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• DANIEL R. ELLIOTT, III  
Associate General Counsel

**UPS NEXT DAY AIR**

October 21, 2004

Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W.  
Washington, DC 20423-0001  
(202 ) 565-1674

212305



Re: STB Finance Docket No. 34540

Dear Mr. Williams:

Please find enclosed the original and 10 copies of the United Transportation Union's Petition to Revoke in the above-captioned matter. In accordance with prior Board's requirements, we have also enclosed a disk in WordPerfect forma and a \$200.00 check for the filing fee.

Thank you for your cooperation.

Sincerely,

  
Daniel R. Elliott, III  
Assistant General Counsel

ENTERED  
Office of Proceedings

OCT 22 2004

Part of  
Public Record

Enclosure

cc: C. J. Miller, III, General Counsel

**FEE RECEIVED**

OCT 22 2004

SURFACE  
TRANSPORTATION BOARD

212305



Before the  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34540

THE COLUMBUS & OHIO RIVER RAILROAD  
COMPANY - ACQUISITION AND OPERATION  
EXEMPTION - RAIL LINES OF CSX  
TRANSPORTATION, INC. FROM COLUMBUS  
TO NEWARK, OHIO AND FROM MT. VERNON  
TO CAMBRIDGE, OHIO

ENTERED  
Office of Proceedings

OCT 22 2004

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Public Record

PETITION TO REVOKE

**FEE RECEIVED**

OCT 22 2004

SURFACE  
TRANSPORTATION BOARD

Daniel R. Elliott, III  
Associate General Counsel  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, Ohio 44107  
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Attorney for United Transportation Union

Petitioner United Transportation Union ("UTU") respectfully asks the Surface Transportation Board ("STB") to revoke the application of the class exemption to the transaction or transactions embraced in the Notice of Exemption ("Notice"), filed September 24, 2004, by the Columbus & Ohio River Railroad Company ("CUOH") in the entitled proceeding.

CUOH is a Class III carrier which intends to take over an important portion of the mainline operations of CSX Transportation, Inc. ("CSXT") in central Ohio.

Rather than attempt to negotiate under the Railway Labor Act for contracting out the CSXT operations to CUOH, CSXT has entered into a series of arrangement with CUOH to perform the work for CSXT.

Presently, CSXT hold a 50% ownership interest in the rail line from Columbus to Newark (the "C&N Subdivision"). The balance of the ownership interest in this line is held by the State of Ohio, and CUOH currently holds operating rights over the C&N Subdivision. *See* Finance Docket No. 31961 (Sub-No. 1), Caprail I Acquisition Exemption – Consolidated Rail Corp., Finance Docket No. 31961 (Sub-No. 2), Ohio Department of Transportation. – Lease Exemption – Caprail I Lines in Ohio, Finance Docket No. 31961 (Sub-No. 3), Columbus & Ohio River Railroad Company – Lease and Operation Exemption – Ohio Department of Transportation Lines. Notice of Exemption served January 15, 1992 (noting that the 161.7 total route miles to be acquired by the Ohio Department of Transportation and operated by CUOH were comprised of "about 129.1 miles currently owned exclusively by Conrail, and Conrail's undivided one-half interest in 32.6 miles between Columbus and Newark, Ohio, owned and operated jointly with CSXT"). Both CSXT and CUOH currently operate over the Columbus to Newark line.

Through the subject transaction, CUOH will purchase CSXT's 50% share in the Columbus to

Newark line, and CUOH will become the sole operator of the line, stepping into CSXT's position with respect to the customers previously served by CSXT. In addition, CUOH will lease approximately 81.4 miles of CSXT's line from Mt. Vernon (milepost BQ 25.90) to Cambridge, Ohio (Milepost BP 49.49) via Newark, Ohio. This line is composed of the "Lake Erie Subdivision" (Newark to Mt. Vernon) and "Central Ohio Subdivision" (Newark to Cambridge).

The lines that are the subject of this transaction are located in Franklin, Licking, Muskingum, Knox, and Guernsey Counties, Ohio. The transaction also includes approximately 1.5 miles of incidental trackage rights assigned by CSXT to CUOH over the line of Ohio Southern Railroad, Inc. (which also is a Summit View Inc. subsidiary) between Milepost 16.7 and Milepost 18.2 in Zanesville, Ohio.

Both before and after the subject transaction, CUOH will have the ability to interchange traffic with the Ohio Central Railroad, which like CUOH, is a subsidiary of Summit View, Inc., a non-carrier.<sup>1</sup>

The exemption claimed by the Notice of Exemption should be revoked for the following reasons, among others:

1. The transactions, in whole or in part, noticed for exemption do not fall within the noncarrier line acquisition class exemption promulgated by 49 C.F.R. § 1150.41, *et seq.*
2. Regulation of the transactions, in whole or in part, is necessary to carry out the rail transportation policy of 49 U.S.C. § 10101.
3. The Notice contains false or misleading information about the transaction.

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<sup>1</sup>Prior to the transaction, CUOH and O&CR interchanged traffic at Newark. Following the transaction, CUOH and O&CR will interchange traffic at both Newark and Zanesville, Ohio.

Petitioner has made a discovery request pursuant to 49 C.F.R. § 1121, and will supplement this Petition to Revoke in accordance with the STB's procedure.

Respectfully submitted,



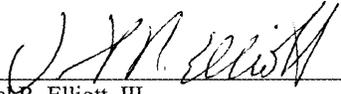
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Attorney for United Transportation Union

**CERTIFICATE OF SERVICE**

This will certify that a copy of the foregoing United Transportation Union's Petition to Revoke has been served this 31<sup>st</sup> day of October, 2004, via first-class, postage pre-paid mail upon the following:

Andrew B. Kolesar, III  
Slover & Loftus  
1224 17th Street, N.W.  
Washington, DC 20036

  
\_\_\_\_\_  
Daniel R. Elliott, III