secretary provides in the certification for longer time periods. Any hearings deemed necessary shall be held directly before a panel of the Commissioners of the Interstate Commerce Commission. Notwithstanding the provisions of section 5(2), the Commission shall not disapprove or modify an agreement unless the Commission finds there is clear and convincing evidence the agreement is not in the public interest as defined in subsection (e). The protestants to such an agreement shall have the burden to prove that such a certified agreement is not in the public interest.

(h) If the Commission shall fail to render a decision under this Act within the required time period, the Commission shall certify to the Secretary the proceedings before the Commission within 3 days of the end of its period for decision. Subject to the concurrence of the Attorney General, the Secretary shall review all material and information he deems relevant and may withdraw, modify, or approve the proposed agreement accordingly. Agreements approved by the

Secretary pursuant to this subsection (h) shall be deemed final and lawful and shall not be subject to section 5(2) of the Interstate Commerce Act. ^{Final Decisions} ~~Findings~~ of the Secretary pursuant to this subsection may be appealed only to the Circuit Court of Appeals for the District of Columbia and may not be held contrary to this Act unless it is found that there is clear and convincing evidence that the Secretary's approval is not in the public interest or is without observance of the procedure required by this Act.

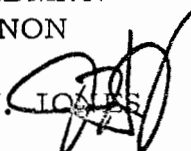
(i) Agreements approved pursuant to this section shall not be subject to the operation of the antitrust laws and any other restraints, limitations, and prohibitions of law, Federal, state or municipal.

THE WHITE HOUSE
WASHINGTON

April 30, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: BILL SEIDMAN
JIM CANNON

FROM: JERRY H. LOUIS 

SUBJECT: Railroad Revitalization Act

Your memorandum to the President of April 29 on the above subject has been reviewed and the following was noted:

- 1) Should the already announced \$2 billion loan program include provision for payment of interest on the loans?

The following notation was made:

-- Seems to me on #1 (a) and (b) one could argue that Sec. of DOT should have both authorities. The availability of such flexibility would give him option to meet the different problems that are bound to arise.

Reaction?

- 2) Should you propose additional (beyond the \$2 billion loan guarantee program) railroad aid to provide emergency rehabilitation?

- a) Permit a portion of the already budgeted \$2 billion loan guarantee program (approximately \$600 million) to be used for direct grants at the Secretary's discretion to any railroad involved in restructuring. Disapprove.

b) The \$2 billion loan program should remain as originally proposed; that is, not include a grant program. Approve.

3) What procedures should govern authority to bypass normal ICC procedures in cases where the Secretary determines assistance is in the public interest?

Compromise (between Justice and DOT) bypass provision that forces the ICC to act on the Secretary's restructuring within 6 months. Approve.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld