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SELLING CONRAIL: TIME FOR CONGRESS TO NAME THE BUYER

(Updating Issue Bulletin No. 113, "Giving Conrail a Green Light," February 15, 1985, and Backgrounder Update No. 5, "The Conrail Sale: Still the Taxpayers' Best Deal," January 20, 1986.)

It seems that everyone agrees on at least one thing: the federal government should sell Conrail. The problem is that Congress cannot make up its mind who should be allowed to buy it. In 1981, Congress ordered the railroad sold. Last year, after evaluating several bids, the Administration presented a plan to sell Conrail to the Norfolk Southern Corporation. This was approved by the Senate by a vote of 54 to 39 on February 4. Yet the House still has not taken action, despite strong assurances from the leadership of the House Energy and Commerce Committee that it supports the sale. Time is now running out. With the 99th Congress nearing adjournment, and the bidders becoming increasingly frustrated, the chances of a sale of Conrail this year are slipping away. Congress must act quickly to get this sale moving again.

When Transportation Secretary Elizabeth Dole announced her plan to sell Conrail to Norfolk Southern in February of last year, it appeared that the federal railroad soon would be on its way to the private sector, where it belongs. Norfolk Southern is a well-qualified buyer--and the deal would be a good one for the taxpayers, Conrail's employees and Conrail customers. Yet the proposal has met with opposition from labor unions, competing railroads, Conrail management, and many shippers, who view the proposed merger as a potential threat to their interests.

After the plan passed the Republican-controlled Senate, it ran into serious trouble at the House Energy and Commerce Committee. After months of hearings and negotiations, Chairman John Dingell, the

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Michigan Democrat, announced that, while he strongly supported privatization, he would block a sale to Norfolk Southern because of concerns about the impact of the merger on competition in the industry. An overwhelming majority of the committee evidently shares his view. To make matters worse, the Interstate Commerce Commission voted in July to prevent two Western railroads--the Santa Fe and the Southern Pacific--from merging, an action which has strengthened the hands of lawmakers opposed to Norfolk Southern.

Conrail's sale to Norfolk Southern still makes good sense. But if the deal is stuck in legislative gridlock, other alternatives must be considered. The most promising is a public offering of stock. Such offerings have proved a very effective strategy for transferring public enterprises to private hands in Great Britain. Stock sales, which include attractive purchase options for such potential opponents as management, customers, and employees, have built strong constituencies favoring privatization. This strategy has enabled the British government to win overwhelming public support for the sale of billions of dollars of government assets, including in 1984 the \$5 billion stock sale of British Telecom, the nation's telephone system. This was the world's largest public offering ever.

A well-constructed public offering could help create such a coalition for a Conrail sale. By providing management, employees, and shippers with the opportunity to buy stock at attractive terms, many current opponents would find good reason to support the privatization process. And unlike a sale to an existing railroad, Conrail's continued existence as an independent carrier would remove concerns about reduced competition. There is strong political support for a public offering among members of the House Committee, including Chairman Dingell and ranking Republican Norman Lent of New York.

Concerns have been raised whether Wall Street could absorb the nearly \$2 billion sale of Conrail shares. It would be, after all, the largest public offering ever for the U.S. Yet these concerns are misplaced. Britain's much larger British Telecom was sold in a stock market one-eighth the size of the U.S. market. Moreover, a recent \$1.3 billion stock offering by Allied Signal Corporation caused hardly a blip on Wall Street. Nor would a public offering mean the government necessarily would have to take its chances with the uncertainty of a volatile stock market. Under one of the bids now before Congress, a group of investors would hand Uncle Sam a check for Conrail and then structure the offering themselves. All risk would be borne by private investors with a guaranteed sale price to the taxpayers.

Members of the Energy and Commerce Committee are still weighing the alternatives for Conrail. Recently Representative Billy Tauzin, the Louisiana Democrat, tentatively proposed legislation to reopen the bidding, requiring the Department of Transportation to accept the highest qualified offer. Soliciting, preparing, and evaluating new bids, however, would take an additional six months to a year. If

another railroad were the high bidder, the resulting ICC review could take another two and one-half years. Such a delay at this time would call into question the future of Conrail. The Tauzin proposal, of course, would make more sense if the delays could be avoided.

The House Committee should end the delay and uncertainty by voting quickly on the rival bids, including those for a public stock offering, and send its recommendation to the House floor for prompt action. And as it makes this clear-cut choice, the Committee should set four basic requirements for an acceptable sale:

1) Congress should not burden Conrail with unnecessary restrictions on its operation. The more Congress limits the flexibility and discretion of Conrail's management, the less successful the new company will be.

2) The sale must not be tied to any proposal to reregulate railroads. The 1980 deregulation of the industry has been credited widely with helping Conrail out of the red and with improving the health of the industry. These gains must not be traded away as the price for Conrail's privatization.

3) The plan must not leave the federal government in the railroad business. The U.S. taxpayer's interest in Conrail must be sold entirely and immediately.

4) The plan must not involve further delay of Conrail's privatization. It is now five years since Congress first ordered the sale and two years since the Administration presented its plan. There have been countless congressional hearings and exhaustive investigations by several federal agencies. Starting a new round of bids is a foolish policy if it means months or even years of uncertainty for Conrail's customers and employees. And further delay would reduce the chances of the sale ever taking place. While there now is an overwhelming consensus in favor of a sale, this may not last for long, and Conrail could be left indefinitely in federal hands.

Congress has before it two sensible options for the sale of Conrail: the Norfolk Southern bid and a public offering. If Chairman Dingell is serious about selling Conrail, he should hold an immediate vote on the rival plans.

Stuart M. Butler, Ph.D.
Director, Domestic Policy Studies

and

James L. Gattuso
Policy Analyst

