CSX

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CSX-Proposed Meridian Speedway Conditions

The Goal:

- Remove barriers to competition to, from, and over the Meridian Speedway

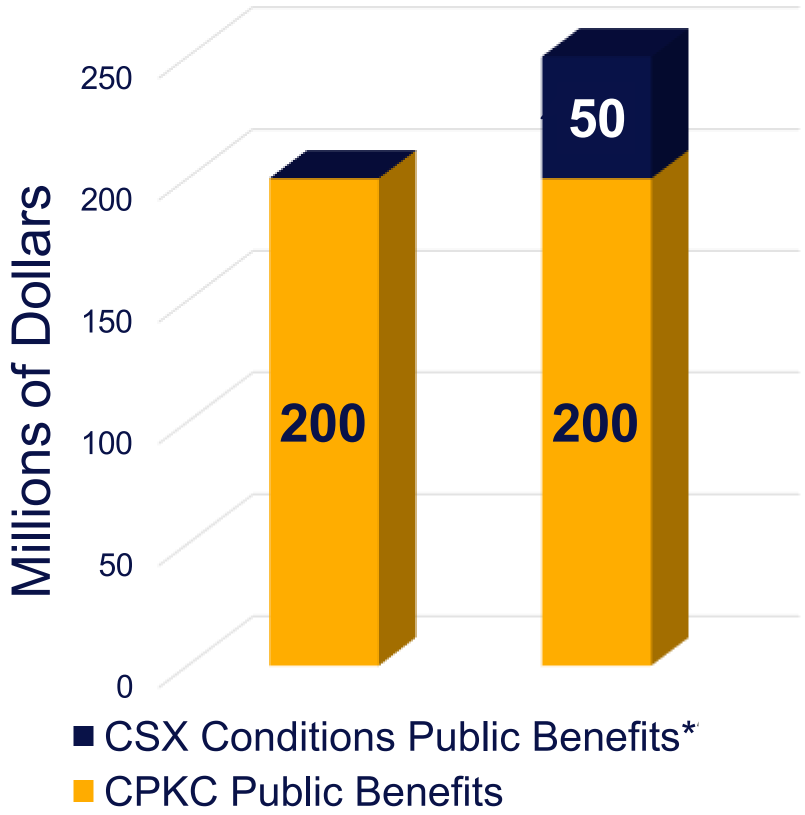
The Conditions:

- Remove unlawful, anticompetitive, and perpetual NS-KCS agreements that foreclose competition
- Require CPKC to open all Speedway Gateways to all interchange partners and all traffic

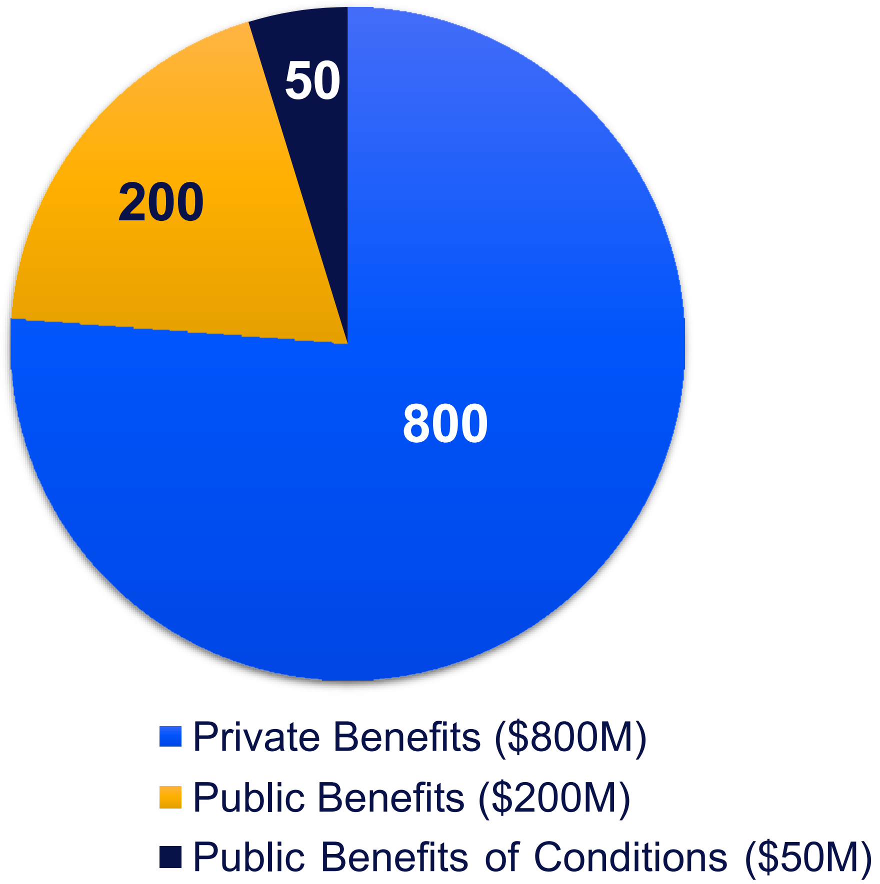
The Benefits:

- The CPKC transaction will not perpetuate and exacerbate barriers to competition
- Competition will
  - improve service
  - provide competitive prices
  - grow volume
  - take trucks off the road
  - strengthen the economy
- CPKC's competitive opportunities will increase

Estimated Annual Public Benefits



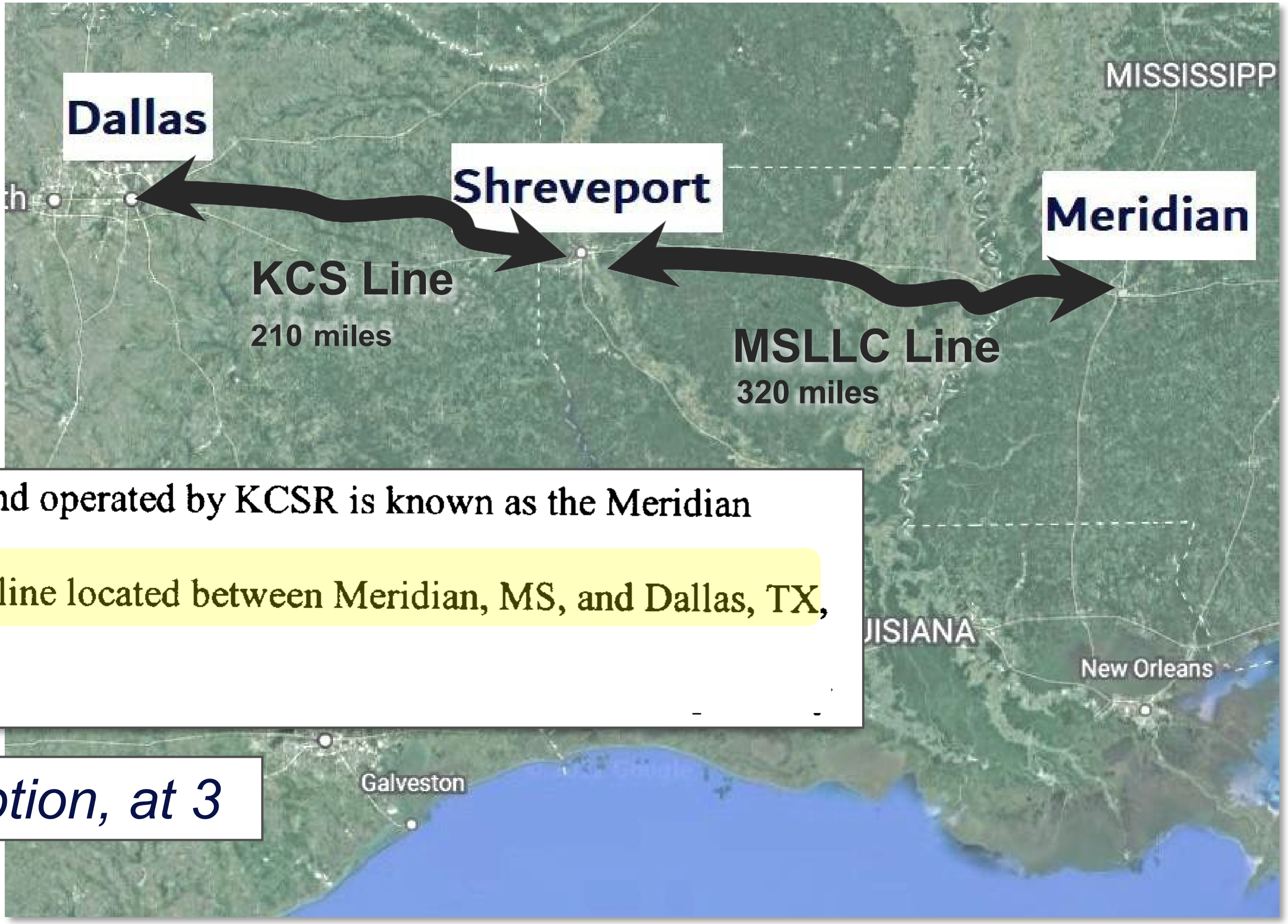
Public and Private Benefits



Source: CSXT-8, Carey V.S. at Section IV and pages 25, 27 *See* also Application Vol. 1 at Exhibit B and CSXT-13, Carey VS, at 60.

Speedway Shippers Shouldn't be Forced to Put All Their Eggs in One Basket

The Meridian Speedway (Defined by KCSR in 2006)



One of the rail lines currently owned and operated by KCSR is known as the Meridian Speedway. The Speedway is an east/west rail line located between Meridian, MS, and Dallas, TX, which passes through Shreveport, LA.

FD 34822, *Notice of Exemption, at 3*

NS & Applicants Say the Speedway is the Best Route for Many Shippers – CSX Agrees

"The Meridian Speedway is the most efficient link for shippers who need to move traffic through the major population centers in the Southeast and Southwest, areas of tremendous population and economic growth… All it takes is one look at a map and the advantages of this route are apparent. Compared to the next-shortest available route, the Meridian Speedway saves 184 miles between Atlanta and Dallas, 212 miles between Charlotte and Dallas, and 41 miles between Jacksonville and Dallas." **NS-9, at 15-16.**

"The Speedway is a critical link in creating the most direct route between the southwest and southeast/northeast U.S." **CP-28/KCS-16, at 535.**

The Problem - Part 1:

The Unlawful, Anticompetitive, and Perpetual NS-KCS Exclusivity Arrangements

Two Key Traffic Types over the Meridian Speedway

Transcontinental Intermodal

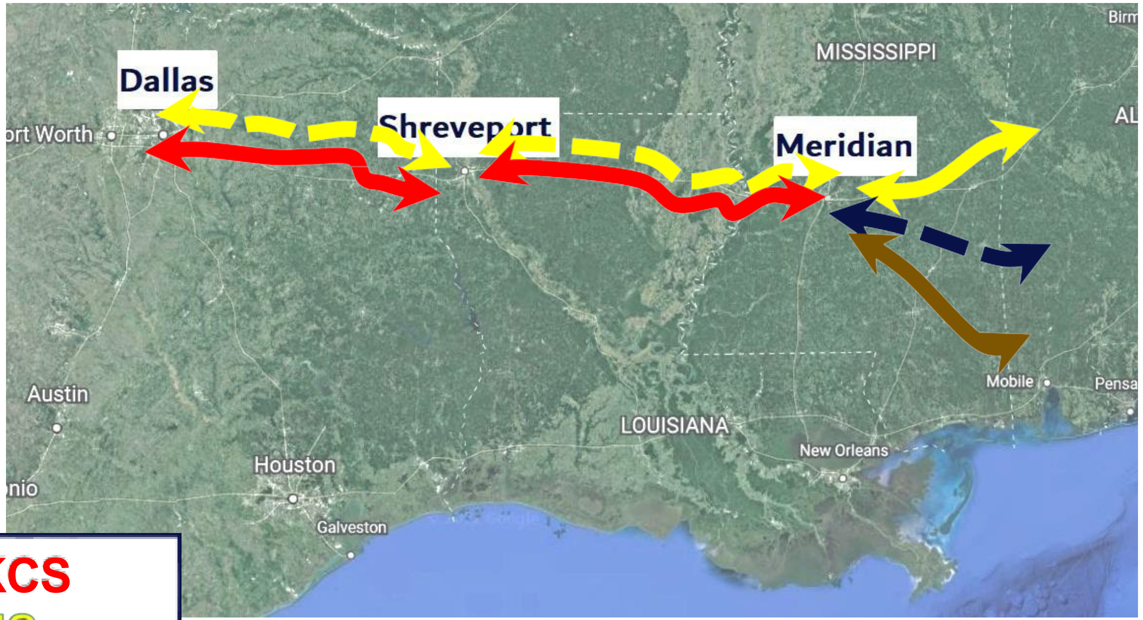
Originates or terminates in the U.S. west of Fort Worth (other than on KCS) and runs overhead between Shreveport and Meridian to or from points east of Meridian

Dallas Intermodal

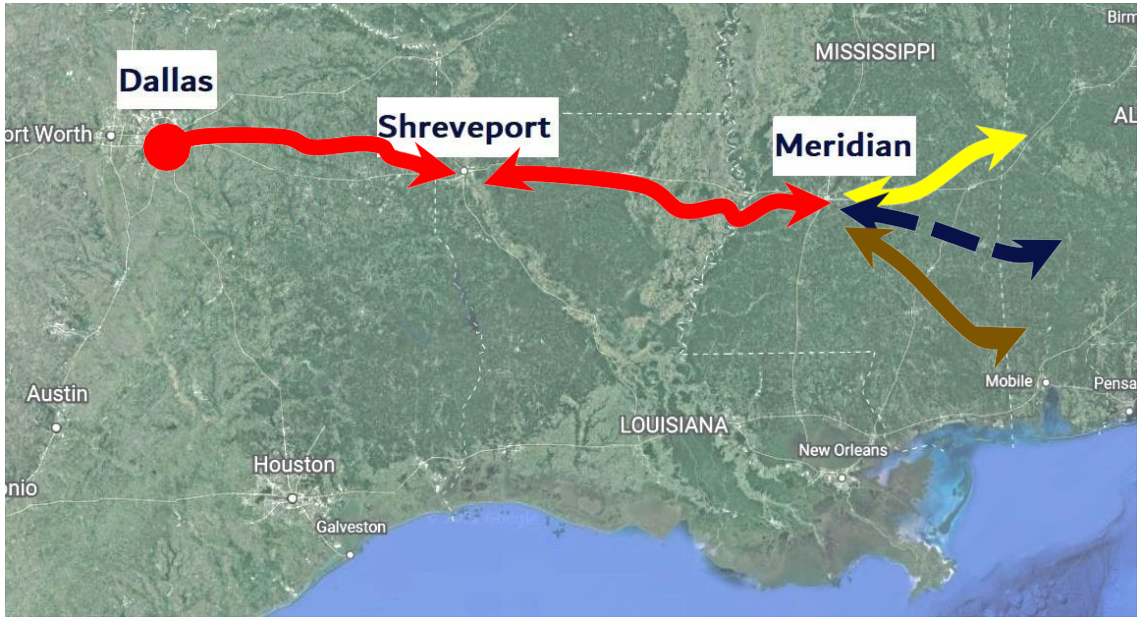
Originates or terminates in the U.S. at or west of Dallas-Fort Worth, has a “lift” or “drop” at KCS’s intermodal terminal in Dallas, Texas and runs overhead between Dallas and Meridian to or from points east of Meridian

The Meridian Speedway 2000 - 2005

Transcon Intermodal Options



Dallas Intermodal Options

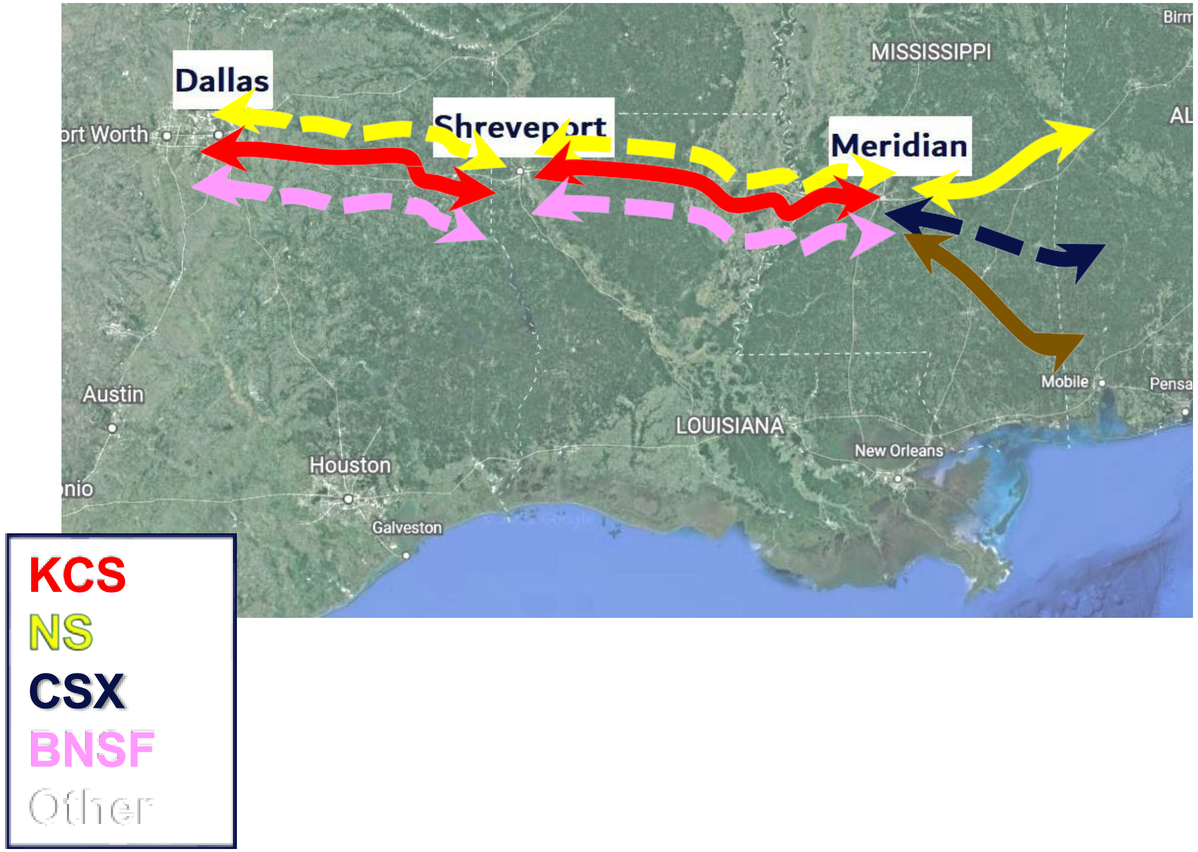


KCS
NS
CSX
BNSF
Other

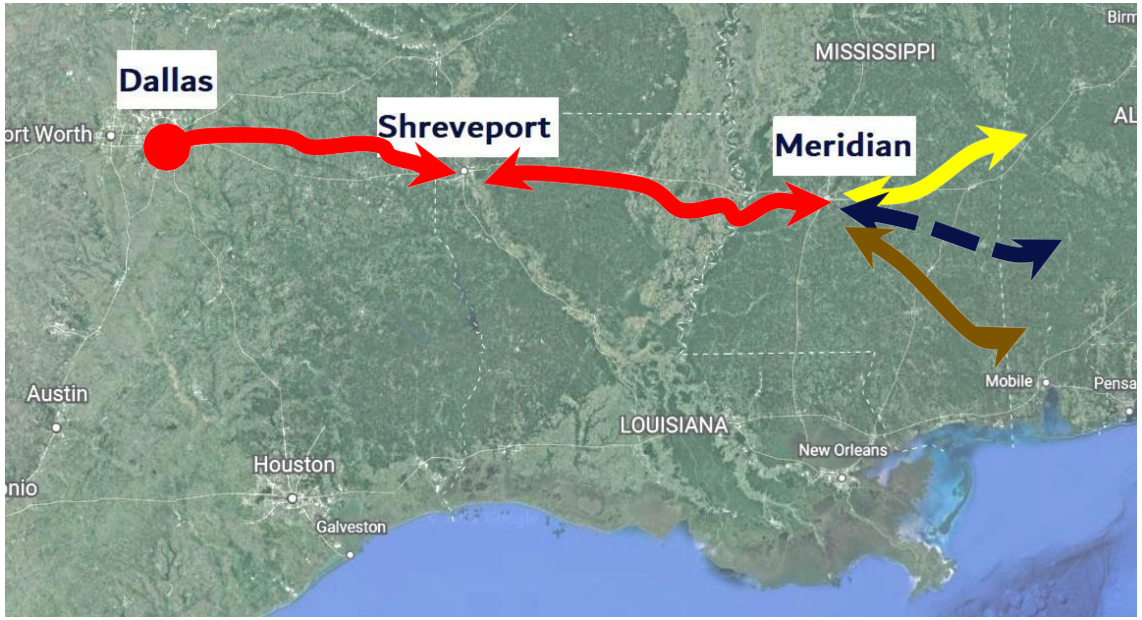
Nothing constrained KCS from competing with NS, handling any traffic, or interchanging with, or granting haulage or trackage to, another carrier. KCS interchanged with CSX [via MNBR] at Meridian.

The Meridian Speedway 2005: Imminent Competition

KCS Proposes New Competition For Transcon Intermodal



Dallas Intermodal Options Remain Open



In 2005, NS Anted Up to Foreclose Competition

NS feared new competition from the imminent, non-exclusive KCS-BNSF-CSX route

NS was willing to pay very heavily to foreclose that competition

NS made an investment in an NS-KCS Joint Venture called MSLLC that now owns the line between Shreveport, LA and Meridian, MS

NS bought perpetual foreclosure of competition for Transcon and Dallas Intermodal

See Memorandum from M.R. McClellan to K.B. McQuade, Subject: Kudzu, NS00006569 at NS00006570 (April 4, 2005). *See* CSXT-13 at 61 for more details.

The Meridian Speedway 2006 - Today

One Transcon Intermodal Option: NS

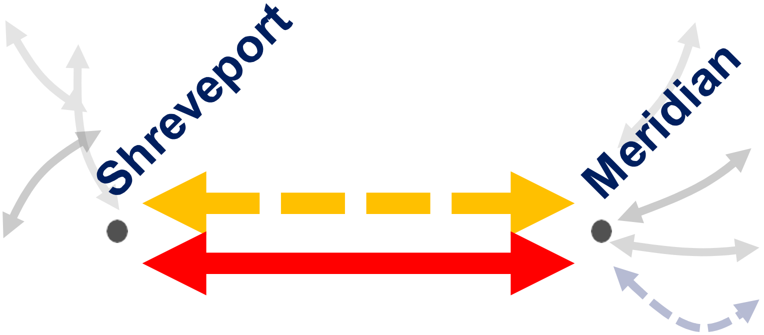
One Dallas Intermodal Option: KCS-NS

KCS
NS
CSX
BNSF
Other

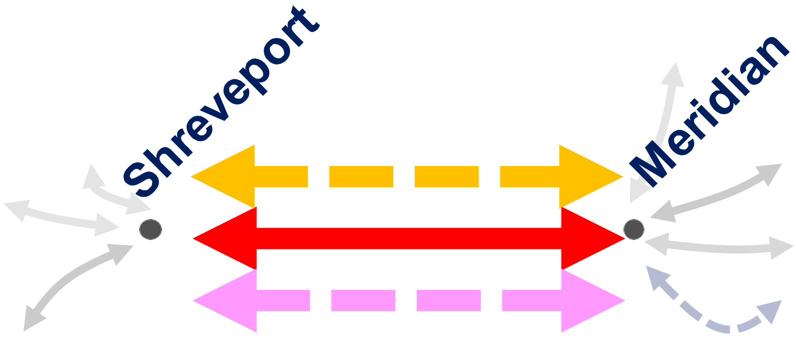
In 2006, NS and KCS perpetually foreclosed all shipper options but one

Perpetually Foreclosed Existing and Imminent Competition for Transcon Intermodal

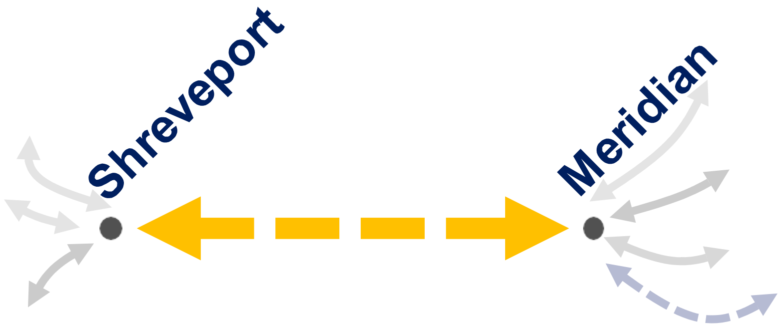
Pre-MSLLC



Imminent Competition (2005)



MSLLC Today



KCS
NS
BNSF

2 to 1 Carrier Reduction

The Record Shows the Affected Volumes of Speedway Traffic

Contrary to NS's suggestions, the affected traffic is not small potatoes

The Perpetual Exclusivity Arrangements

1) KCS can only move Dallas Intermodal over the Speedway in interchange with NS at Meridian unless NS agrees to allow competition at Meridian and NS has to agree to the rates for all movements
2) Only NS can handle Transcon Intermodal over the Speedway (through either the Shreveport or the Dallas gateways)

The MSLLC JV Agreements Are Unlawful -- They Violate ICCTA

The only STB approval KCS sought was an exemption for an intracorporate transaction noticed in 2006. The exemption did not apply, especially because:

1) The Agreements "change[d] the competitive balance with carriers outside of the corporate family." 49 CFR 1180.2(d)(3).
2) NS was not a party to the notice of exemption.
3) The exemption did not extend to the NS-KCS traffic division. That required approval under 49 U.S.C. §11322 but none was sought or granted.

CSX

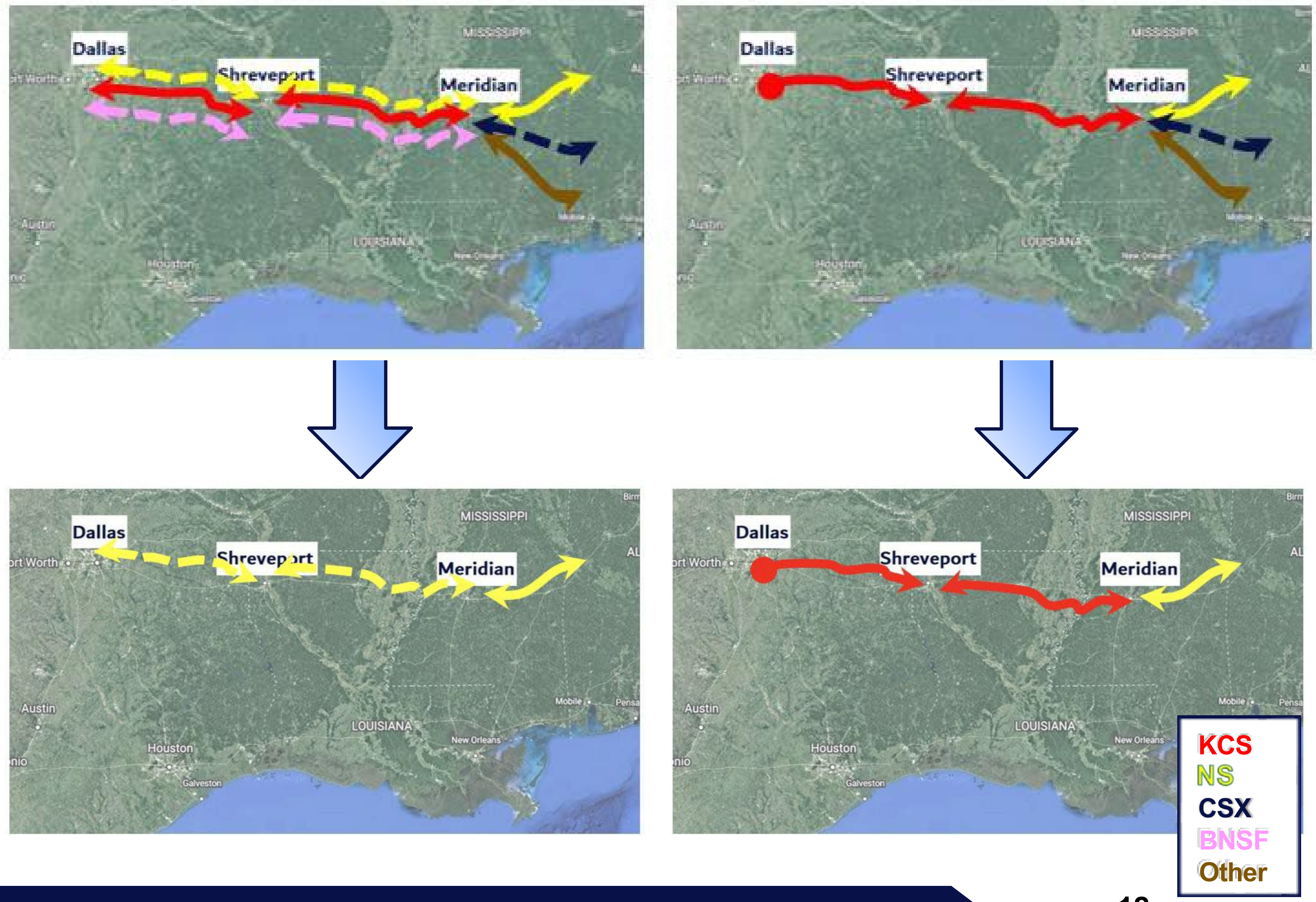
The Unlawful NS-KCS Traffic Division

The NS-KCS Agreements created a traffic division because they:

- Are between otherwise competing carriers
- Divide the benefits and costs by special agreement
- Involve a restraint or potential restraint on competition

Transcon Intermodal Options

Dallas Intermodal Options



See Interstate Commerce Commission, "Decisions of the Interstate Commerce Commission of the United States June 1990 to July 1991," Vol. 7, 2nd Series, at 185. *See also* 49 CFR 1180.2(d)(3).

The Board Is Authorized to Condition Transactions to Protect the Public

The classic rubric in consolidation cases:

> "To be granted, a condition must first address an effect of the transaction. We will not impose conditions 'to ameliorate longstanding problems which were not created by the merger,' nor will we impose conditions that 'are in no way related either directly or indirectly to the involved merger.'"
>
> *Burlington Northern et al.—Merger—Santa Fe Pacific et al.*, 10 I.C.C.2d661, 730 (1995).

But that rubric has always referred to long standing ***lawful*** arrangements.

This is not the classic case: here we are addressing extraordinary arrangements that were ***unlawful*** the day they were entered. Nothing in the Board's precedents or the statute bars conditioning a merger on removal of unlawful arrangements that would perpetually harm the public interest.

But even if it were, CSX's conditions should be approved because…

The CPKC Transaction Would Exacerbate Competitive Harm

- More traffic = More shippers with one option + more congestion

- CPKC will have incentives and opportunities to foreclose UP Transcon competition (and potential BNSF competition) in favor of CPKC's longer haul opportunities even though the geography of the Speedway is the best for shippers

- Any restrictions on competition embodied in the CPKC Transaction may be enshrined as "necessary" and immunized from all other law under 49 U.S.C. §11321(a)

The Board Can Remedy the Exclusivity Provisions

CSX recommends a very straightforward remedy: the Board should exercise its conditioning authority and remove only the exclusivity provisions, preserving the remaining MSLLC agreements consistent with their severability clauses

49 U.S.C. §11324(c)

MSLLC Line Rates Can Ensure Adequate Investment Without NS Exclusivity

Competitive and Reasonable	VS.	Anticompetitive and Convoluted
Optimize Throughput Over MSLLC Line		Throughput with Only 1 Eastern Railroad
↓		↓
Set MSLLC Rates for the Line to Earn Return on and of Investments in the Line		Expand Profits for the Rest of NS's Eastern Railroad Network, not MSLLC

See CSXT-13, Carey VS, at Section VI.C.

The Problem - Part 2:

Restricted Speedway Gateways

Ending Exclusivity Is Not Enough: Shippers Need Unrestricted Gateways

- The Speedway Gateways are only partially open – to some carriers and some traffic
- NS wants all existing gateways open – but only for NS on the Speedway
- Applicants want no open gateway requirements for the Speedway
- The Board should:
  1. Require CPKC to fully open the Speedway Gateways
  2. Ensure shippers have an effective remedy to enforce this requirement
- The Speedway Gateways and Laredo are key to taking Mexico truck traffic off the highways

Meridian Speedway Gateways

- If Meridian is not open to KCS interchanging any traffic with any carrier, Transcon shippers can still be denied a competitive option to and from the East via KCS-CSX

Meridian Speedway Gateways

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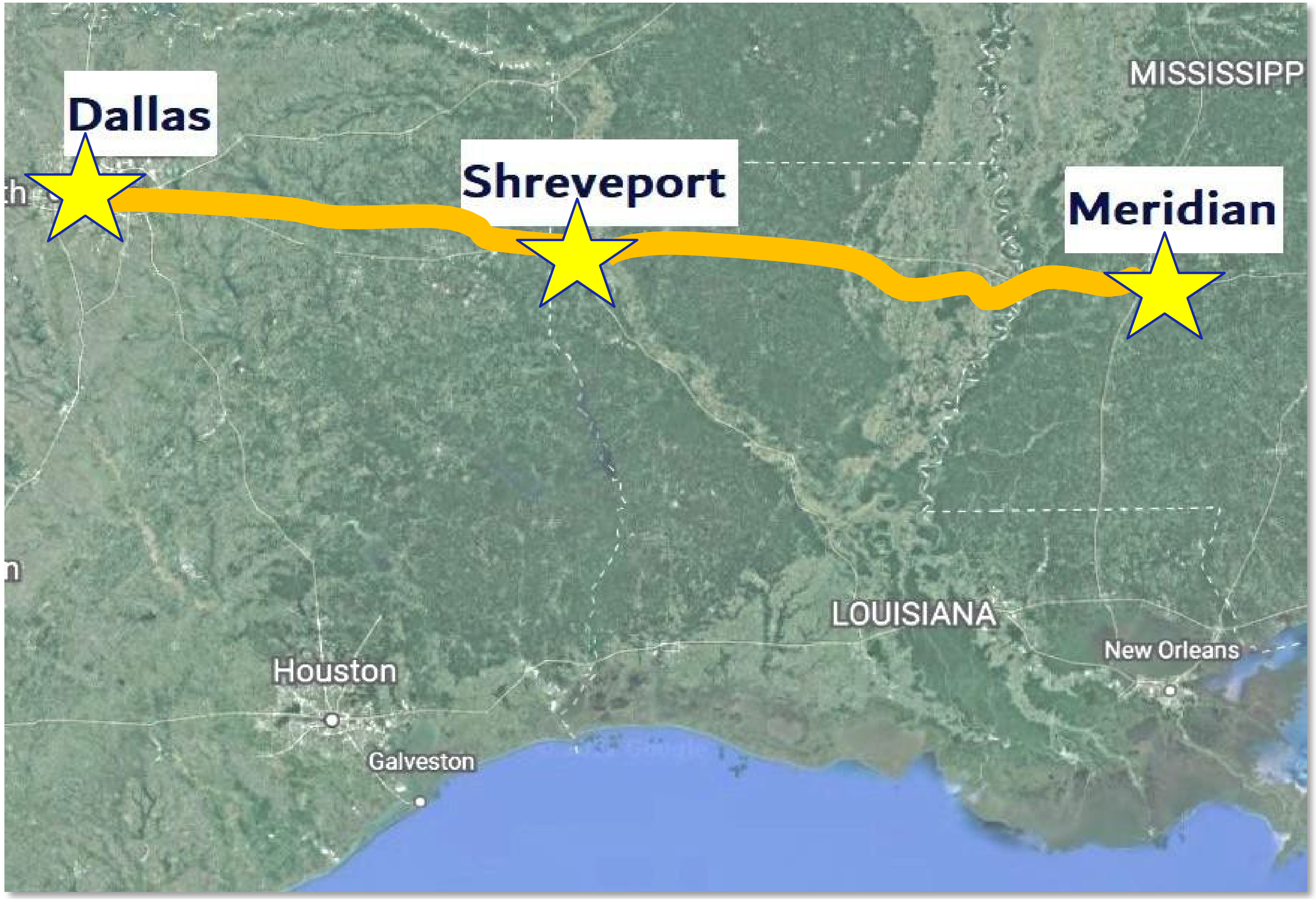
- If Shreveport is not open, then UP's route to Mexico will not be available to take trucks off the highway that KCS cannot attract; competitive services cannot be built on UP's Transcon anchor traffic

Meridian Speedway Gateways

- If Meridian is not open to KCS interchanging any traffic with any carrier, Transcon shippers can still be denied a competitive option to and from the East via KCS-CSX
- If Shreveport is not open, then UP's route to Mexico will not be available to take trucks off the highway that KCS cannot attract; competitive services cannot be built on UP's Transcon anchor traffic
- If Dallas is not open, there will fewer options for intermodal shippers to and from the West



The Board Should Ensure Speedway Competition

- The CPKC transaction will not perpetuate and exacerbate barriers to competition
- Competition will:
  - improve service
  - provide competitive prices
  - grow volume
  - take trucks off the road
  - strengthen the economy
- CPKC's competitive opportunities will increase

CSX

MARYCLARE KENNEY

CSX Vice President of Intermodal and Automotive

MSLLC Agreement has harmed competition and the public interest

1. How the NS-KCS exclusivity agreements harm competition
2. Why there have been even farther reaching effects and how that has limited customer options
3. Address comments by NS regarding the need for this agreement to recoup investments

How the NS exclusivity arrangement has harmed competition

- Prohibiting competitors from establishing Transcon Intermodal service across the speedway
  – NS is the only carrier in practice able to transport traffic across the fastest and most direct route to the southeast between Shreveport and Meridian

- Dallas Intermodal traffic must be interchanged at Meridian to the east with the NS unless they decline to carry it
  – Which has never happened

What shippers need for cost-effective Intermodal service

Long Length of Haul

Reliable, Consistent and Fast Service Competitive to Trucking

Carrier and Shipping Lane Options

Direct Route Between Origin and Destination

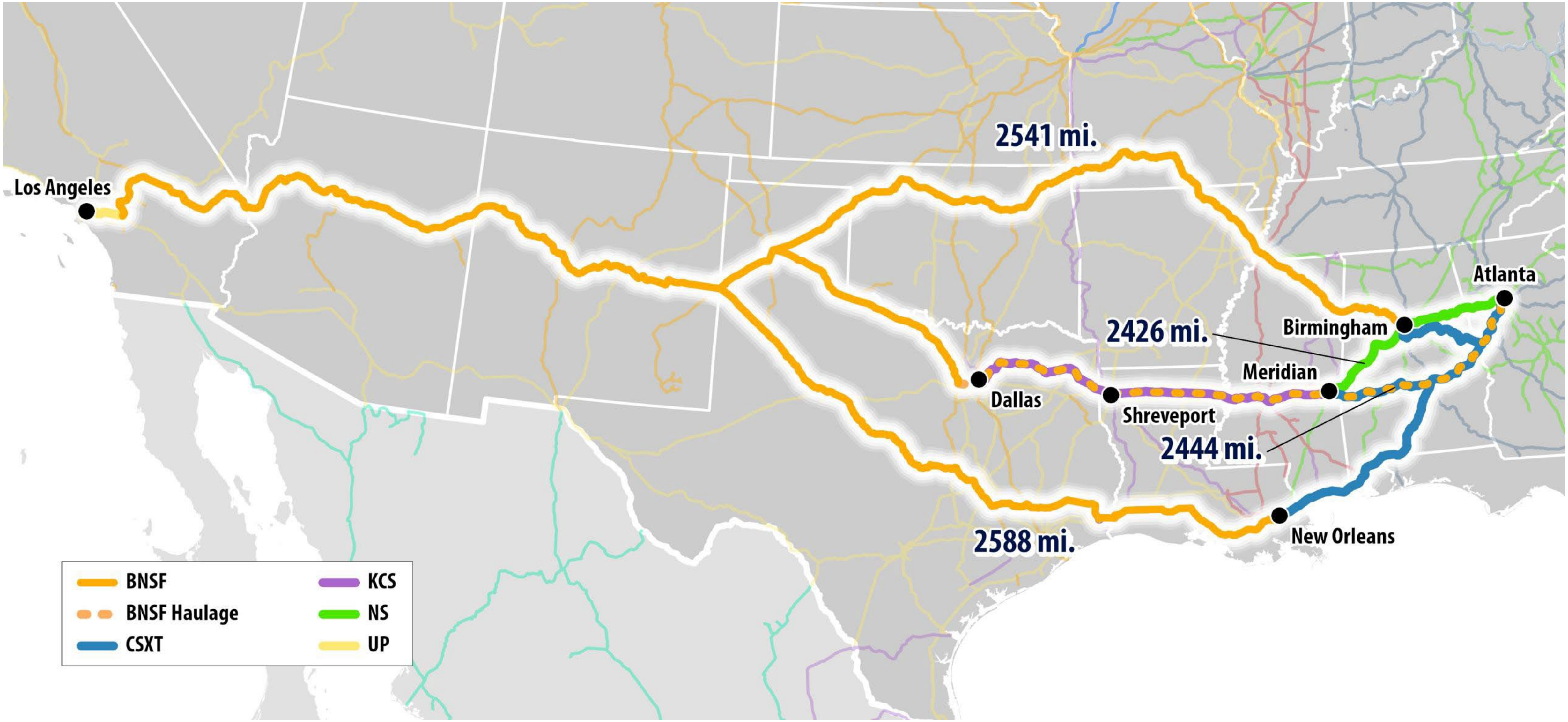
Short Dray from Shipper to Intermodal Terminal

The Meridian Speedway is the Most Competitive Route to SE

"The Meridian Speedway is the most efficient link for shippers who need to move traffic through the major population centers in the Southeast and Southwest, areas of tremendous population and economic growth….All it takes is one look at a map and the advantages of this route are apparent. Compared to the next-shortest available route, the Meridian Speedway saves 184 miles between Atlanta and Dallas, 212 miles between Charlotte and Dallas, and 41 miles between Jacksonville and Dallas." **NS-9, at 15-16.**

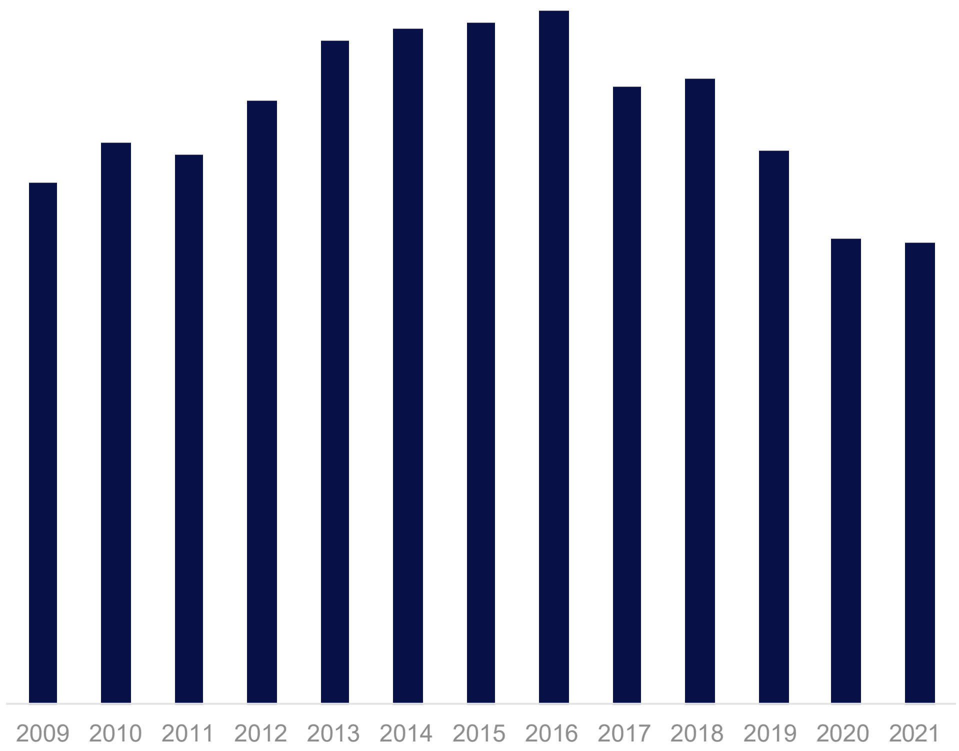
Route	Miles Saved
Dallas ⟺ Atlanta	184
Dallas ⟺ Charlotte	212
Dallas ⟺ Jacksonville	41
Los Angeles ⟺ Atlanta	115

Meridian Speedway is the fastest and most direct route to SE US



CSX volumes are hindered by lack of additional opportunities

CSX SE Corridor[1] Intermodal Transcon Volumes

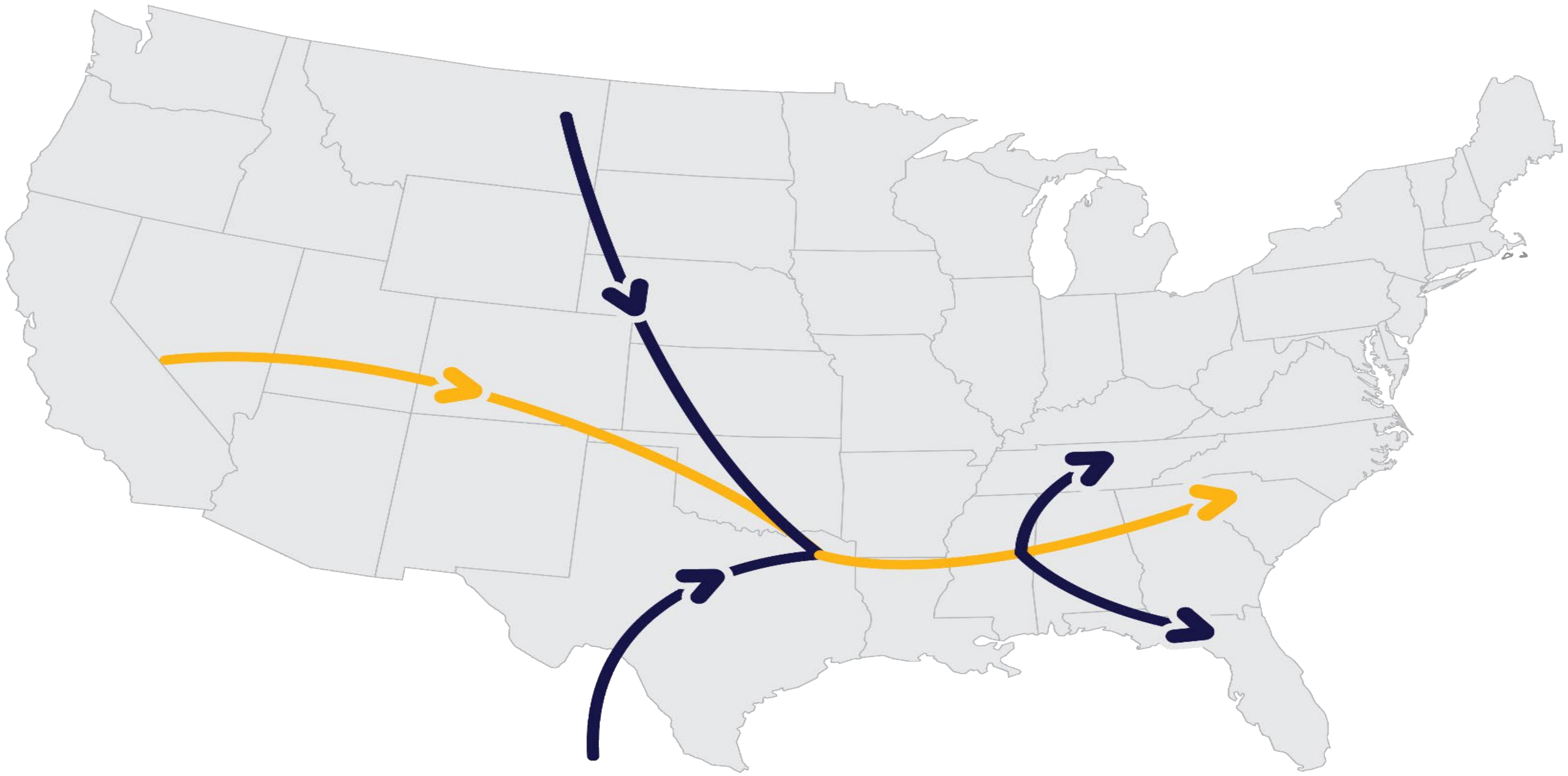


- BNSF-CSX partnership provides a partial solution to only one market
  - Inferior routing and limited additional service offerings have capped CSX volume growth
- Open competition across gateways would ensure more shipper options
  - Current CSX offerings from west coast to SE are limited relative to market demand due to competitive landscape

1) SE Corridor defined as BNSF & UP interchange traffic over Memphis, New Orleans and Birmingham

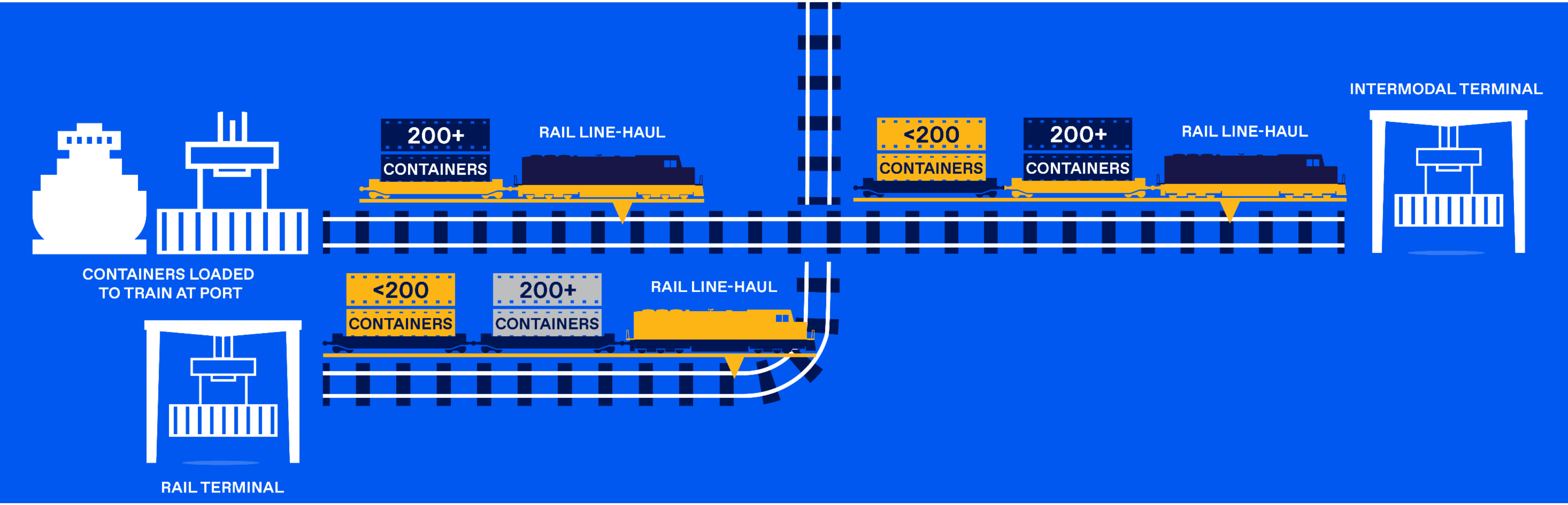
Dallas market is uncompetitive to the SE without Speedway use

What is required for competitive rail intermodal service: Anchor Volume



Small markets must connect to a large-volume lane between two large markets for best service.

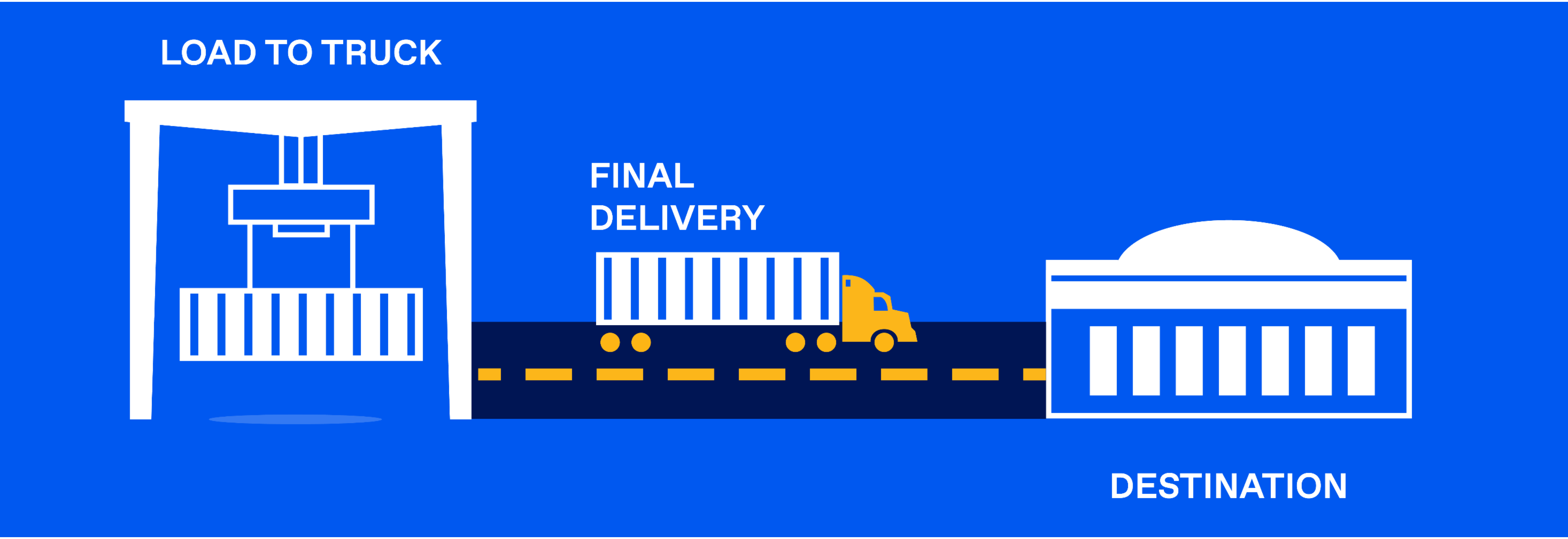
Traffic aggregation makes Intermodal service more competitive



Once anchor volume is established, less-than-trainload blocks can be added, enabling intermodal connectivity to smaller markets

Open speedway will create more options for shippers

Limited drayage makes rail more competitive with trucks



Intermodal Terminal footprint minimizes dray miles for customers

NS Intermodal Terminal Map

CSX Intermodal Terminal Map

CSX supports the elimination of barriers to competition

- Unique scenario of host railroad removing itself from competition
- NS perpetual exclusivity was unnecessary to recoup investment
- CSX is willing to invest
- The Board should remove unlawful barriers to competition and promote the public interest
- CSX may or may not gain traffic as a result but shippers will benefit from removal of barriers to competition

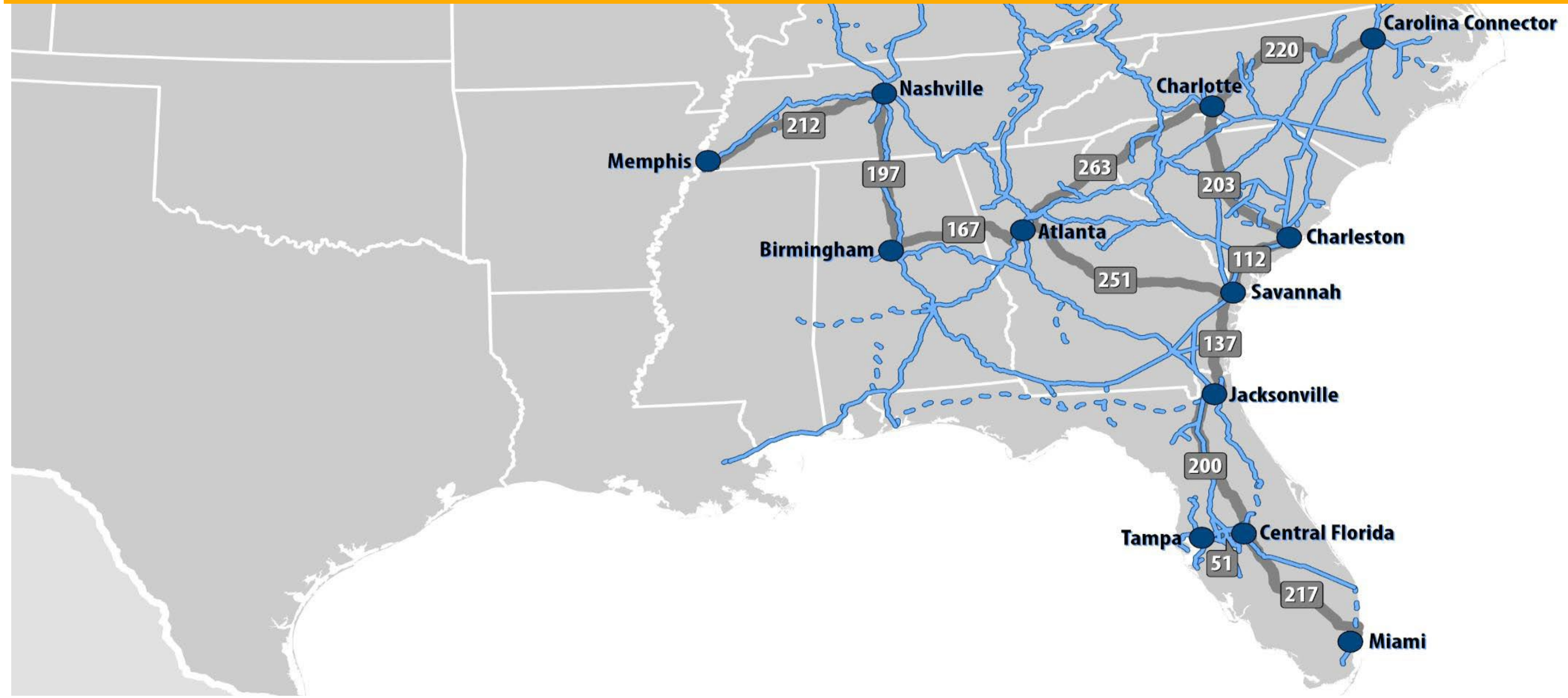
APPENDIX

Intermodal Terminal footprint minimizes dray miles for customers

Norfolk Southern Intermodal Terminals and Highway mile distances in SE US

CSX Terminal investments demonstrate value of distinct markets

CSX Intermodal Terminals and Highway mile distances in SE US



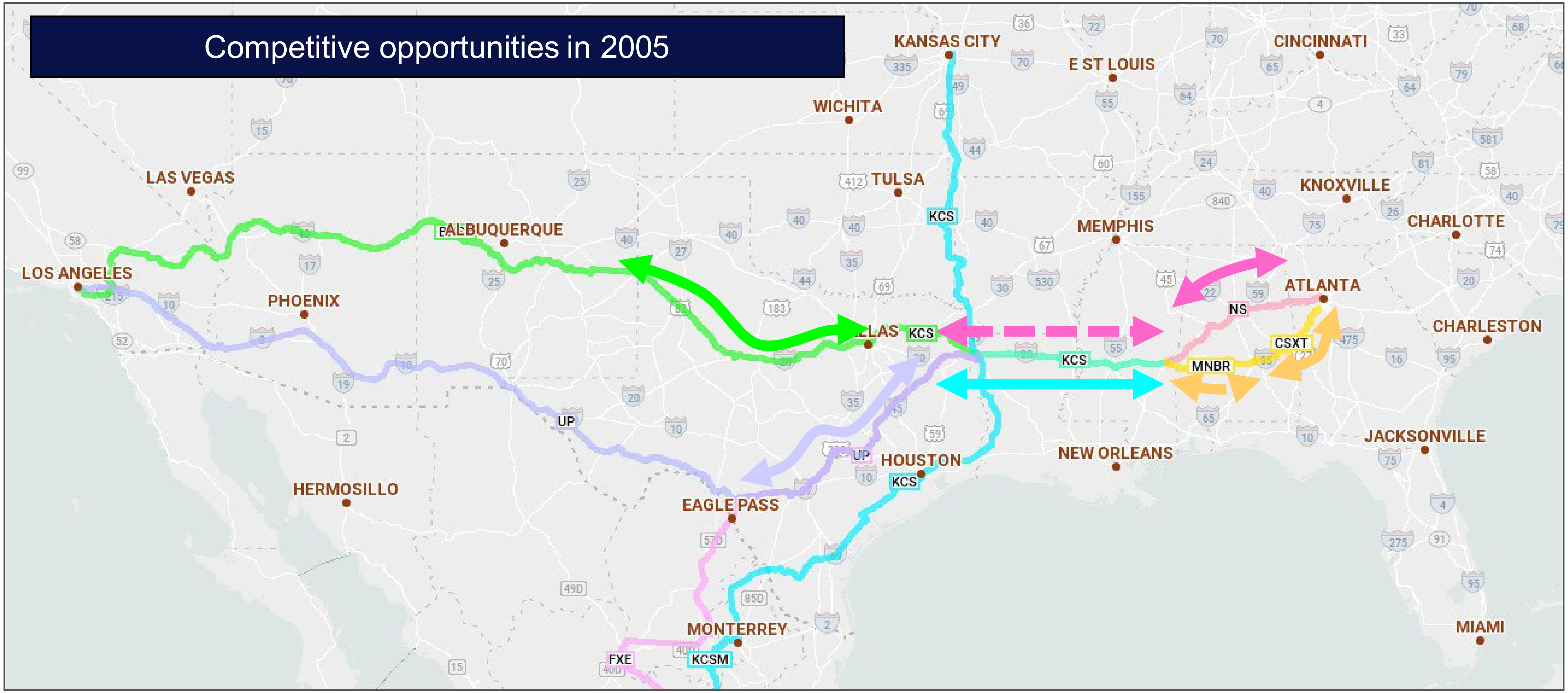
ROB GIRARDOT

CSX Director of Intermodal Strategy & Analytics, Rail Relations and Port Development

Introduction

- CSX was close to agreement with KCS and BNSF to create a competing Speedway service, with far-reaching benefits
- The NS-KCS agreements foreclosed that opportunity and all its benefits
- The Meridian Speedway is a uniquely efficient route
- Addressing this foreclosure would result in far-reaching public benefits

Meridian Speedway created competition among Class 1's prior to 2006



Traffic Flow Key: KCS NS CSX BNSF UP FXE

CSX was actively negotiating to expand intermodal offering to SE

The service CSX, BNSF, and KCS were negotiating to build

BN & CSX touch via non-exclusive haulage

Established BN transcon provides “anchor”

Less-than-trainload service for other O/Ds

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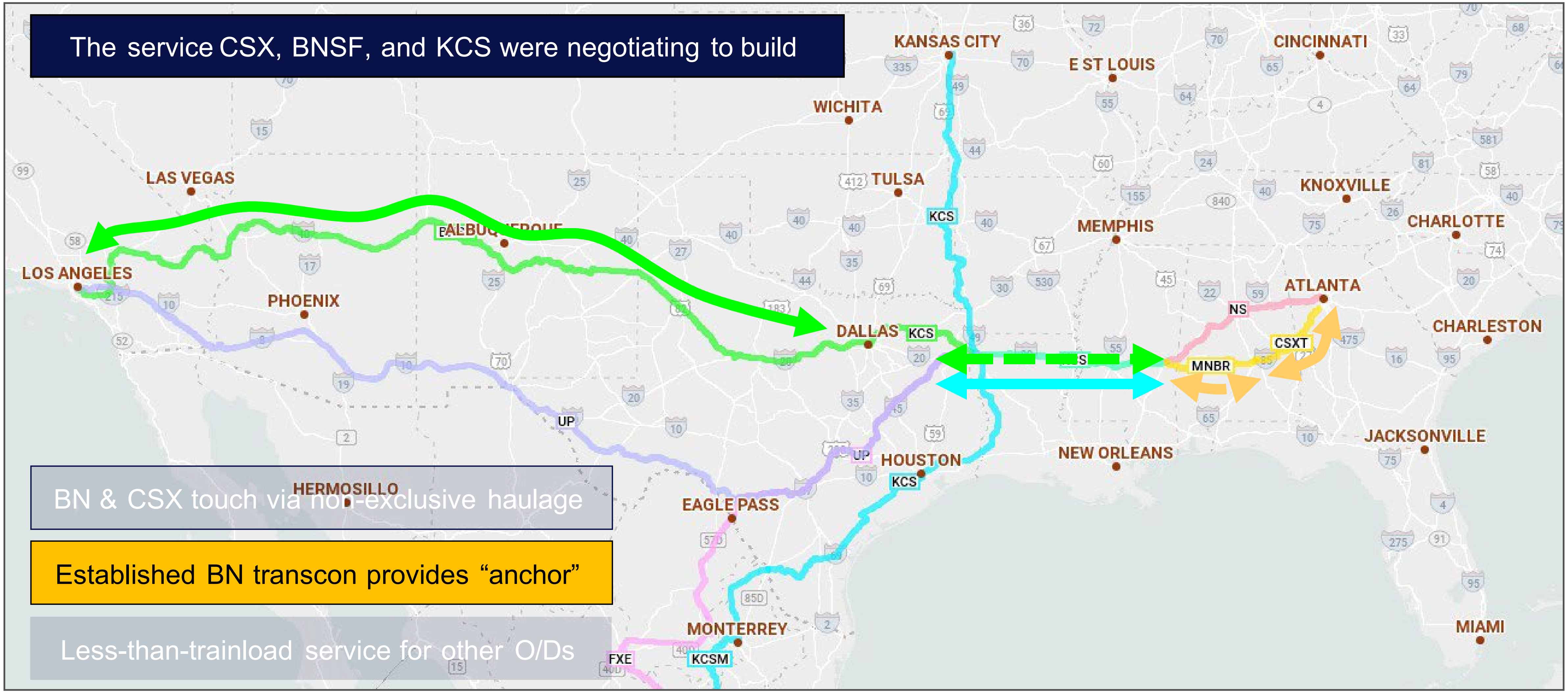

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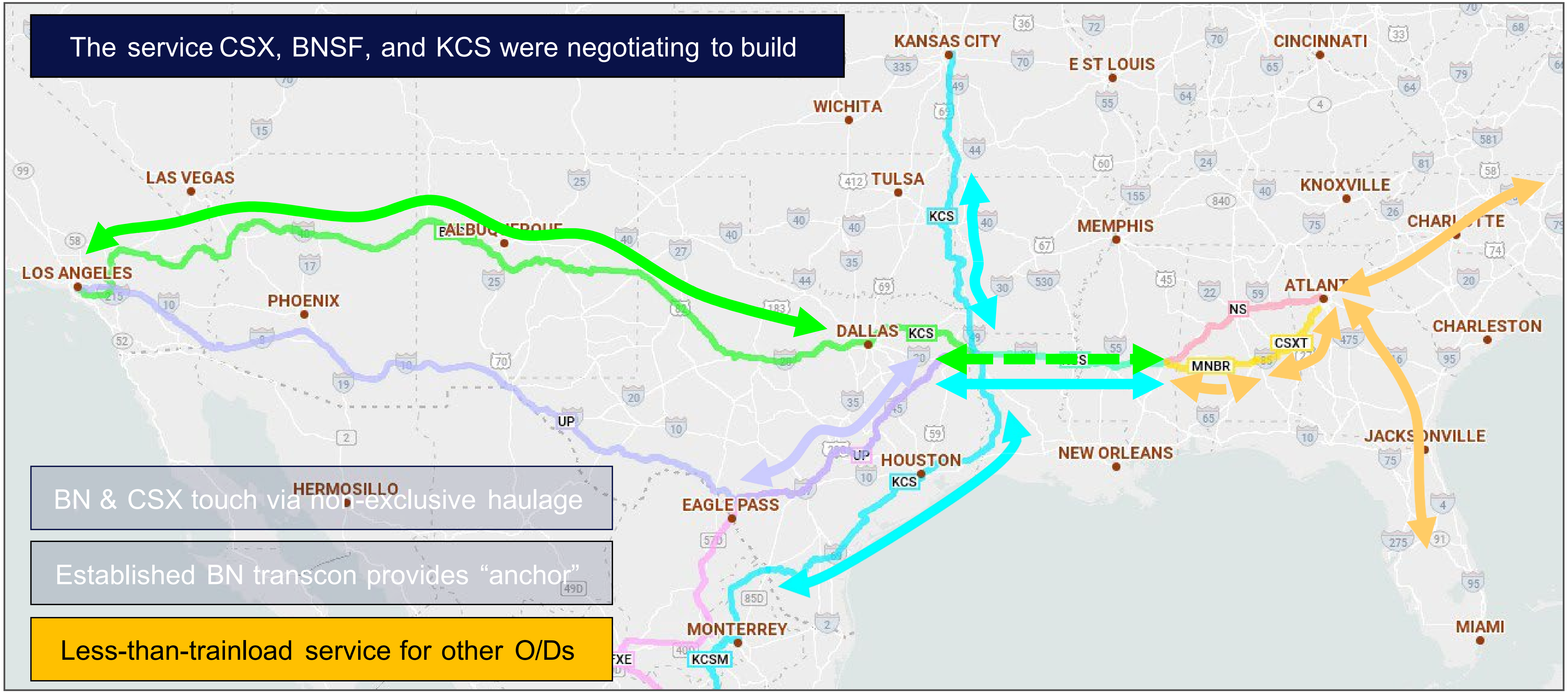

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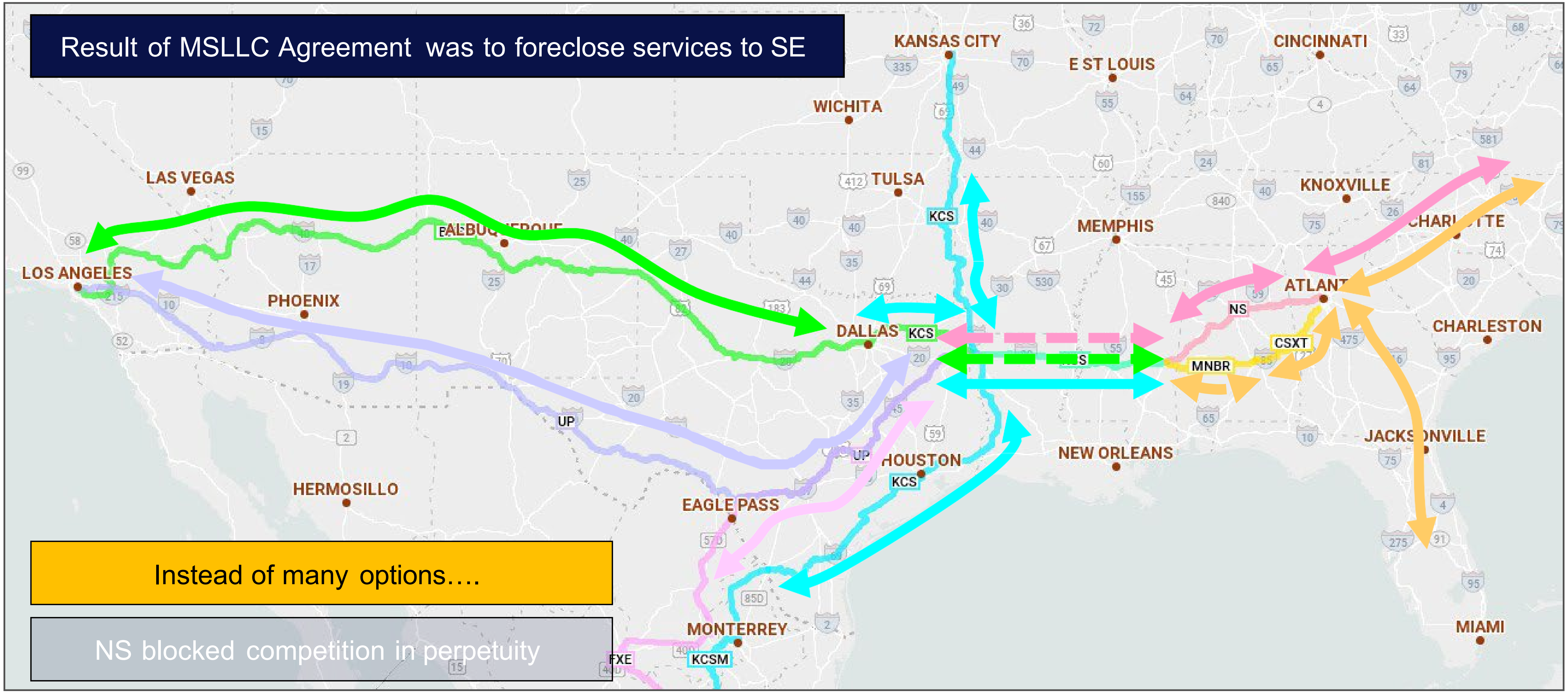
The Exclusivity Arrangements cut off imminent service options



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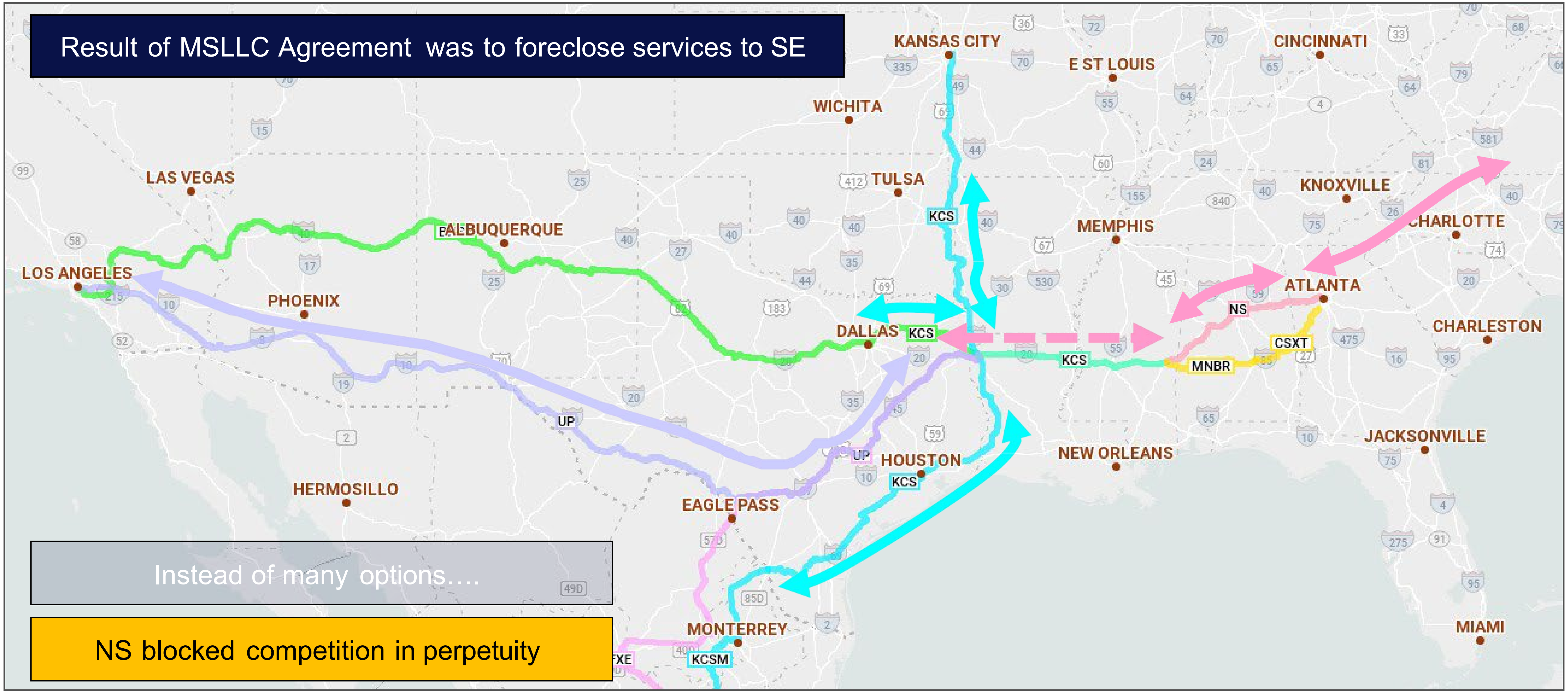

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Route	Miles Saved
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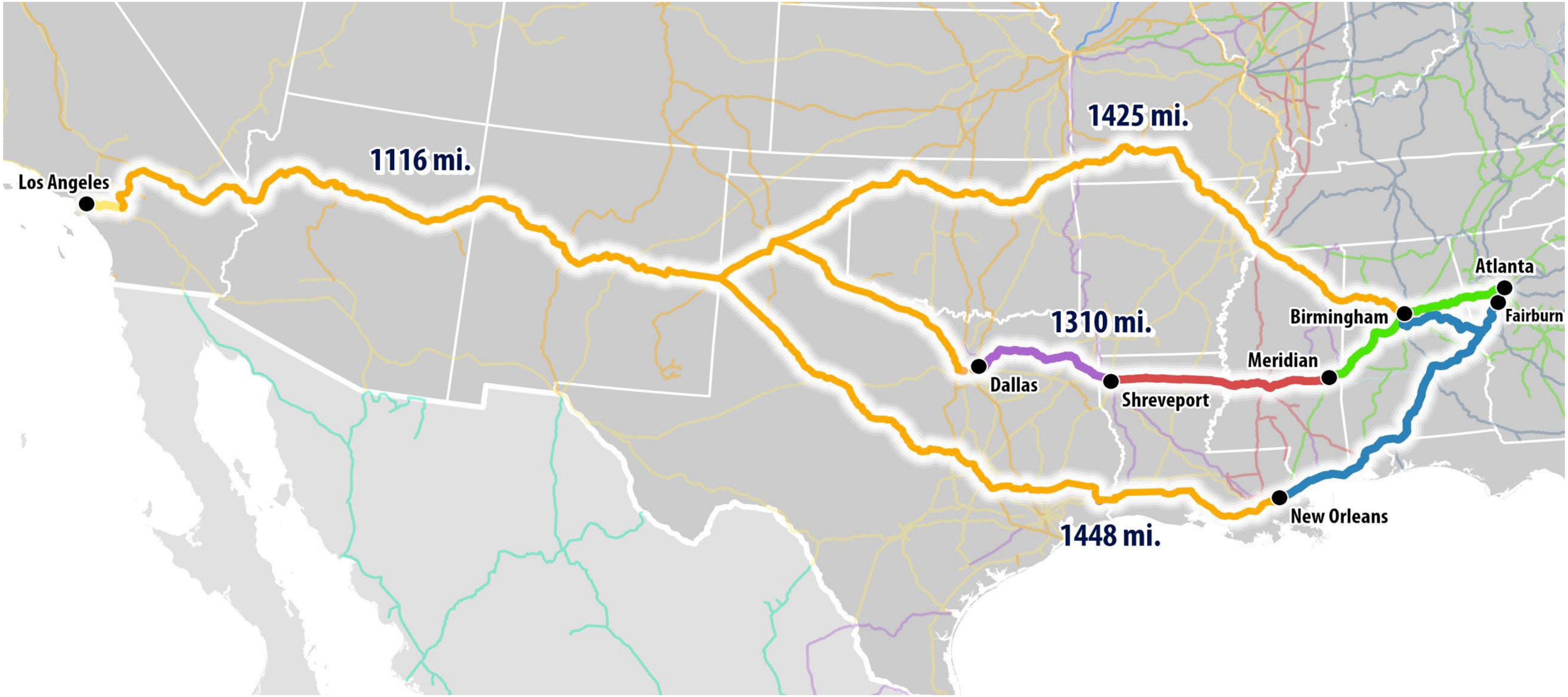
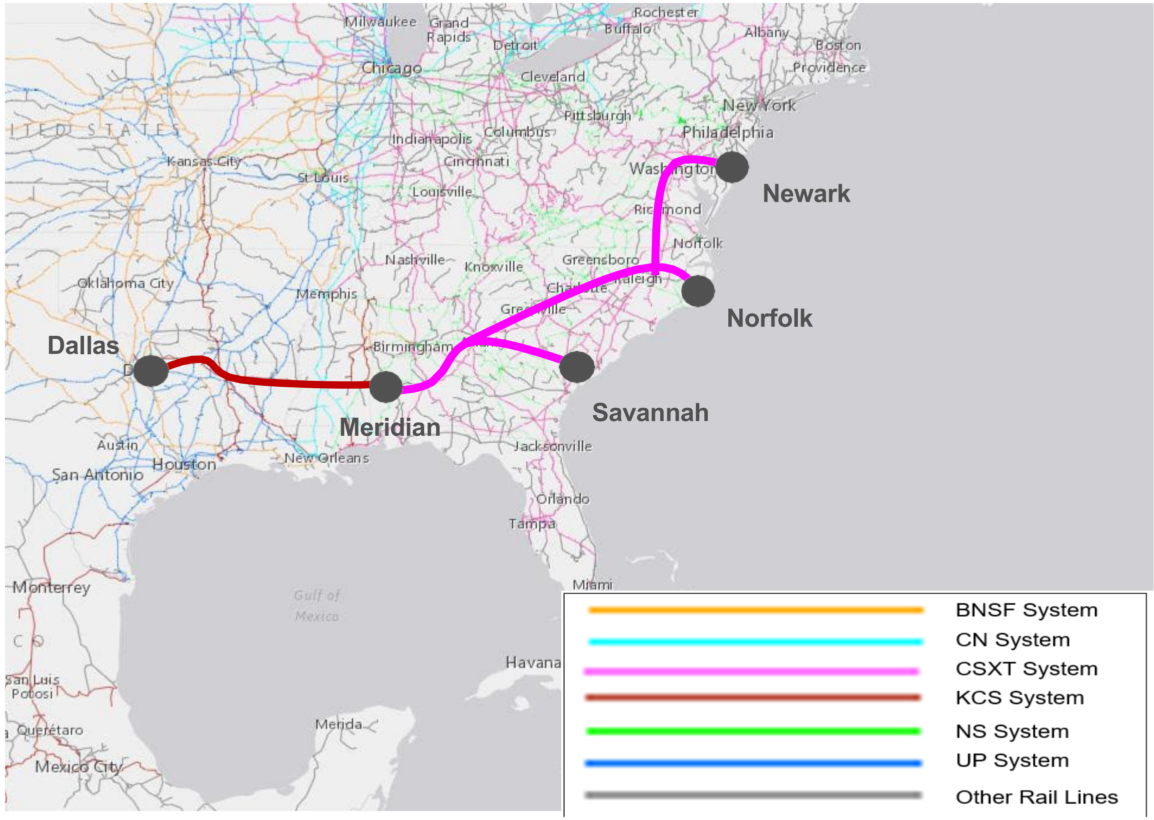
CSX

The Memphis route is much less direct than the Speedway route



Efficient Dallas – East Coast port routes can take trucks off the road

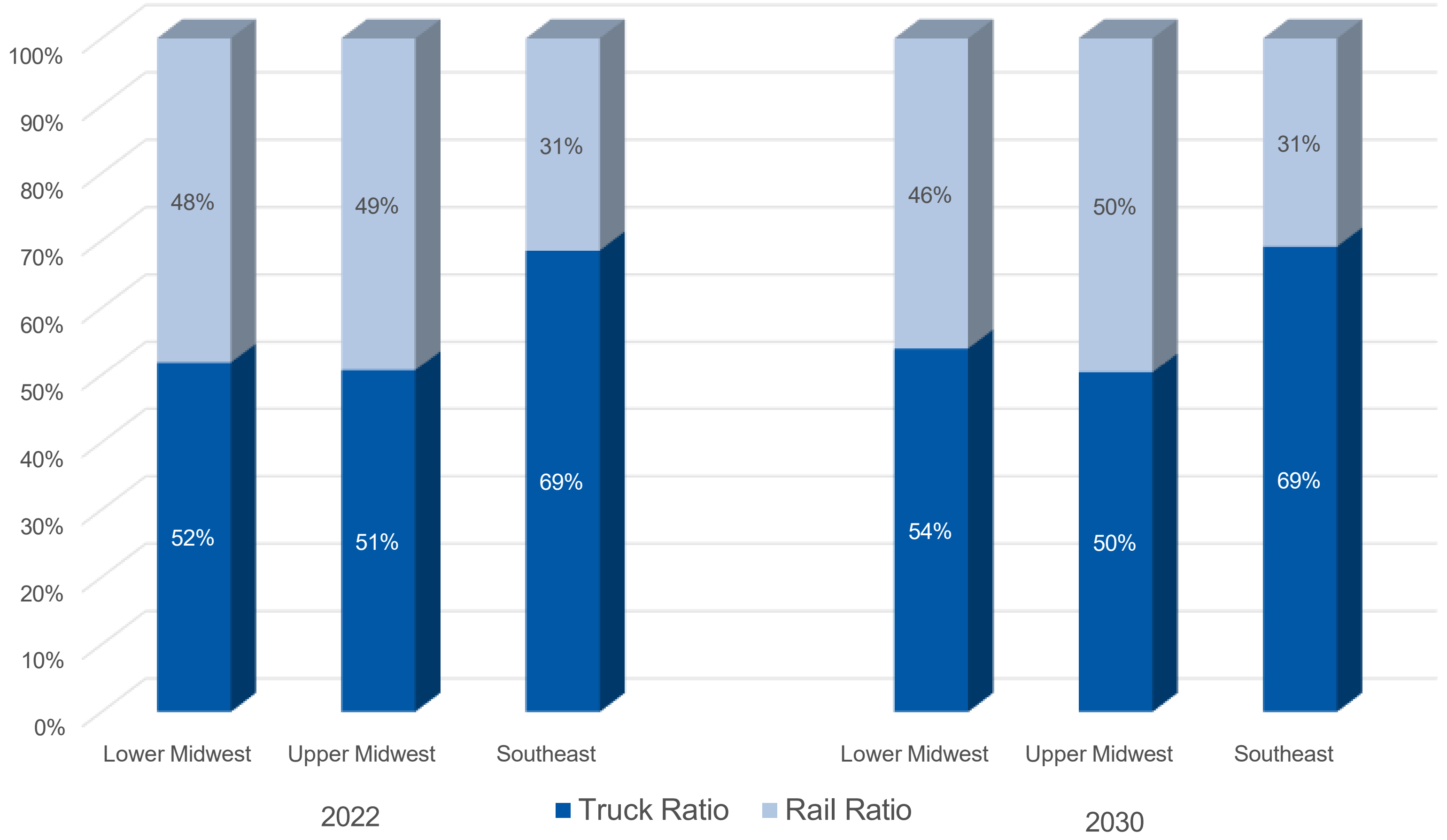
- Traffic between Dallas and Savannah is primarily truck-served
- We cannot provide an effective rail solution because a non-Speedway route is so circuitous
- With a competitive route, East Coast ports present a large truck-to-rail diversion opportunity



Mexico – Southeastern automotive markets remain untapped by rail

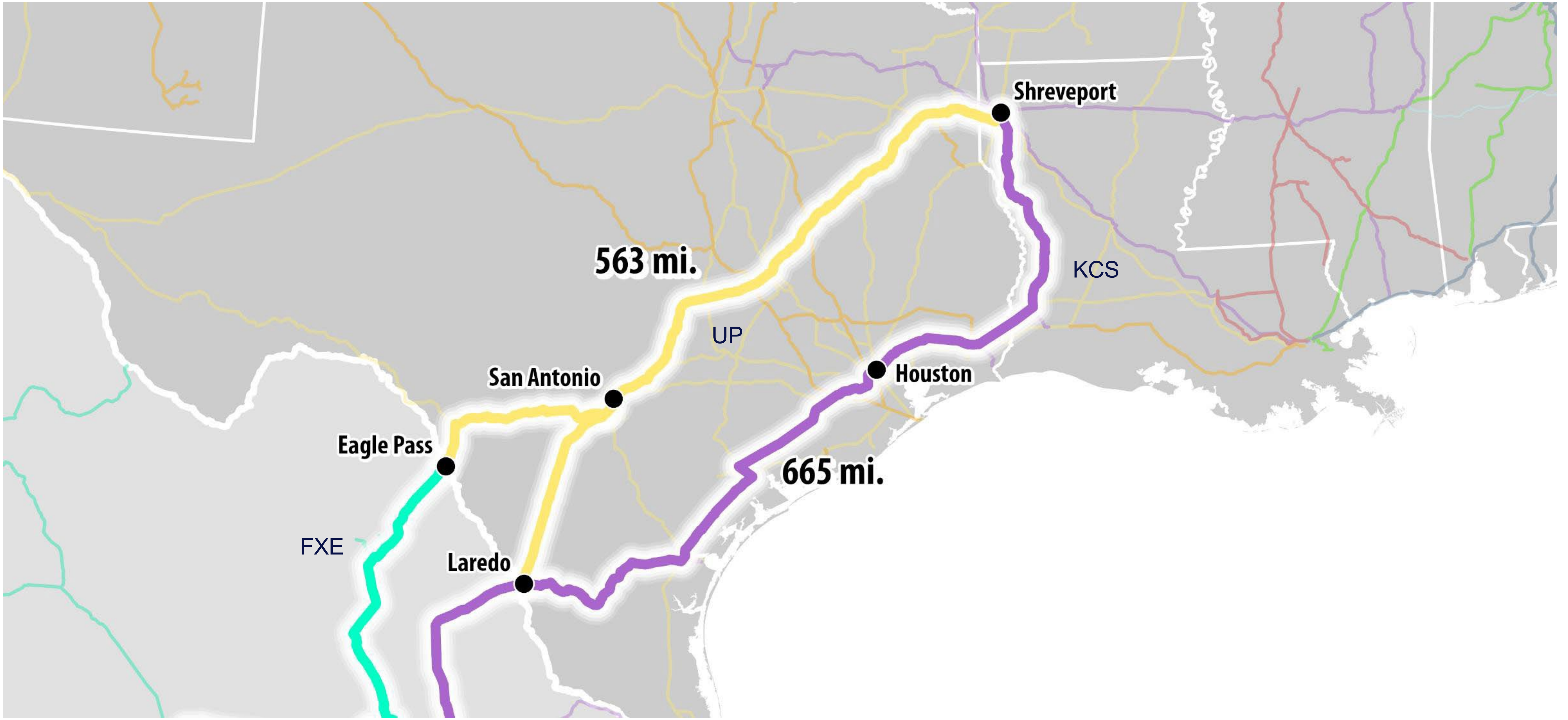
- CSX has large volumes connecting Mexico with automotive shippers in Detroit area
- CSX has no volumes doing the same in the Southeast

Truck vs Rail Market Shares, 2022 and 2030



FAF data available at https://faf.ornl.gov/faf5/dtt_domestic.aspx; 2. Upper Midw est imports and exports are to Illinois, Indiana, Michigan, Ohio, and Wisconsin ; 3. Southeast imports and exports are to Alabama, Florida, Georgia, North Carolina, South Carolina and Tennessee; 4. Low er Midw est Imports and exports are to Kentucky, Missouri, Tennessee, West Virginia; 5. 2017-2019 represent actual data; FAF forecasting begins in 2020; 2. See Carey WP Mexico Truck and Rail Volumes Over Time.xlsx

To take more Mexico traffic off highways, UP must have access to Shreveport Gateway



RYAN TISCH

CSX Outside Counsel – Crowell & Moring LLP

Introduction: Role of Competition Law

- Public interest standard includes (but is not limited to) "whether the proposed transaction would have an adverse effect on competition between rail carriers." 49 U.S.C. § 11324.

- Agreements dividing traffic may "not unreasonably restrain competition." 49 U.S.C. § 11322.

- Antitrust law & policy provide well-developed framework for competition analysis

Key Findings of Competition Law Analysis

The Exclusivity Arrangements:

- Cause *horizontal* harm: They <u>reduce carriers 2-to-1</u> for key traffic over Speedway
- Cause *vertical* harm: They <u>require NSR's consent for competition</u> east of Meridian
- Hurt shippers: <u>Prices are higher and output is lower</u> than they would otherwise be
- Are not reasonably necessary for investment: "Free-riding" <u>is not a magic word</u>
- Have an anticompetitive aim: NSR purchased exclusivity to <u>prevent imminent competition</u>

The MSLLC Arrangements Have Two Distinct Elements

- The Exclusivity Arrangements:
  - ✓ Exclusivity for transcontinental intermodal.
  - ✓ Right of first refusal for Dallas intermodal.

- NS's Investment in the MSLLC:
  - ✓ $300 million in exchange for 30% share.
  - ✓ Most of investment used to improve facilities.

The Relationship Between Exclusivity and Investment

What the law says:

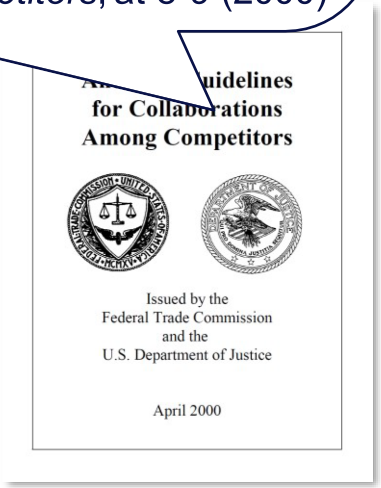
"If, however, participants … enter into an agreement that is reasonably related to the integration and **reasonably necessary to achieve its procompetitive benefits**, the Agencies analyze the agreement under the rule of reason."

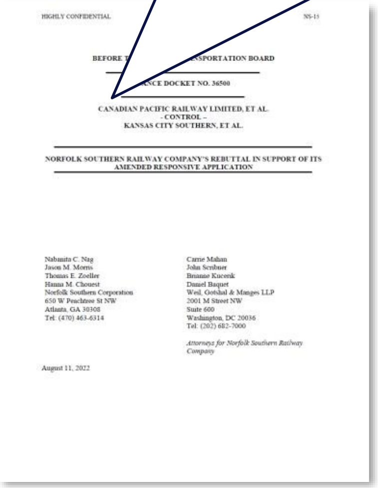
FTC-DOJ Guidelines for Collaborations Among Competitors, at 8-9 (2000)

What NS says:

"First, contrary to the allegations in CSXT's Response, **the MSLLC was, and remains, a pro-competitive joint venture** between NS and KCS that facilitated much-needed investment in the Meridian Speedway route."

NS-15, at 18





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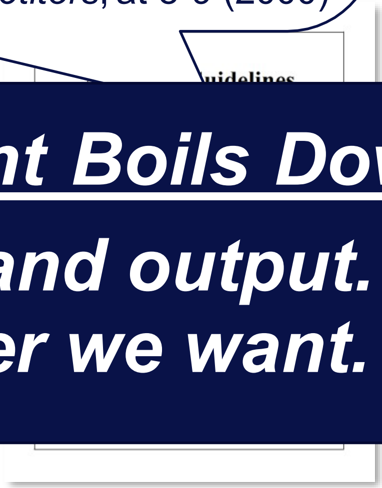


What NS's Argument Boils Down to:

We invested to expand output. Therefore we can restrict competition however we want.

The Rule of Reason Framework

Opponent must show

Harm to Competition:
The claim that Exclusivity Arrangements reduced competition.

Proponent must show

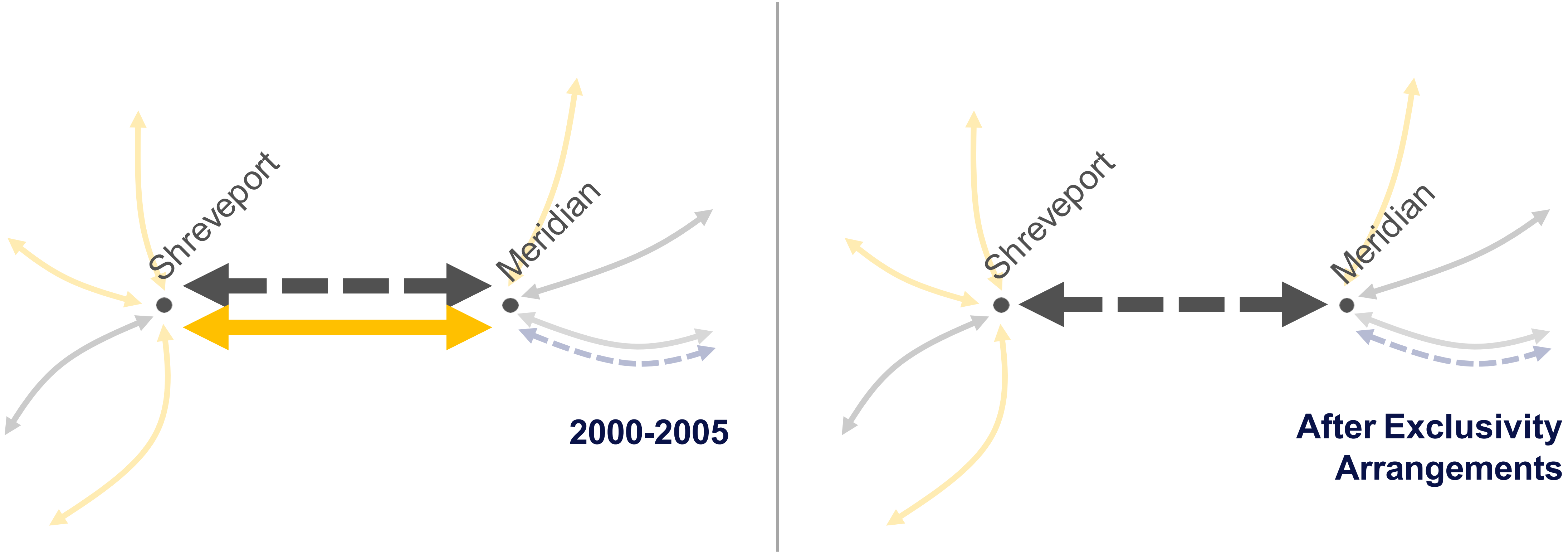
Procompetitive Justification:
The claim that Exclusivity Arrangements protected investment against "free riding."

Opponent must show

Less Restrictive Alternatives:
The claim that Exclusivity Arrangements were not reasonably necessary to facilitate investment.

Harm to Competition: Perpetual 2-to-1 Carrier Reduction

Carriers Offering Service over MSLLC Line for Transcontinental Intermodal Traffic:

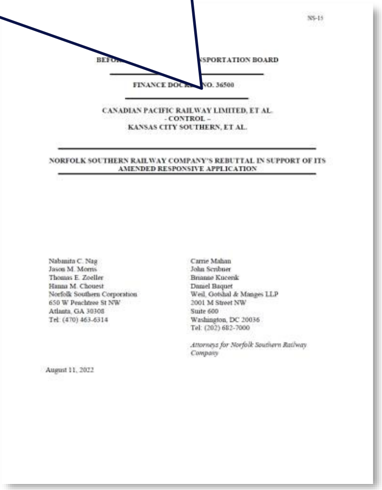


Perpetual 2-to-1 Carrier Reduction: NS's Egregious Error of Law

NS argues potential competitors can freely divide markets:

"At the time of the MSLLC formation, **KCS was not hauling traffic for, or performing interline service** jointly with, any carrier other than NS on the Meridian Speedway. **NS and KCS did not compete.**"

NS-15, at 19-20



NS-15

BEFOR[...]NSPORTATION BOARD

FINANCE DOC[...]NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
- CONTROL –
KANSAS CITY SOUTHERN, ET AL.

NORFOLK SOUTHERN RAILWAY COMPANY'S REBUTTAL IN SUPPORT OF ITS AMENDED RESPONSIVE APPLICATION

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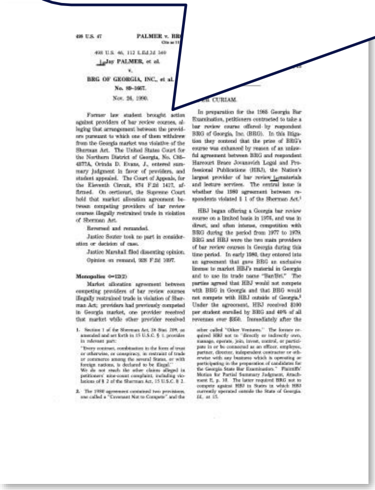
Attorneys for Norfolk Southern Railway Company

August 11, 2022

But the law could not be clearer:

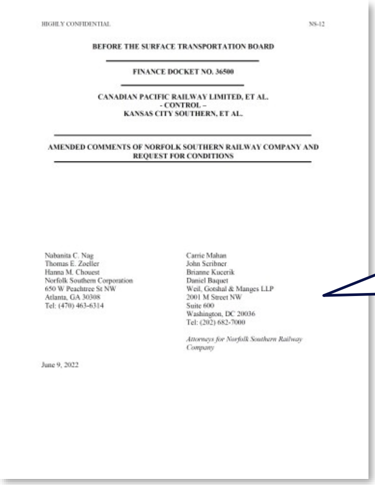
"Such agreements are **anticompetitive regardless of** whether the parties split a market within which both do business or **whether they merely reserve one market for one and another for the other.**"

Palmer v. BRG, 111 S.Ct. 401, 403 (1990)



Harm to Competition: Foreclosing Only Efficient Path to Market

NS on the Speedway:



HIGHLY CONFIDENTIAL NS-12

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36500

CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
- CONTROL –
KANSAS CITY SOUTHERN, ET AL.

AMENDED COMMENTS OF NORFOLK SOUTHERN RAILWAY COMPANY AND REQUEST FOR CONDITIONS

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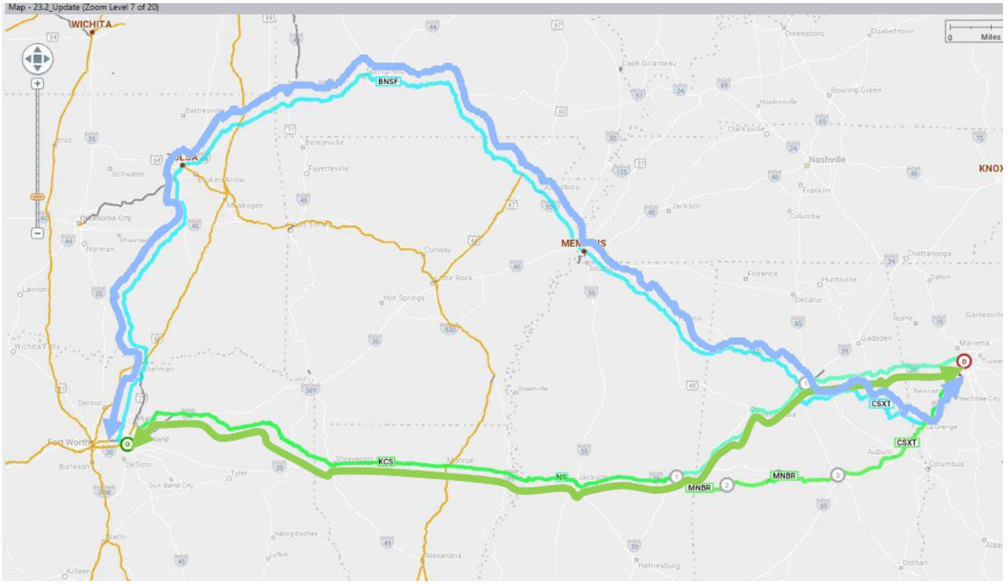
June 9, 2022

"All it takes is one look at a map and the advantages of this route are apparent. **Compared to the next-shortest available route, the Meridian-Wylie Route saves 184 miles between Atlanta and Dallas**, 212 miles between Charlotte and Dallas, and 41 miles between Jacksonville and Dallas."

NS-12, at 16

Dallas-Atlanta via Speedway route (green) vs Memphis route (blue)



Foreclosing Only Efficient Path to Market: Another Egregious Error

NS argues that if there is *any* alternative path to market, there is no harm to competition:

"NS has no ability to foreclose CSXT from providing intermodal services along this route. That is, **CSXT has the ability to provide Los Angeles-to-Atlanta intermodal services** whether or not it is able to utilize the MSLLC line."

Mayo Rebuttal V.S. ¶ 23

The law could not be clearer:

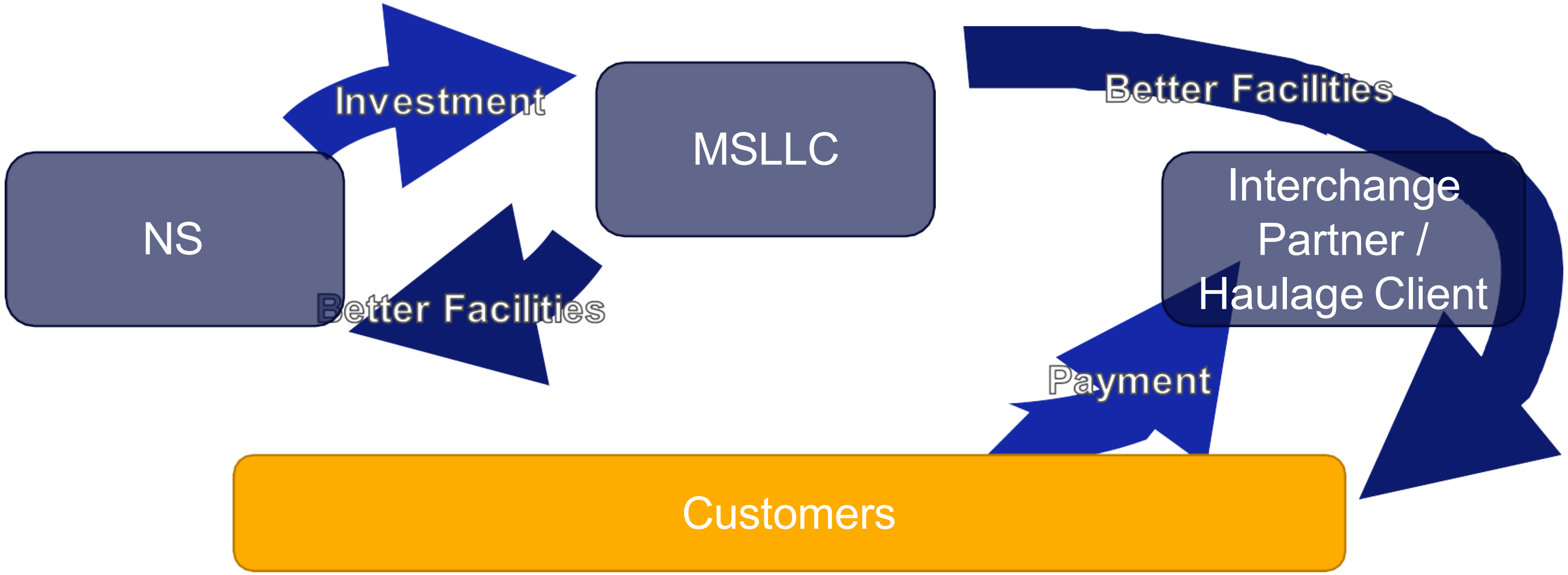
"Netscape is not completely blocked from distributing its product. That claim is insufficient to shield Microsoft from liability … because, **although Microsoft did not bar its rivals from all means of distribution, it did bar them from the cost-efficient ones**."

U.S. v. Microsoft, 253 F.3d 34, 65 (D.C. Cir. 2001)

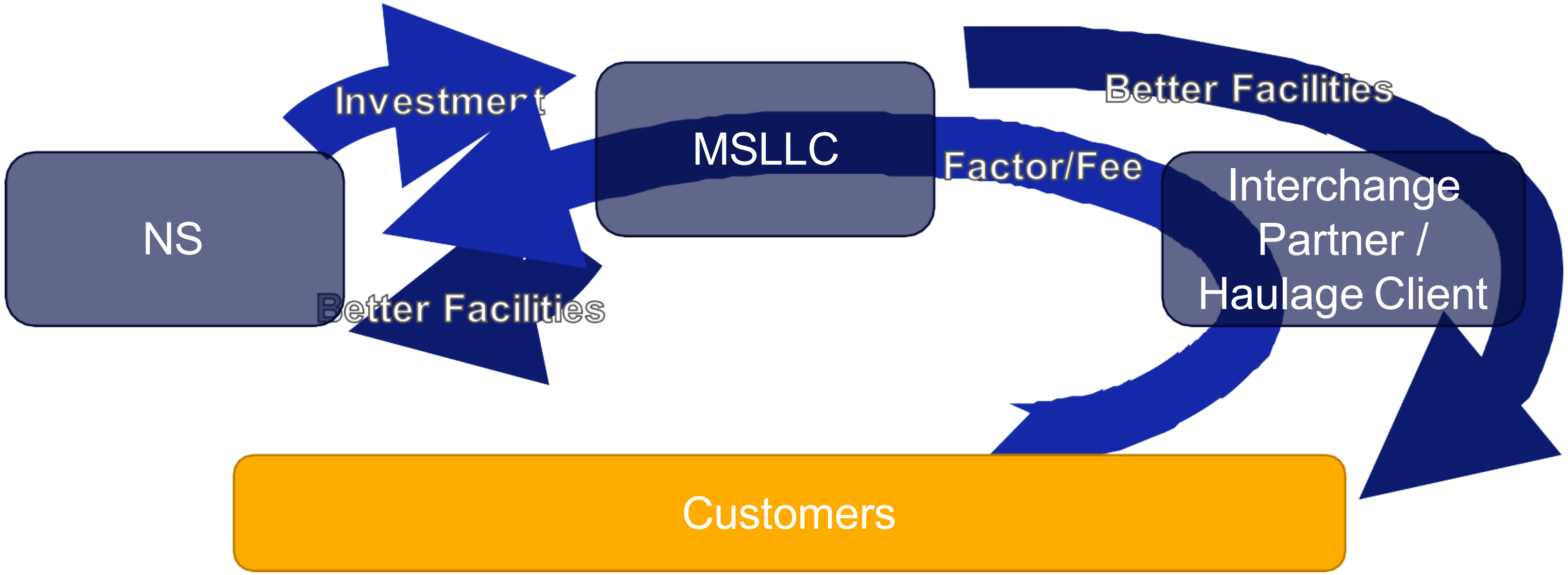
Harm to Competition: Real World Effects

- Prices are higher than without exclusivity (Carey)
- Output is lower than without exclusivity (Shehadeh)
- Services for which there is demand are blocked (Kenney/Girardot)

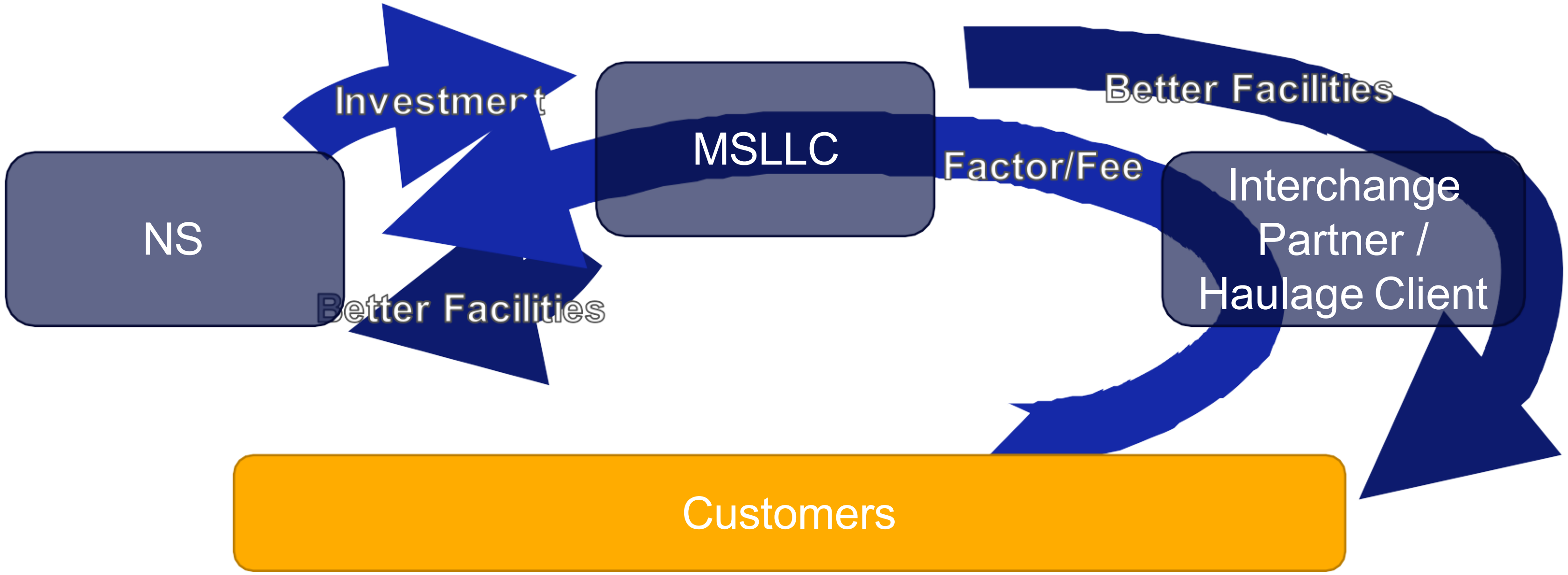
Proffered Justification: To Prevent Free-Riding on NS's Investment



Proffered Justification Fails: Free-Riding Would Not Occur



Proffered Justification Fails: Free-Riding Would Not Occur



When payment is possible, free-riding is not a problem because the "ride" is not free. Here lies the flaw in the NBA's

Chi. Prof. Sports, 961 F.2d 667, 675 (7th Cir. 1992)

Proffered Justification Fails: *Res Judicata* Claim Fails

What NS argues:

"The notices of exemption were complete and **the Board considered and approved of the narrow restriction on MSLLC operations** to protect NS's significant investment in the MSLLC."

NS-15, at 17

What the Board actually said:

"Meridian Speedway has no precedential value here …. These class exemptions … are **authorized subject only to an after-the-fact Board review if objections are received** …. The notices of exemption were **unopposed and became effective in due course**."

FD 35063 - Mich. Central Rwy. (Dec. 10, 2007), at 10

Industry Standard Arrangements Are Less Restrictive Alternatives

- NS could have protected its investment through numerous industry-standard arrangements that would have been less restrictive of competition

"[T]he key question at the third step [was] whether the [plaintiff] could prove that **'substantially less restrictive alternative rules' existed** to achieve the same procompetitive benefits the [defendant] had proven at the second step."

NCAA v. Alston, 141 S.Ct. 2141, 2162 (2021)

The Board **should ignore these alternatives** because:

- The MSLLC joint venture was "pro-competitive"

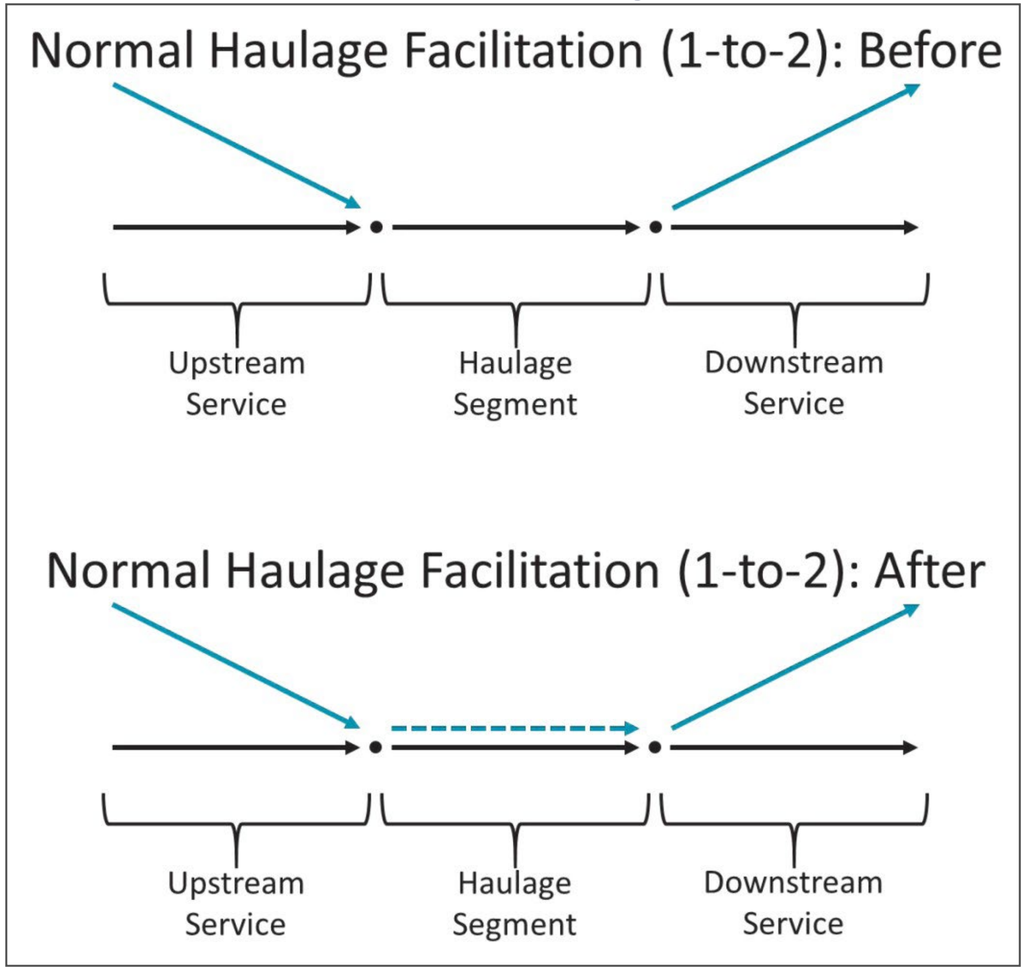
NS-15, at 21; *Mayo Rebuttal V.S.* ¶ 68

- The MSLLC investment was larger

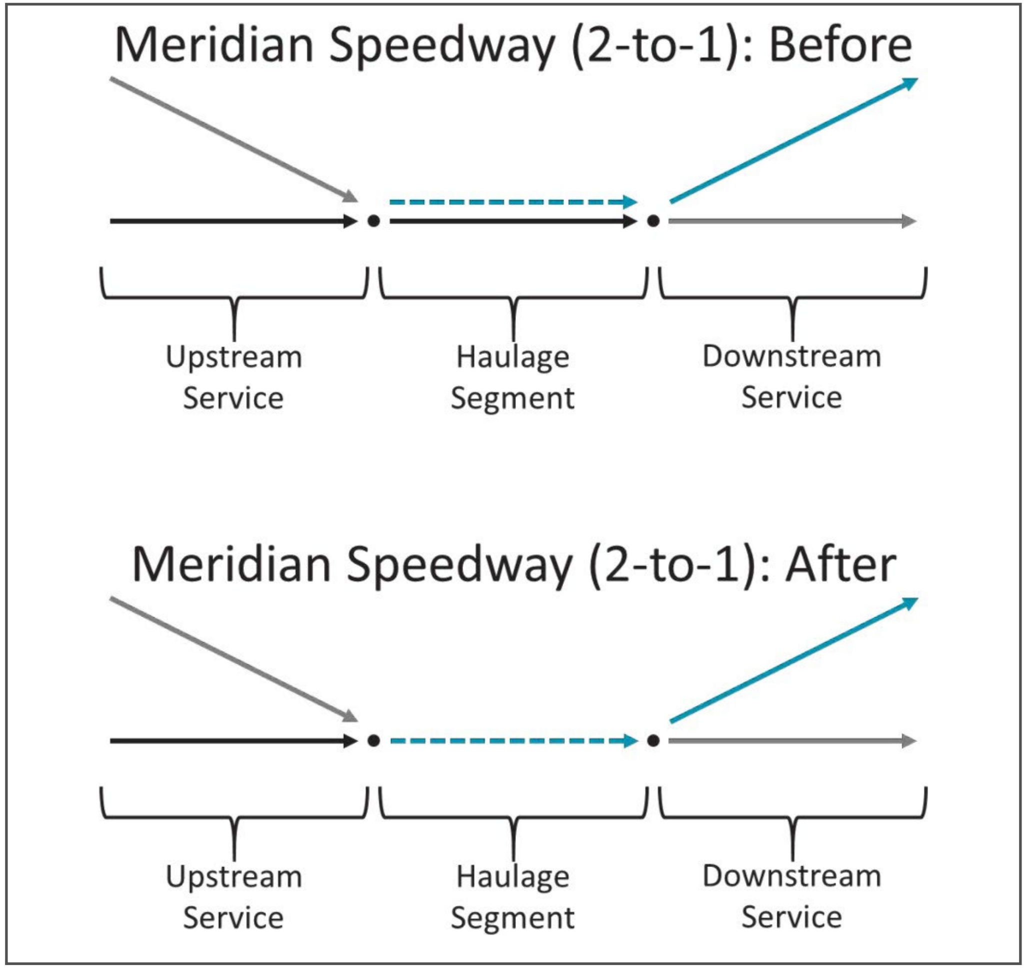
NS-15, at 24-26

What About Others' "Exclusivity"?

What NS analogizes to:



What NS did here:



What Is Really Happening Here?

- NS00006606 at NS00006610 (Dec. 29, 2004)
- NS00006573 at NS00006586 (July 26, 2005)

Bottom Line Conclusion from a Competition Law Perspective

- NS knew competition was imminent
- NS purchased the ability to block that competition, forever
- None of NS's proffered justifications engages with the relevant principles of competition law and policy
- **NS is not mounting a defense. It is counting 100% on the Board to ignore this issue.**

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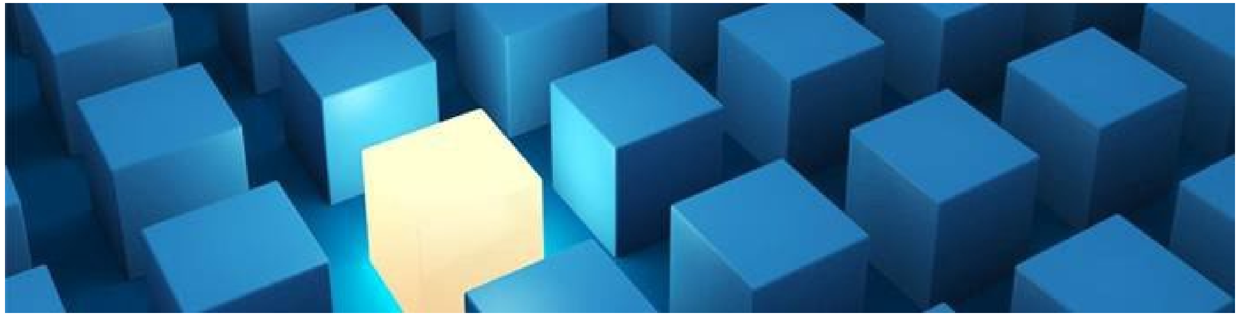


FINANCE DOCKET NO. FD 36500
PUBLIC HEARINGS

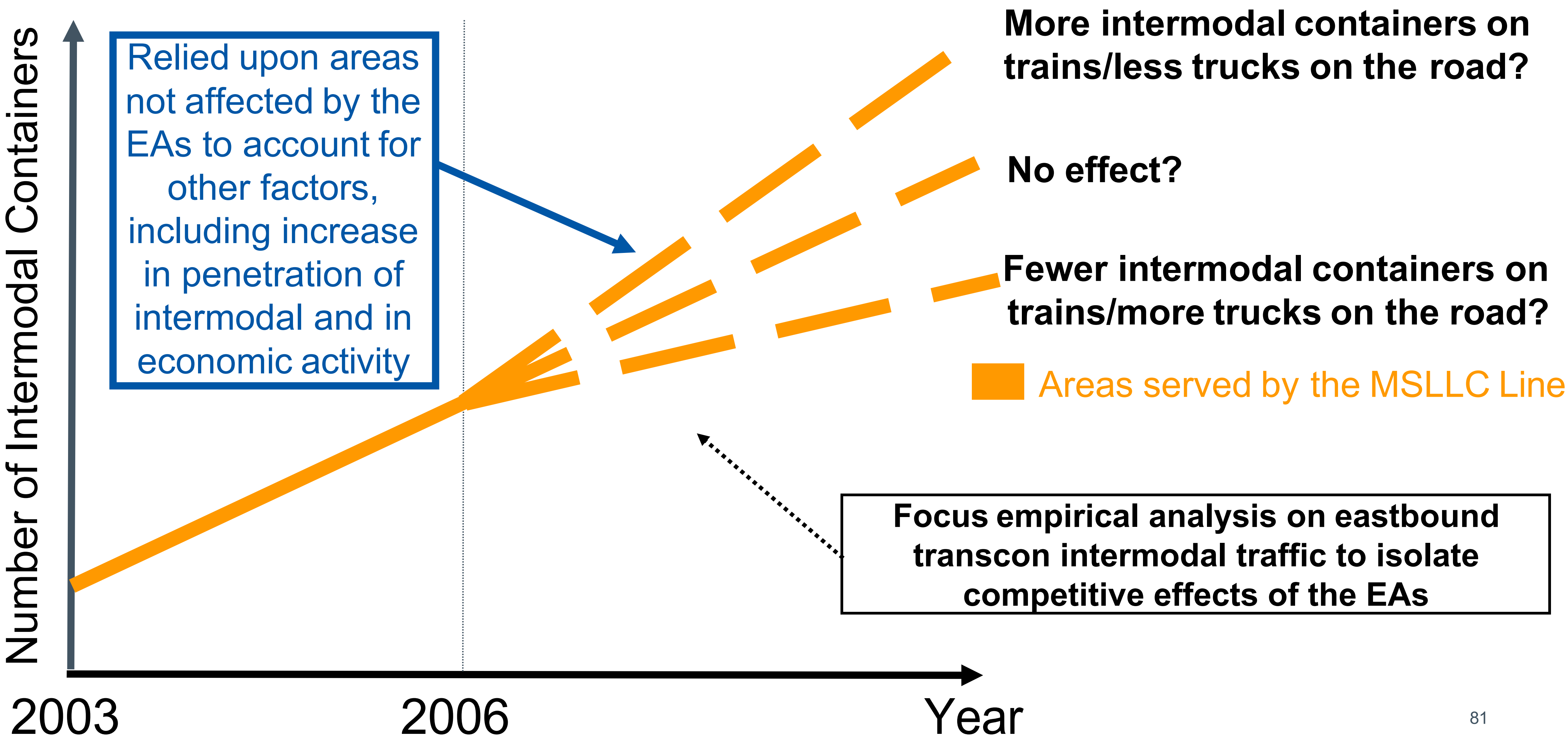
SEPTEMBER 30, 2022

Ramsey Shehadeh, PhD
On Behalf of CSX

Agenda

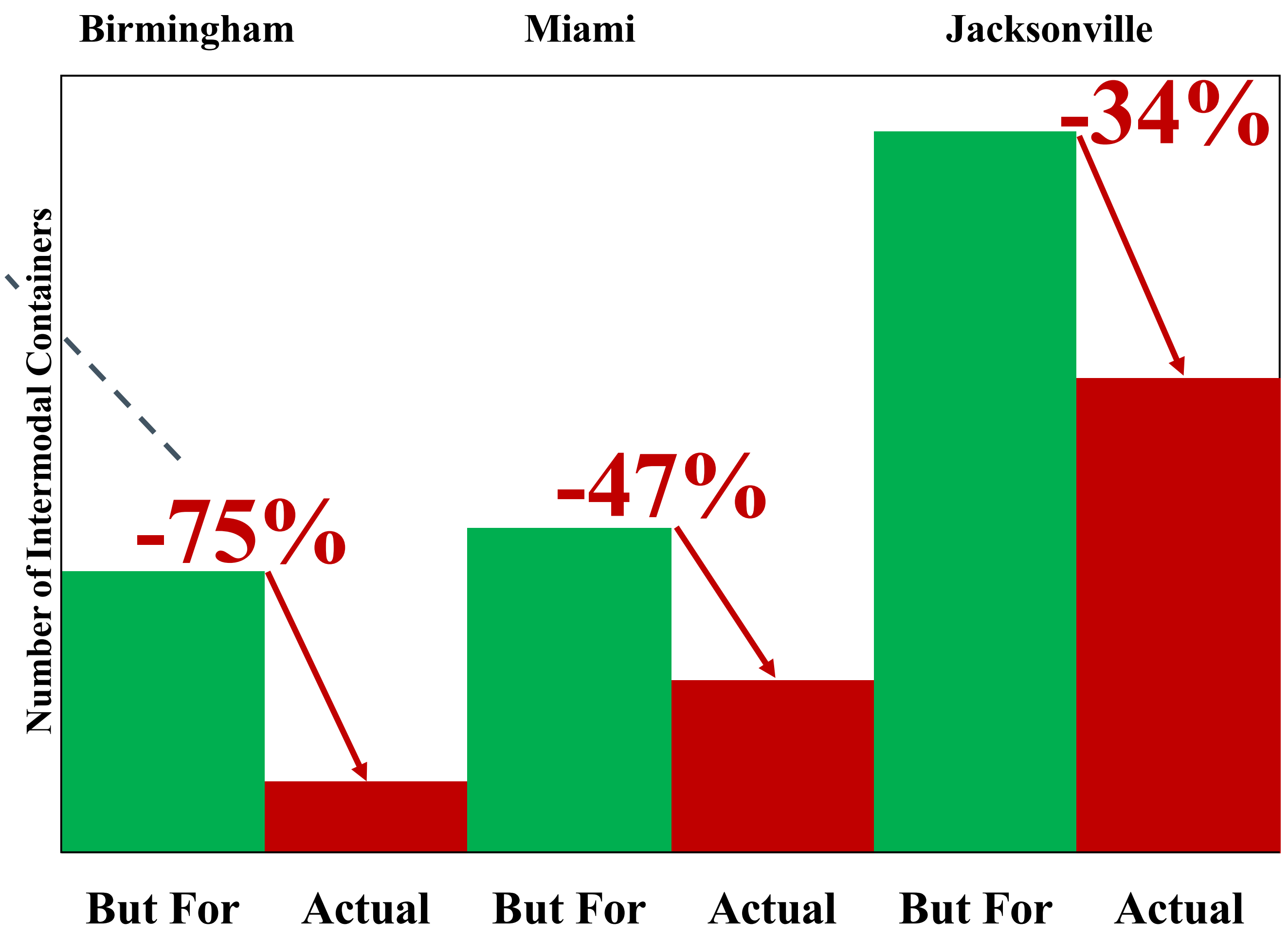
1. **Economic Analyses Demonstrate that Removing the Exclusivity Arrangements ("EAs") Will:**
   - **Enhance Competition to the Benefit of Shippers and Consumers**
   - **Increase Intermodal Rail Traffic (some of which will take trucks off the road)**
2. **NS's Economic Expert Has Not Addressed the Anticompetitive Effects of the Exclusivity Arrangements**
   - **Correcting His Proposed Method Confirms that Removing the Exclusivity Arrangements Will Increase Competition**
3. **The CP-KCS Transaction Exacerbates, from an Economic Perspective, the Anticompetitive Effects of the Exclusivity Arrangements**

What Would Happen if Competitors Were Not Foreclosed from Competing with a Transcon Container Product Using the MSLLC Line?



Economic Methods Confirm that Removing the EAs Would Increase Competition for Transcon Intermodal Traffic (Method 1)

Impact on average annual transcon intermodal container volumes (2013-2019): The EAs foreclosed competition on the MSLLC Line and reduced supply relative to competition in the absence of the EAs (“but-for” competition)

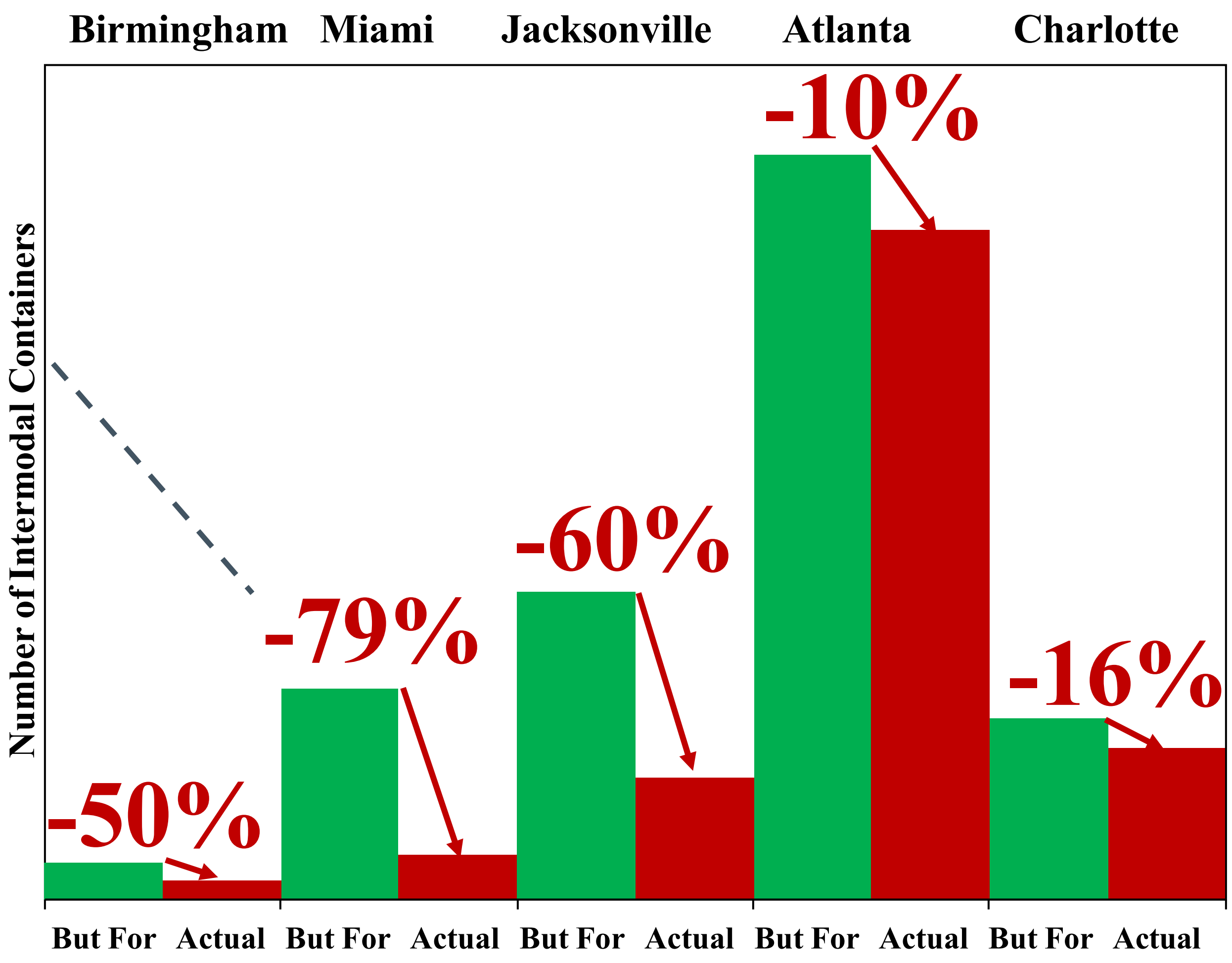


With enhanced competition absent the EAs, transcon intermodal container traffic would have been higher by an average of **85%** relative to actual volumes in 2013-2019.

Source: Shehadeh V.S., p. 2, and Shehadeh Workpaper “Regression Dataset.csv”.

Economic Methods Confirm that Removing the EAs Would Increase Competition for Transcon Intermodal Traffic (Method 2)

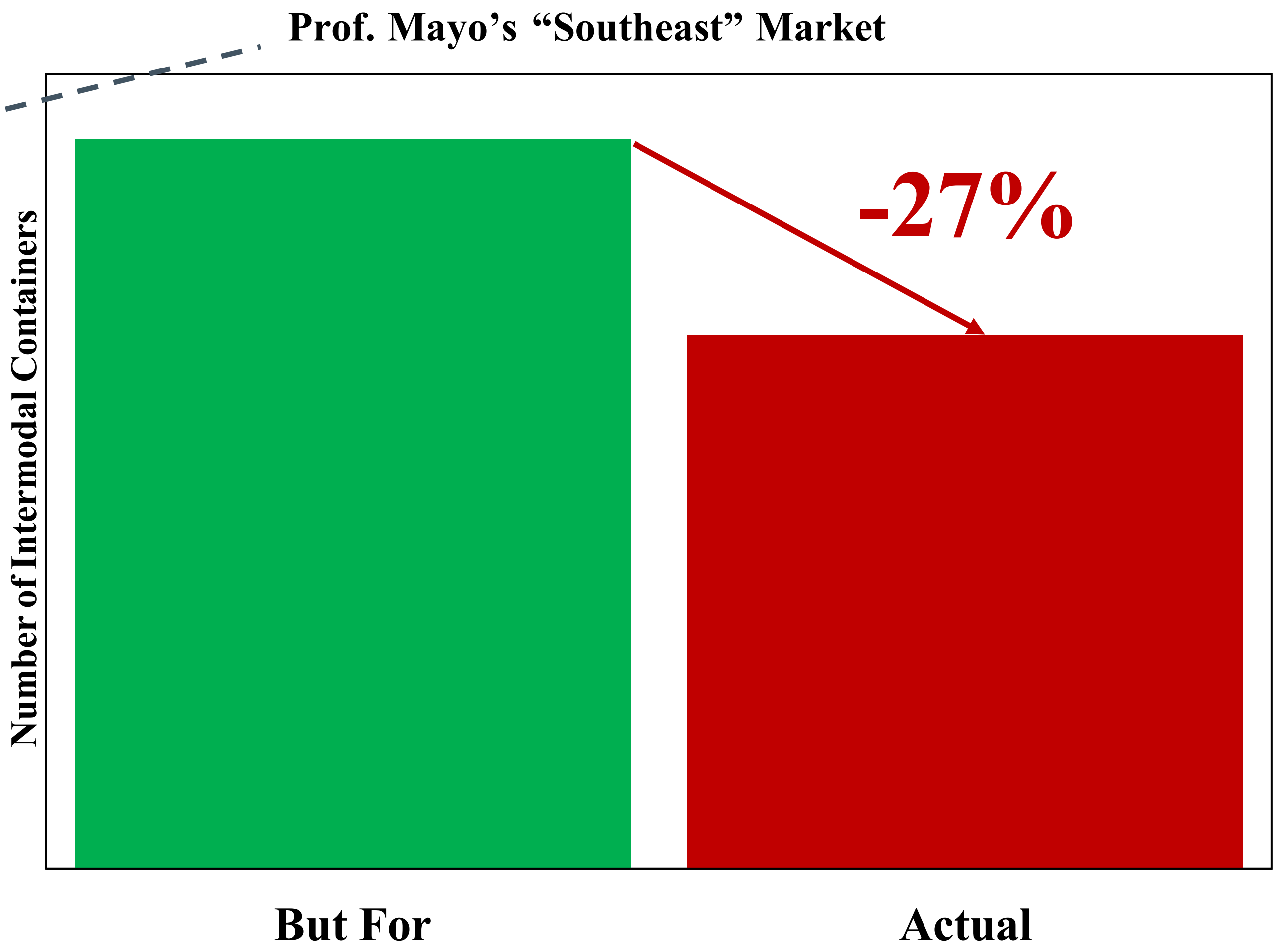
Impact on average annual transcon intermodal container volumes (2013-2019): The EAs foreclosed competition on the MSLLC Line and reduced supply relative to competition in the absence of the EAs ("but-for" competition)



Source: Shehadeh V.S., pp. 24, 37, and Shehadeh Workpaper "HC-WP-Synthetic Controls.log".

Removing the EAs Would Increase Competition Even When Evaluated, As NS's Expert Proposes, By *Aggregating* Shipments Across the Southeast*

*Aggregate transcon intermodal container shipments as calculated by NS's expert Prof. Mayo, properly analyzed using methods in my Verified Statement



With enhanced competition absent the EAs, transcon intermodal container traffic would have been higher by an average of **37%** relative to actual volumes in 2013-2019.

Sources: Shehadeh V.S. at pp. 24, 37 using code in Shehadeh's Workpaper "06 Synthetic Controls.do" applied to Prof. Mayo's aggregated Southeast data from his August 11 Workpaper "Exhibit 6 Output.png".

From an Economic Perspective, CP-KCS Transaction Exacerbates the Anticompetitive Effects of the EAs

- NS: CP-KCS transaction will significantly increase congestion at DIT and over the Shreveport-Wylie Section (NS-15, pp. 28-29)
- NS's anticipation of congestion increases the likelihood that it will exercise its Wylie Option (NS-12, p. 46) in 2024
- An increase in congestion as anticipated by NS would increase the likelihood of service failures by CP-KCS (NS-12, pp. 27, 34), which increases the likelihood that
    1. NS will exercise its MSLLC contingent trackage rights
    2. NS will exercise its proposed contingent trackage rights over the Shreveport-Wylie Section (if granted through this proceeding)
- DIT Option/trackage rights would cement NS's ability/incentive to foreclose rivals via ownership (relative to existing ROFR) and cement the anticompetitive harm due to perpetual EAs

NS's Expert Has Not Addressed the Anticompetitive Effects of the EAs

- NS proposes that, because more intermodal containers were carried on the Meridian Speedway in recent years relative to 2006, the MSLLC/EAs *caused* that increase and were procompetitive
  - False comparison: NS's method assumes intermodal container traffic would not otherwise have grown on the Speedway and uses an incorrect before/after standard instead of the correct "but for" standard
- NS proposes that the Southeast be treated in aggregate to evaluate the effect of the MSLLC/EAs on intermodal service because the Southeast is all one market
  - Inconsistent with past NS evaluations and its Expert's statements (e.g., BEA analysis in NS-12, including for intermodal)
  - Aggregation relies on unrealistic assumptions (e.g., customer substitution between destinations such as between Charlotte and Miami) with shippers forgoing the efficiencies of rail movements (more trucks on the road for longer hauls)
  - Corrected analysis of NS's "aggregate Southeast" confirms that aggregated transcon container volumes in the Southeast have been lower than what they would have been due to the EAs

Removing the EAs Will Increase Competition to the Benefit of Shippers and the Economy

- The EAs gave NS the ability and incentive to foreclose CSX from competing for transcon intermodal traffic carried by KCS or MSLLC (as a railroad) over the MSLLC Line and DIT Traffic *in perpetuity*
- Economic analysis demonstrates that potential and actual competition would have arisen and will arise without the EAs which will benefit shippers and the public: greater supply of intermodal container traffic to shippers/more containers on trains, including through fewer trucks on the road
  - NS's expert has not addressed the competitive effects of the EAs
- While NS claims that the EAs are restraints that are necessary for the existence of the MSLLC and associated investment, economic analysis demonstrates that larger expansions of supply would be achieved with competition and without the competitive restraints of the EAs
  - These findings corroborate those of Professor Carey that the EAs were not necessary for the formation of the MSLLC and, instead, that less restrictive alternatives are available that will maintain the beneficial aspects of the MSLLC, including the investments, while promoting competition

APPENDIX

NS's Expert Has Not Addressed the Anticompetitive Effects of the EAs (detail)

Analysis of the economic effects of the EAs must account for other factors (unrelated to the EAs) that impact growth in intermodal container traffic

- NS has proposed that, because more intermodal containers were carried on the Meridian Speedway recently than in 2006, the MSLLC/EAs *caused* that increase
  - NS's method invokes a false standard of comparison (before the JV/EAs rather than in the absence of the EAs)[1]
  - NS's method assumes intermodal container traffic would not otherwise have grown on the Speedway which ignores factors other than the MSLLC/EAs that caused intermodal container traffic on the Meridian Speedway to increase relative to 2006, including
    - intermodal traffic grew throughout the U.S. with the increasing penetration of this freight product (substituting for trucks on the road); NS's expert Prof. May Mayo has documented this growth in publication[2]
    - economic activity in the Southeast grew, increasing demand over this time period (unrelated to the EAs)
  - NS's approach assumes that (rather than evaluating whether) the EAs were necessary for the performance of the MSLLC JV

Analysis of the economic effects of the EAs must account for the fact that the capital contributions were invested gradually, which had the effect that the impact of the EAs on intermodal container traffic intensified over time

- NS has proposed that the full effect of the MSLLC/EAs was present immediately in 2006, which ignores that the capital contributions were invested gradually over several years

1. See, e.g., Horizontal Merger Guidelines, and discussions throughout of competition as it would prevail "absent" or "in the absence of" the merger.
2. See "Revenue Adequacy: The Good, the Bad and the Ugly" (with J. Macher and L. Pinkowitz), *Transportation Law Journal*, Vol 41, 2014, p. 113.

NS's Expert Has Not Addressed the Anticompetitive Effects of the EAs (detail, cont.)

The MSLLC Line is advantaged and provides crucial benefits for intermodal shippers in the Southeast

- NS and its expert agree with me

The EAs give NS the ability to foreclose competition in perpetuity for transcon intermodal traffic moving over the MSLLC Line

- NS claims that the EAs did not give NS the ability to foreclose rivals from serving transcon intermodal traffic because BNSF serves intermodal traffic from LA to Atlanta over Memphis under a haulage agreement with CSX
  - ➢ This claim uses a false competitive standard because
    - ➢ it does not address destinations in the Southeast other than Atlanta (e.g., Birmingham, Charlotte, Jacksonville, Miami)
    - ➢ it ignores that CSX has been foreclosed from competing for traffic carried on the Meridian Speedway by KCS or MSLLC (as a railroad) over the "advantaged" route for transcon intermodal traffic from the Southwest to the Southeast, which raises CSX's costs of serving such traffic/degrades the services CSX can provide (relative to what it could provide with the ability to turn to KCS or MSLLC service over the MSLLC line in the absence of the EAs)
    - ➢ it ignores shipper requirements for service for intermodal traffic affected by the EAs other than transcon (e.g., Atlanta to Dallas service)
- NS claims that the EAs did not raise CSX's costs of serving transcon intermodal traffic because CSX did not use the MSLLC Line to serve such traffic before the formation of the MSLLC
  - ➢ This claim uses a false standard. Harm to competition does not require that CSX's costs are higher now than pre-MSLLC. It requires that CSX's costs are higher now with the EAs than in the absence of the EAs ("but-for" the EAs). Without the EAs, CSX could serve transcon intermodal traffic at lower costs/higher service levels than with the EAs[1]

The EAs give NS the ability to exclude and restrict competition for DIT Traffic in perpetuity

- NS claims that NS cannot exclude competition for DIT Traffic because the EAs did not give NS exclusivity for DIT traffic
  - ➢ This ignores that the way DIT Traffic is governed under the EAs (right of first refusal for NS; rates for DIT traffic "established jointly" by KCS and NS); together these establish effective economic exclusivity of DIT Traffic for NS

1. See, e.g., Horizontal Merger Guidelines, and specifically discussions throughout of competition as it would prevail "absent" or "in the absence of" the merger, such as "compared to the level that would prevail in the absence of the merger", p. 28.

NS's Expert Has Not Addressed the Anticompetitive Effects of the EAs (detail, cont.)

Analysis of the competitive effects of the EAs must assess competition in each affected destination area in the Southeast to capture the anticompetitive effect of the EAs on shippers and consumers

- NS's expert proposes that the Southeast be treated in aggregate when evaluating the effect of the MSLLC/EAs on the number of intermodal containers because it is all one market
  - ➢ Inconsistent with past NS evaluations of the economic effects of the CP-KCS transaction (see NS-12, including Mayo V.S., using BEAs including for intermodal traffic, pp. 21-23)
  - ➢ Aggregation requires unrealistic assumption that shipper-customers substitute across enormous geography (e.g., between Charlotte and Miami); if this were true, why would NS invest roughly $340mm in multiple terminals spanning the Southeast (NS-12, pp. 19-20 and Elkins V.S., p. 2)?
    - ➢ Such customer substitution is not economical for shippers. Without such substitution, the proposed aggregation has the effectof trading off the welfare of shippers in different destination areas
      - ➢ No economic basis for making such trade-offs, particularly given that the EAs are not necessary for the MSLLC and the investment (see, e.g., Horizontal Merger Guidelines, p. 30, including fn. 14)
    - ➢ Even if such customer substitution happened, it would harm the public interest because shippers are forced to forgo the efficiencies of rail movements (which have been acknowledged in past NS evaluations) and more trucks are on the road
- By comparing the Southeast to an aggregation of unaffected BEAs—improperly aggregating numerous BEAs as disparate as Houston and Chicago and Boston—NS claims that its analysis shows that the EAs did not restrict aggregated transcon container volumes in the Southeast
  - ➢ Corrected NS analysis shows that aggregated transcon container volumes in the Southeast have been lower than what they would have been in the absence of the EAs (Shehadeh V.S., pp. 24, 37 using code in Shehadeh's Workpaper "06 Synthetic Controls.do" applied to Prof. Mayo's aggregated Southeast data from his August 11 "Workpaper Exhibit 6 Output.png")
  - ➢ Same results apply to NS's proposal that economic analysis should evaluate the average effect of the EAs across the affected destination areas rather than in each area

NS's Expert Has Not Addressed the Anticompetitive Effects of the EAs (detail, cont.)

Less restrictive alternatives will maintain the beneficial aspects of the MSLLC, including the investments, while promoting competition

- NS claims that the EAs are restraints that are necessary for the existence of the MSLLC and the investment
  - ➢ This ignores economic analysis demonstrating that larger expansions of intermodal supply were achieved in areas without the EAs (after accounting for other differences between these areas and the areas affected by the EAs)
  - ➢ My findings are corroborated by Professor Carey's demonstration that the EAs were not necessary for the formation of the MSLLC and the investments in the MSLLC Line and, instead, that less restrictive alternatives are available that will maintain the beneficial aspects of the MSLLC, including the investments, while promoting competition

Analysis of the competitive effects of the EAs must rely on the applicable econometric literature

- Prof. Mayo claims that my choice of clustered standard errors is "groundless", relying on Angrist and Pischke (2009), Chapter 8.1 (Mayo August 11 V.S., p. 35 and fn. 88)
  - ➢ Prof Mayo is wrong, including because he relies on the wrong source—a section of Angrist and Pischke that addresses cross-sectional data only
  - ➢ The data used for my economic analysis are not cross sectional but rather are panel data; the relevant section of Angrist and Pischke (on panel data) confirms that my method is properly "grounded"
    - ➢ See Angrist and Pischke, Chapter 8.2.2.: "[Stata-clustered] standard errors are reasonably good at correcting for serial correlation in panels"

From an Economic Perspective, CP-KCS Transaction Exacerbates the Anticompetitive Effects of the EAs (detail)

- NS anticipates a significant increase in congestion at DIT and over the Shreveport-Wylie Section as a result of the CP-KCS transaction (NS-15, pp. 28-29)
- NS's anticipation increases the likelihood[1] that NS will exercise its Wylie Option (NS-12, p. 46) in 2024, which is a precondition for NS to exercise its proposed contingent trackage rights over the Shreveport-Wylie Section (if granted through this proceeding)
  - An increase in congestion as anticipated by NS would increase the likelihood of service failures by CP-KCS (NS-12, pp. 27, 34), which increases the likelihood that
    1. NS will exercise its MSLLC contingent trackage rights

       NS identifies the dependency of the MSLLC line on Shreveport-Wylie Section and DIT congestion it forecasts: "In practice, this would preclude NS from effectively holding CPKC to a service standard because trains on the Meridian-Wylie Route would move with NS's power, crew, and train composition on the Meridian Speedway but with KCS's (or CPKC's) power, crew, and train composition on the Shreveport-Wylie Section…These additional handlings and added time would undermine the efficacy of the route for NS and the NS intermodal service that traverses the Meridian-Wylie Route, thus harming the intermodal customers who have come to rely on that service." (NS-12, p. 49)
    2. NS will exercise its proposed contingent trackage rights over the Shreveport-Wylie Section (if granted through this proceeding)
- Exercising the DIT Option and trackage rights would cement NS's ability and incentive to foreclose rivals through ownership (relative to existing ROFR) and cement the anticompetitive harm due to the EAs in perpetuity

1. See, e.g., Horizontal Merger Guidelines, p. 1 ("merger analysis is necessarily predictive").

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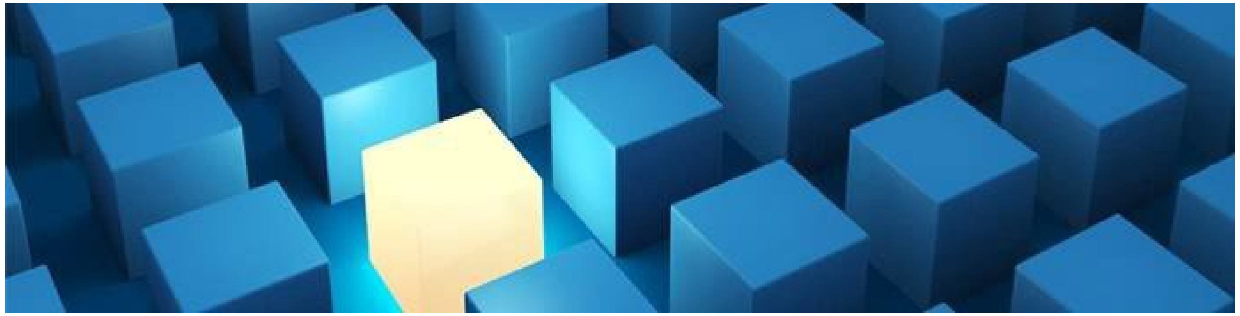


FINANCE DOCKET NO. 36500
PUBLIC HEARINGS

JULIE M. CAREY, NERA
ON BEHALF OF CSXT

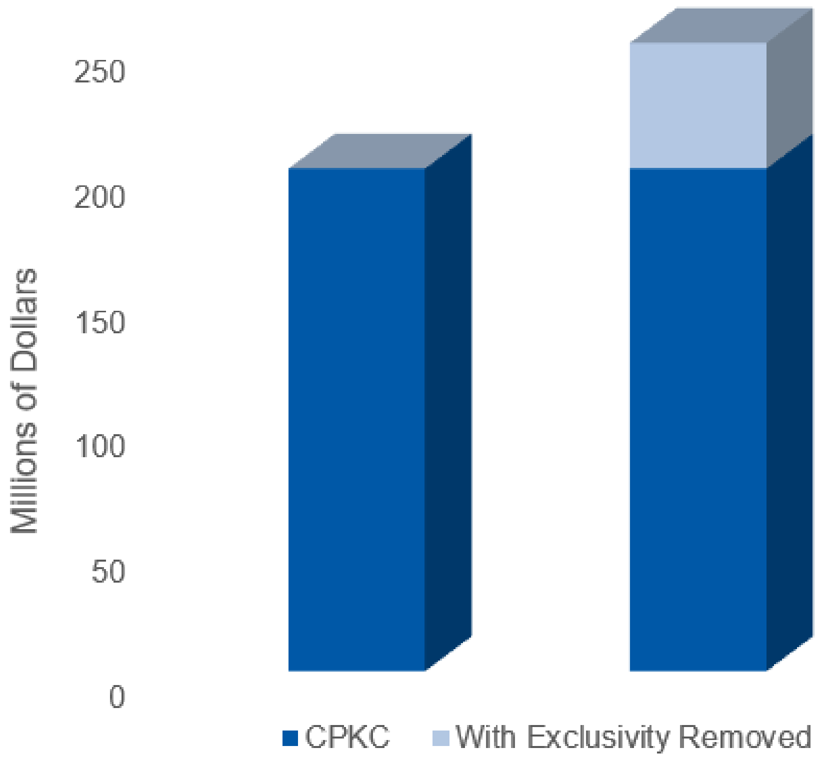
SEPTEMBER 30, 2022

Topics to Discuss

- Overview of the CPKC Transaction and the MSLLC Joint Venture (JV)
- The MSLLC Perpetual Exclusivity Arrangements (EAs) are Uncommon and Harm Competition
- Large Public Benefits are Achievable by Removing the Perpetual EAs and Opening the Shreveport and Meridian Gateways
- The Compounding Effect of CPKC Transaction on the MSLLC EAs
- Concluding Comments

Removing MSLLC EAs and Opening the MSLLC Corridor (Meridian and Shreveport Gateways) Maximizes CPKC Transaction Public Benefits

Annual CPKC Transaction Public Benefits
(with Exclusivity Removed)

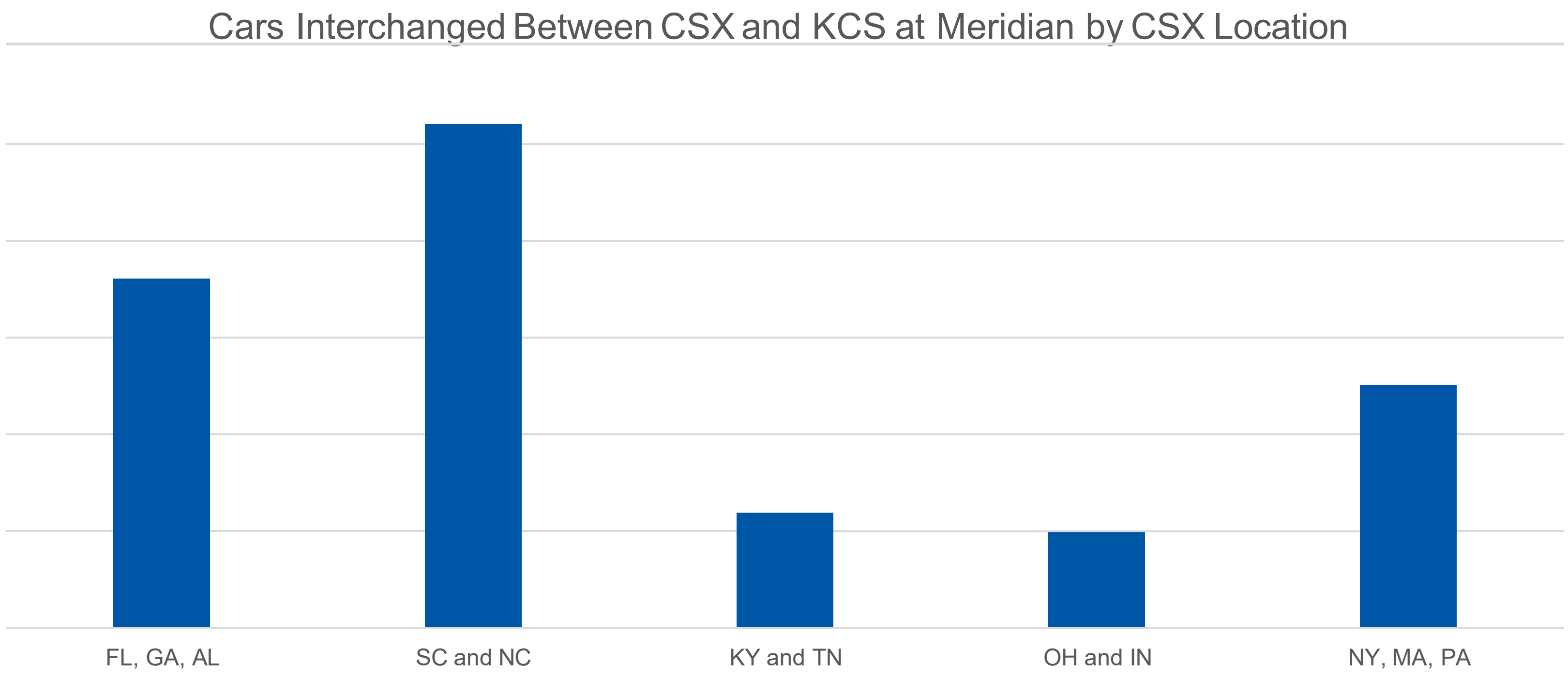


- CPKC public benefits represent cost reductions in CPKC App. Vol. 1 Appendix 2 at page 74. CPKC application erroneously claims private benefits as public benefit. In fact, 81% of Applicants' claimed public benefits are private benefits. Private benefits have been rejected in past merger proposals, including the UP/SP Transaction.

Source: CSXT-8, Carey V.S. at Section IV and pages 25, 27 *See* also Application Vol. 1 at Exhibit B and CSXT 13 Carey V.S. section VI.

CSX Interchanged Traffic with KCS at Meridian prior to the MSLLC JV

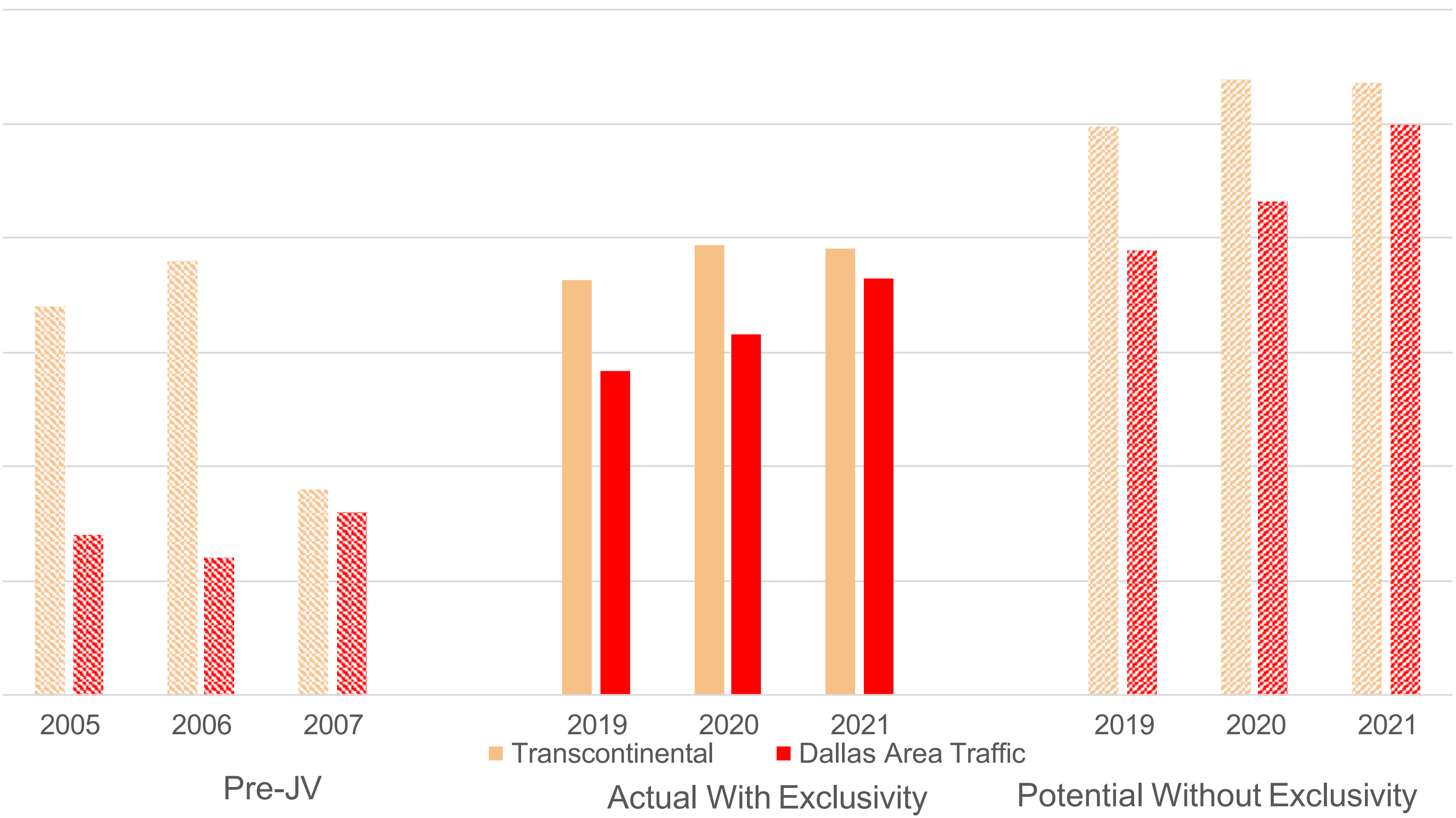
- CSX interchanged merchandise carloads that traversed the Meridian Speedway in 2005 prior to the creation of the joint venture
  - The majority of KCS and CSX traffic movements originated or terminated in Dallas and were interchanged at Meridian, MS (the rest of the cars were interchanged at Montgomery, AL)
  - “Recognizing the efficiency of the Meridian Speedway, CSX opted to enter into an agreement with KCS to reroute interchange traffic with KCS that previously moved through New Orleans onto the Meridian Speedway on a permanent basis.”



- Contrary to NS and its expert who stated “CSXT did not rely upon the Meridian Speedway trackage before the formation of the MSLLC, and it does not today.” NS-15 at p 9

Source: *See* Dr. Shehadeh HC-WP 01 CWS Databuild.py. For KCS quotes, see CSXT-13 (Carey VS at page 11) See “Kansas City Southern 2005 Annual Report,” at 11, available at https://investors.kcsouthern.com/~/media/Files/K/KC-Southern-IR-V2/annualreports/annualreport2005.pdf

Intermodal Traffic Proportions Over the MSLLC Line Did Not Increase as "Dramatically" as NS claims and Would be Higher Without Exclusivity



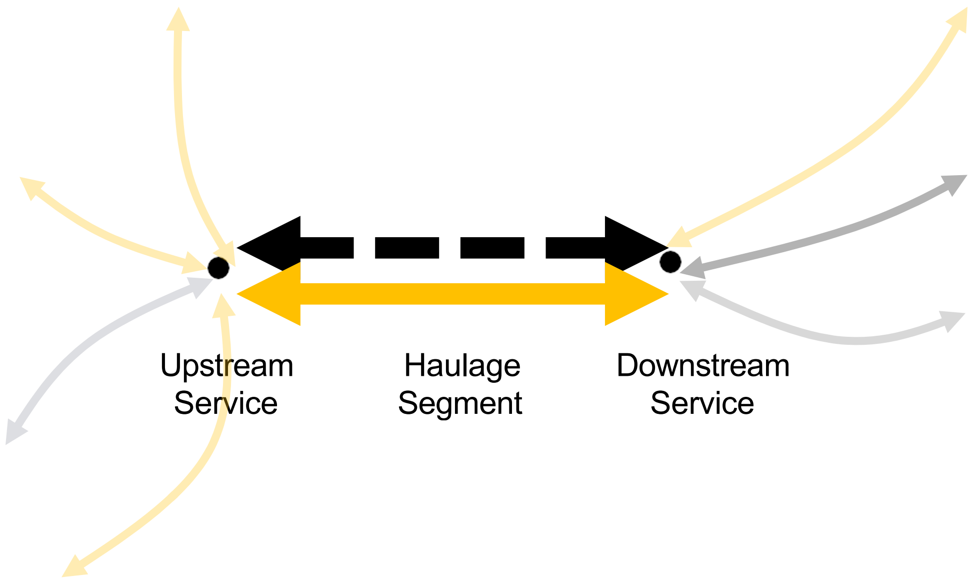
- NS Exclusivity Traffic did not increase as "dramatically" as NS claims. (NS-15 at 21; Mayo VS at p 29) Specifically, in 2006 NS carried many more than the limited number of intermodal units asserted by NS.

Source: *See* NS-HC-NS00006120 for speedwayunits 2005-2007, *see* CSXT 13 Carey VS at Figure 3 for speedwayunits 2019-2021 and *see* Dr. Shehadeh VS Figure 6 for MSLLC output restriction. NS ignores its own records and misapplies a figure referenced by Carey that was used in a distinct and conservative way for her purpose. See Slide 12.

No Other 2-to-1 EAs for Haulage Service Were Found After an Extensive Review of the Railroad Industry

- I conducted detailed research and analysis on haulage service across the North American rail industry
  - Identified the existence of haulage service and agreements for Class 1 railroads (as well as additional non-Class 1 railroads) through company, industry and other sources
  - Conducted a detailed analysis of traffic flows over the line segments where haulage agreements were identified
  - There were no other instances of a host railroad removing itself from competition
- CSX has no 2-to-1 exclusivity agreements
- NS has not presented any other examples of 2-to-1 exclusivity agreements

Normal Haulage Arrangement



Source: *See* CSXT 13 Carey VS at p 49 – 53 and Appendix D for the full discussion and analysis of haulage service and agreements.

Lack of Economic Efficiencies Resulting from the MSLLC JV (Transcontinental and Dallas Intermodal Traffic)

	No Change in the Economic Conditions Post JV	Confirmed
1	Same haulage or interline service	✓
2	Similar haulage service requirements	✓
3	No cost reductions from the JV haulage rate	✓

- **The JV lacks typical economic efficiencies of a vertical transaction that would reduce mark ups over variable costs and would spur shipper rate reductions and public benefits**

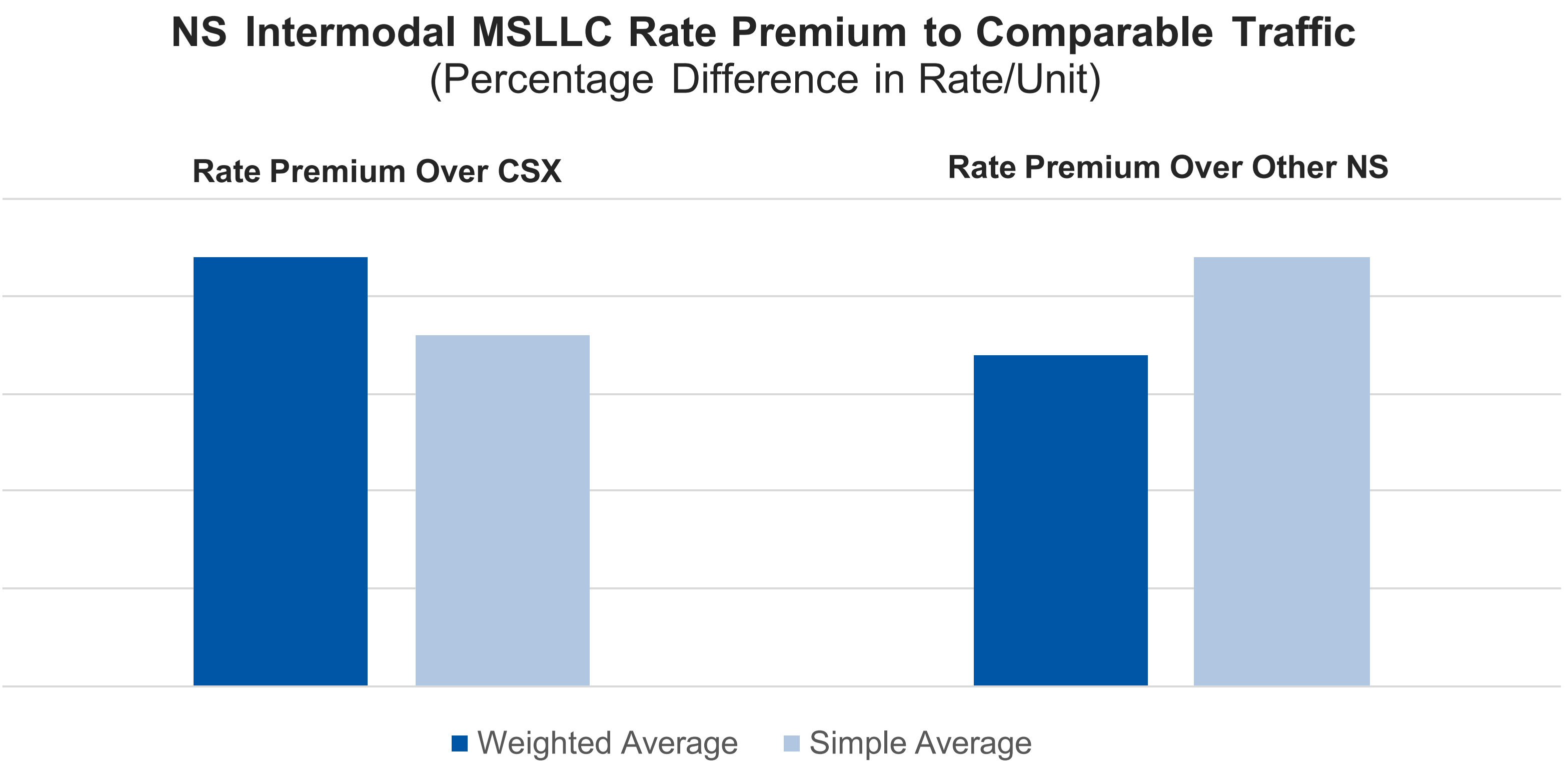
Source CSXT 13 Carey VS at Figure 13; See CSXT 13 Carey VS at p 42 – 49 for the full discussion.

NS's Claims of Additional Procompetitive Benefits for the MSLLC JV are Misplaced

- The claim of reduced transaction costs as a procompetitive benefit is misplaced (NS-15 Mayo VS, pp. 13-16)
  - A longer-term and non-exclusive haulage agreement was an available option to reduce transaction costs
  - Dallas exclusivity traffic requires ongoing rate and revenue division negotiations which obviates any transaction cost savings
- The increased MSLLC train speed touted by NS (NS 14 Mayo VS, p. 15) yields approximately 1 hour improvement over the MSLLC Line, which approximates 3 - 4% of a longer traffic movement (e.g. 24-36 hours)
  - The MSLLC segment is 318 miles. An increase in train speed from 50 to 60 mph resulted in approximately 1-hour reduction (318 miles / 50mph = 6.4 hours to 318 miles / 60mph = 5.3 hours)

Rail Rate Benchmarking Analysis Shows Higher NS MSLLC Intermodal Rates

- Shippers in the Southeast have no opportunity to negotiate with a railroad competitor for intermodal traffic to, from and over the MSLLC Line



- While NS's expert provides a general criticism of this analysis (NS 15 Mayo at p. 24-27), he provides no economic analysis quantifying the price effect of any other service factors to explain the higher NS MSLLC intermodal rates

Source: *see* CSXT -13 Carey V.S at Figures 18 and 22 and pages 64-66 and 71 -73 for the full discussion of rates and pages 69-71 and Figure 21 for the full discussion of market shares.

Rail Market Share Analysis and Response to NS's Expert Critique

- NS carries a large proportion of Dallas and Transcon intermodal traffic over the MSLLC line
- For this analysis, I removed BNSF's single line traffic movements (that involved the CSXT haulage arrangement) for transcontinental traffic to/from Atlanta
- NS's expert argued that CSXT should be assigned the market share for BNSF traffic (NS 15 Mayo VS at p 17-20 and Exhibits 3 - 4)
  - This traffic movement operates entirely in BNSF's waybill account (i.e., on BNSF's system and billed by BNSF)
  - BNSF has economic control of output and price for this traffic movement
  - It is economically appropriate to consider a BNSF single line movement
- NS's expert recommends a market share analysis that includes rail and truck instead of a rail-only market share analysis (NS 15 Mayo VS at p 17-20 and Exhibit 3 - 4)
  - The NS expert's rail and truck market share approach is inconsistent with NS's rail only market share reported for Dallas intermodal traffic in its June filing (See NS 12 at p 16.)
  - The NS expert's rail and truck market share analysis artificially understates market shares by assuming--without analytical support--that all trucks can compete with rail
  - Rail requires a myriad of economic conditions (shortest route, highest speeds, economic scale, network efficiencies and reliable service) to be able to compete with a subset of the trucks on the road

Source: *see* CSXT -13 Carey V.S at Figures 18 and 22 and pages 64-66 and 71 -73 for the full discussion of rates and pages 69-71 and Figure 21 for the full discussion of market shares.

NS has Received a Substantial Return on its $300 Million MSLLC Investment in MSLLC Through Traffic Movements on its Eastern Railroad Network

- NS' initial investment has provided NS with a contribution that is orders of magnitude larger than the initial investment

Source: CSXT 13, Carey V.S. at Figure 15. See CSXT 13 Carey VS at p 53 – 59 for the full discussion.

Achievable Public Benefits from Removing NS/KCS Exclusivity Arrangements over the MSLLC Line with Open Meridian and Shreveport Interchanges

- **Lower railroad rates and improved service for shippers** for movements between the southeast U.S. and the West Coast, Dallas, or Mexico
- **Take trucks off the road** today and tomorrow in the eastern railroad markets (more rail traffic movements to new and existing locations served by railroads)
- **Improve economic efficiency** by ensuring the most economically efficient routes are able to compete fairly (i.e., curtailing uneconomic diversions)
- **Increase throughput** over the MSLLC (more units and more revenue to CPKC)
- **Develop new and underserved railroad markets** in the east
- **Effectively counteract CPKC transaction exacerbation** of MSLLC exclusivity
- **Enhance rail service** to best address growing challenges from global supply chain issues and the increasing demand for rail services created by onshoring and reshoring
- **Promote efficient freight transportation to enhance commerce and ignite economic growth for the betterment of the US economy**

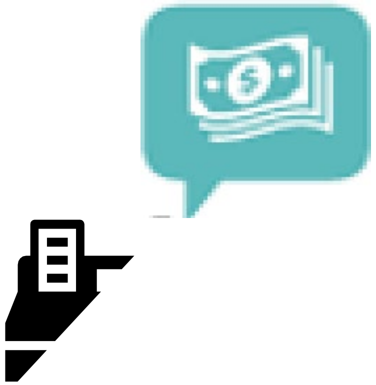
Note: NERA's analysis does not include all markets that may be developed if the Meridian Speedway is opened to competition; there is potential for larger public benefits if other markets open due to competitive changes along the Meridian Speedway.

Achievable Public Benefits from Removing MSLLC EAs over the MSLLC Line with Open Meridian and Shreveport Gateways

Rail rate per unit mile **$.04**

Trucks off the road **>10,000**

Current truckloads to the Southeast from Mexico, Kansas City, and Dallas **>500,000**



Shipper Savings As High As

$50,000,000

Per Year

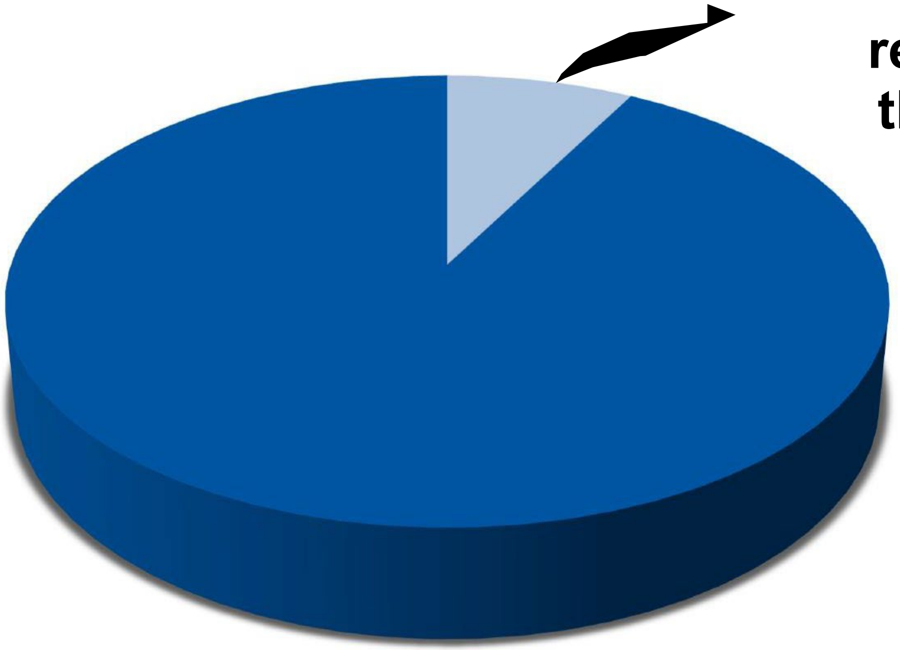
- The total universe of potential savings created by improved routing and service is much larger than $50,000,000
- $50,000,000 is the largest amount of savings estimated from existing moves

Source: *see* CSXT 13 Carey VS at p 59 – 69 for the full discussion and Appendix E: Figures 4, 5, and 6; page 60 and see FAF data available at https://faf.ornl.gov/faf5/dtt_total.aspx at 21.5 tons per car
Note: Shipper savings can also potentially increase from the creation of new markets spurring from the opening of the Meridian Speedway; this is not included in NERA's analysis of shipper savings

Rigorous Econometric Analysis Confirms Shippers Benefit from More Rail Competition

- The scope of the analysis included evaluation of railroad competition at interchange locations and long route options for traffic movements (i.e., not origin and destination locations)
  - 2019 intermodal traffic moves by all US Class 1 railroads (approximately 400,000 moves)
  - Six different scenarios analyzing the impact of railroad rates from more routes/carrier options and the number interchange competitors as well as numerous methods to incorporate variations in route distance
- All six scenarios
  (1) show that shippers benefit from more rail competition
  (2) report statistically reliable results

Estimated Reduction in NS Intermodal Rail Rate from Increased Rail Competition over the MSLLC Line



8% reduction in the rail rate per unit

See CSXT 13 Carey VS Section VII, pages 59-73; *See* Carey See Carey Appendix E - Interchange Analysis; *See* HC-WP Final NS Tape Adjustments for Analysis.rmd

Rigorous Econometric Analysis Confirms Shippers Benefit from More Rail Competition – Response to NS's Expert

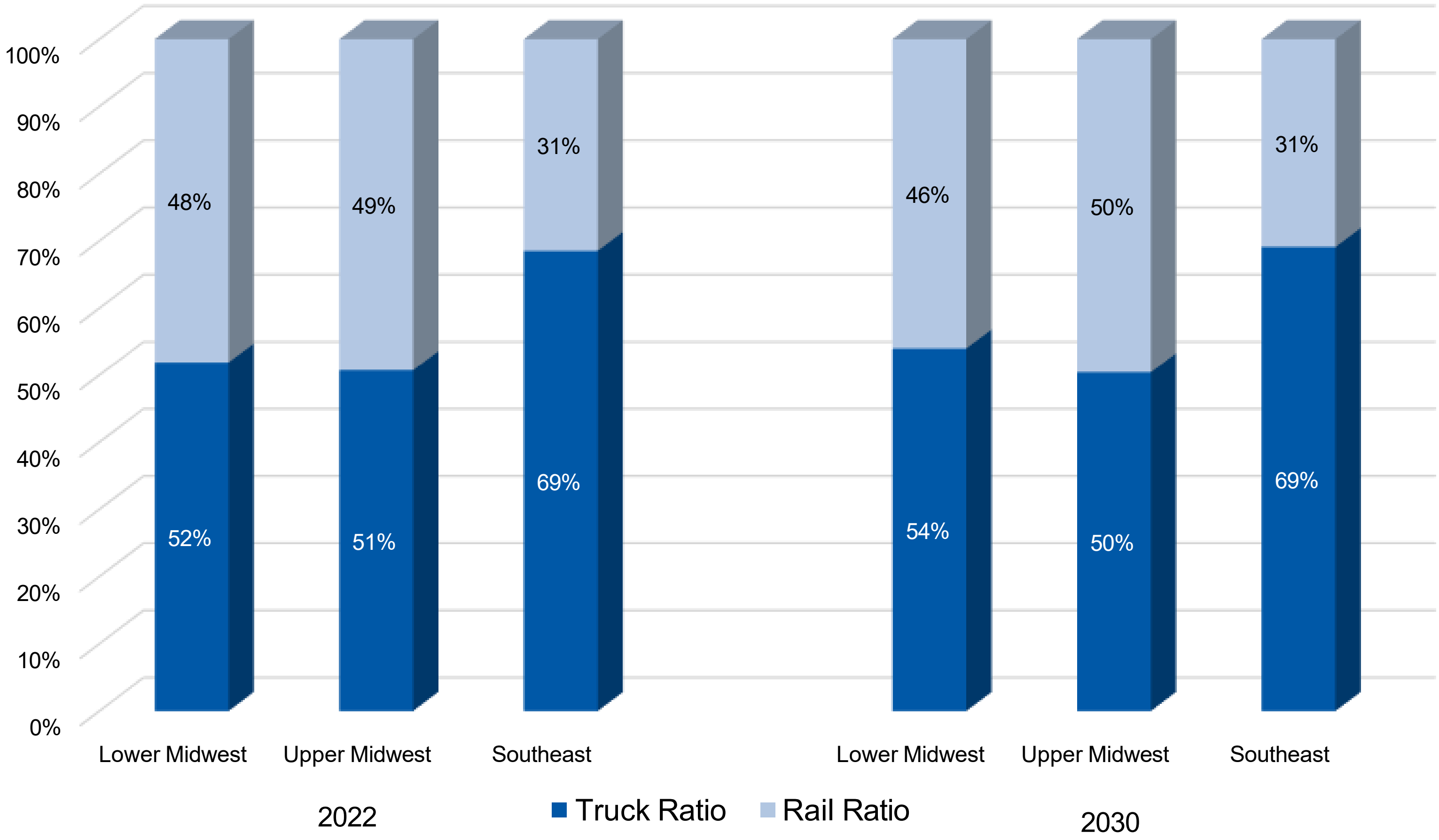
- NS's expert suggests that my econometric analysis is "not matched by the policy choice" because "abrogating the as-structured MSLLC does not increase the number of competitors" for transcontinental traffic because of the existence of an alternative route through Memphis (NS-15 Mayo at p 27-28.)
  - Certain scenarios take into account alternative route options
    - This captures the reduction in price that a shipper receives who has access to an additional route alternative (i.e. traffic over the MSLCC Line)
  - Certain scenarios take into account different number of competitors at an interchange locations
    - This captures the reduction in price that a shipper receives if there is an increase in the number of competitors at an interchange (i.e., traffic interchanged at Meridian, MS)
  - Both scenarios reaffirm shippers benefit from rail competition
- NS's expert does not address the lack of any real alternative for Dallas traffic movements

See CSXT 13 Carey VS Section VII, pages 59-73 and Appendix E - Interchange Analysis; *See* HC-WP Final NS Tape Adjustments for Analysis.rmd

Comparatively Low Mexico-Southeast Rail Market Shares Highlight the Robust Opportunity to Take Trucks Off the Road

- Cross-border rail freight movements are a large and growing opportunity to take trucks off the road
- Today, the Southeast lags other regions in capturing Mexico traffic from truck competitors
- Without an open Meridian gateway, the southeast will continue its suboptimal performance in the future

Truck vs Rail Market Shares, 2022 and 2030



Notes and Sources:

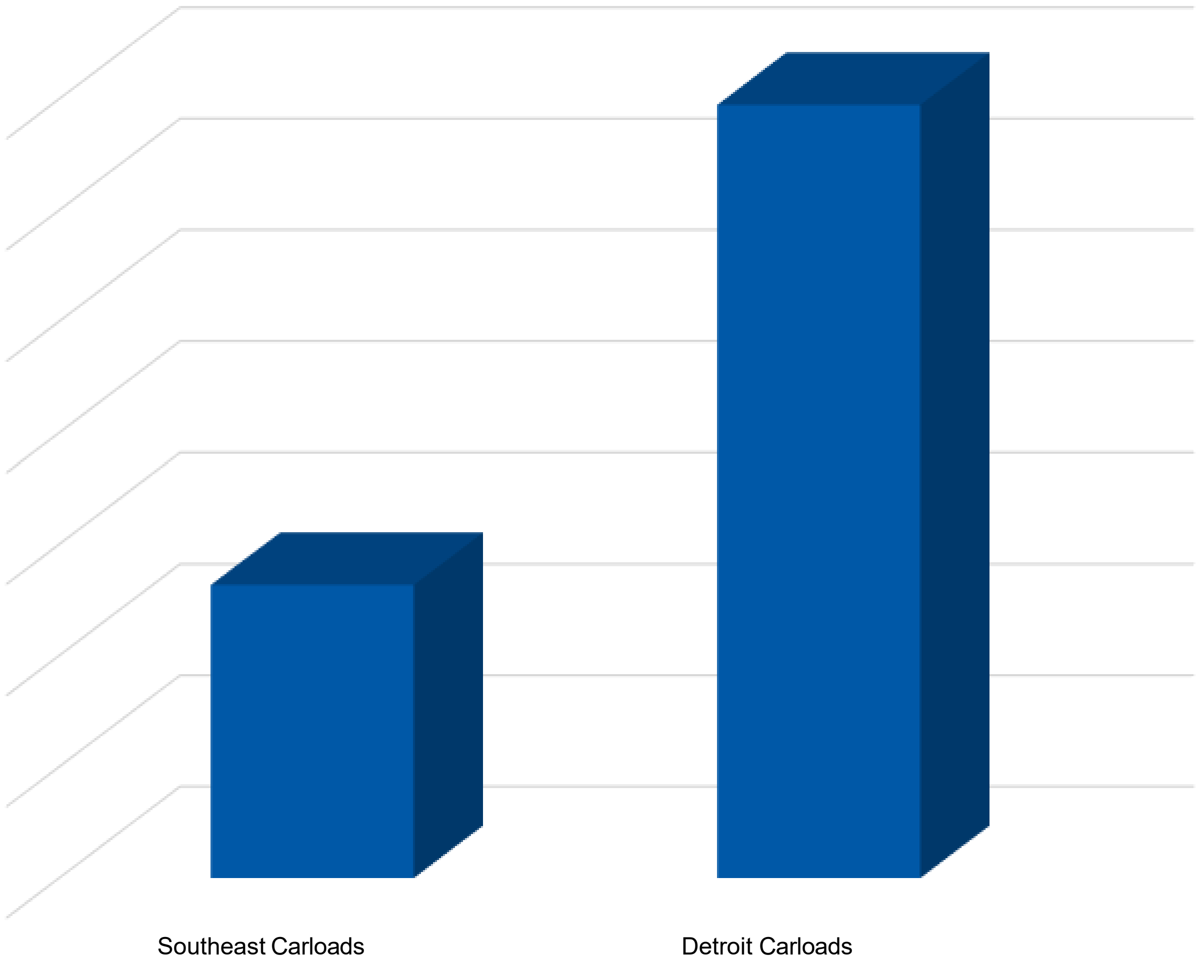
1. FAF data available at https://faf.ornl.gov/faf5/dtt_domestic.aspx; 2. Upper Midw est imports and exports are to Illinois, Indiana, Michigan, Ohio, and Wisconsin ; 3. Southeast imports and exports are to Alabama, Florida, Georgia, North Carolina, South Carolina and Tennessee; 4. Low er Midw est Imports and exports are to Kentucky, Missouri, Tennessee, West Virginia; 5. 2017-2019 represent actual data; FAF forecasting begins in 2020; 2. *See* Carey WP Mexico Truck and Rail Volumes Over Time.xlsx
2. See CSXT -13 Carey V.S at Section V and Figures 9-10 at page 33-34

The Southeast U.S. Could Achieve Rail Market Shares for Mexico Intermodal Traffic Similar to Those for Detroit

- The Southeast intermodal volumes with Mexico are much lower than the volumes with the Detroit area, despite similarly robust automotive businesses located in the southeast (e.g., TN, KY and AL)

- CSX has virtually no Mexico intermodal traffic into the Southeast US today, while it has achieved substantial traffic for movements between the upper Midwest and Mexico where it has railroad partners with the best route and where it is able to compete

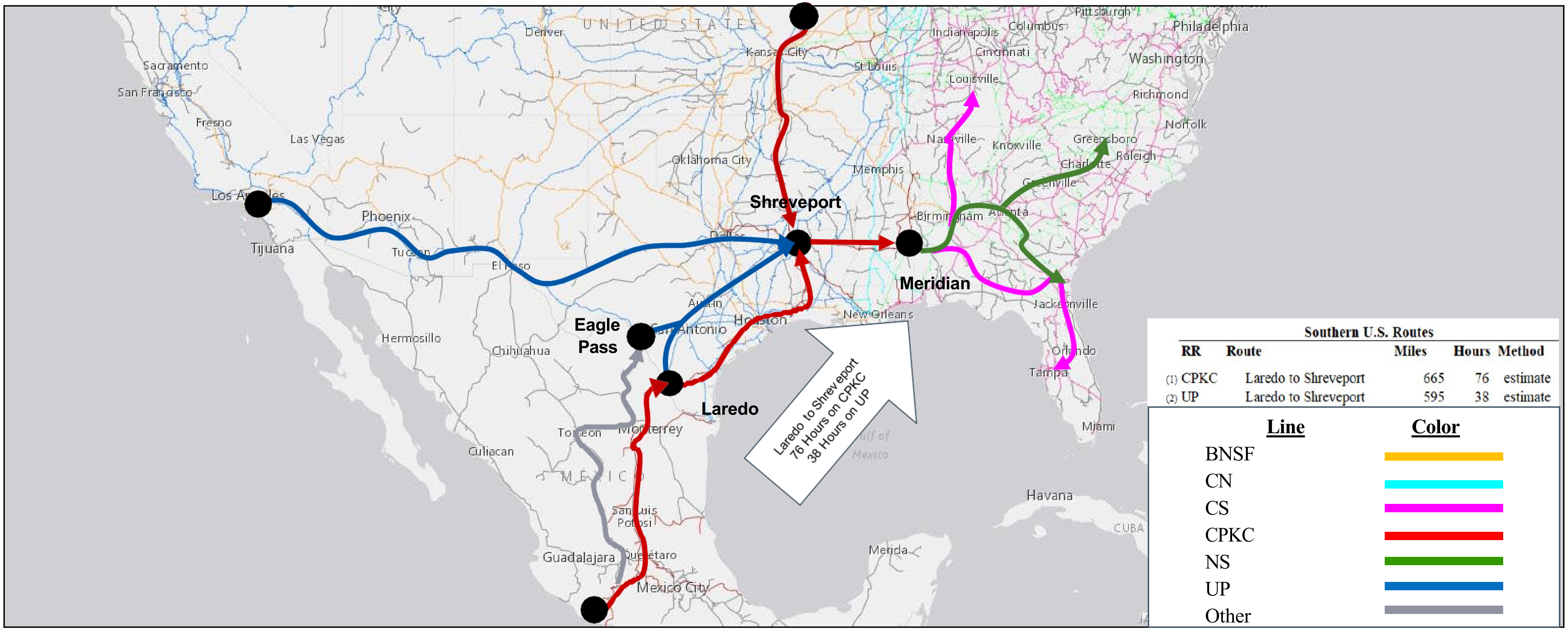
Detroit vs Southeast-Mexico Intermodal Carloads



Notes and Sources:
1. *See* Carey "HC-WP Mexico Cross Border Traffic - CSX NSR Southeast.xlsb”

Opening the Shreveport and Meridian Gateways Would Create a Competitive Alternative to CPKC Post Transaction for Mexico Traffic to and from the Southeastern and Mid-Atlantic U.S.

- UP access to Shreveport creates the most efficient route from Mexico to the Southeast
- The new Mexico to Southeast route could take half the time of current moves



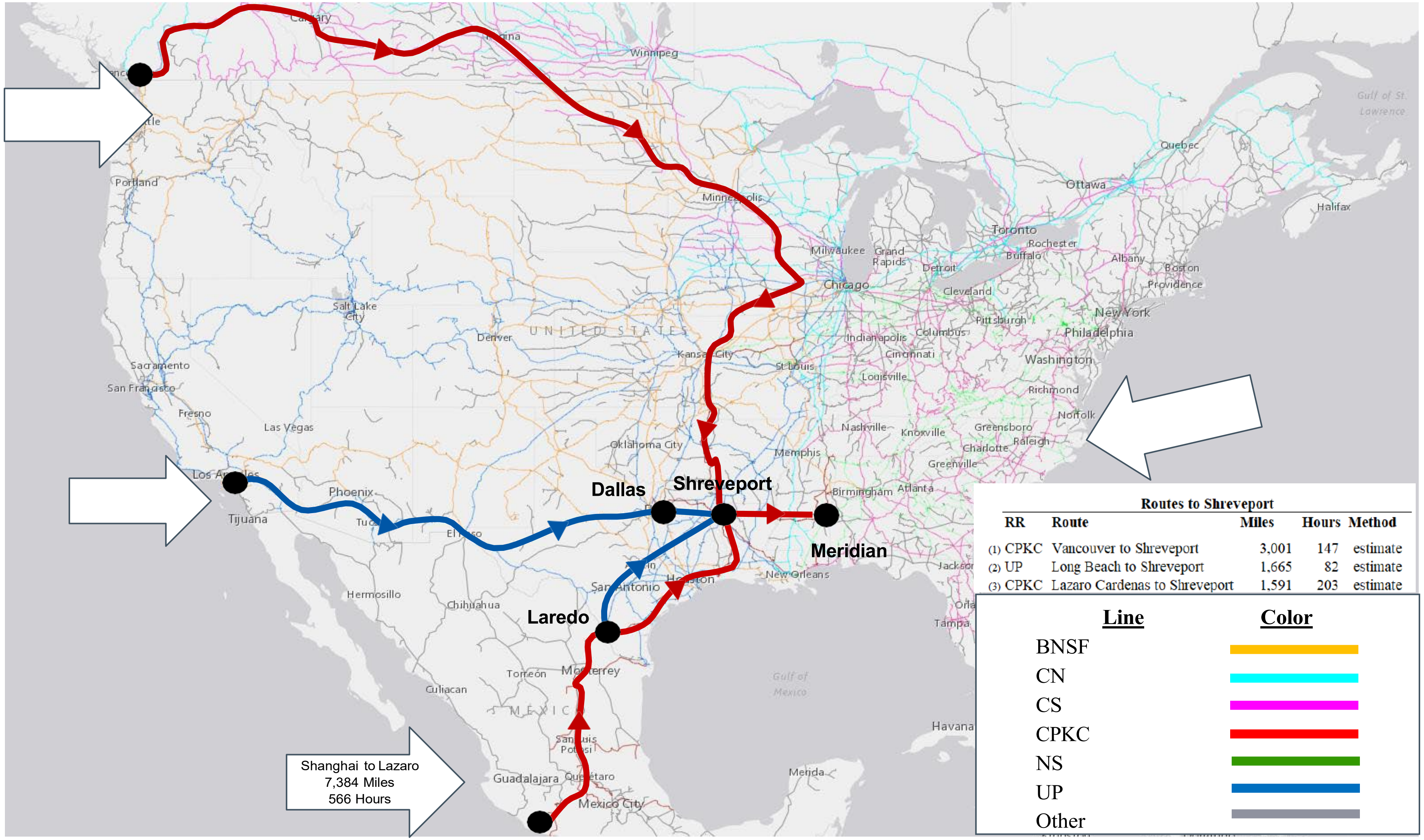
Southern U.S. Routes

RR	Route	Miles	Hours	Method
(1) CPKC	Laredo to Shreveport	665	76	estimate
(2) UP	Laredo to Shreveport	595	38	estimate

Source: CSXT -13 Carey V.S at Section V and Figures 5 -6 at page 29-30

Opening the Shreveport and Meridian Gateways Would Create a Competitive Alternative to CPKC for West Coast Ports to and from the Southeastern and Mid-Atlantic U.S.

- New West Coast routing options will increase use of MSLLC for speedway traffic



Routes to Shreveport

	RR	Route	Miles	Hours	Method
(1)	CPKC	Vancouver to Shreveport	3,001	147	estimate
(2)	UP	Long Beach to Shreveport	1,665	82	estimate
(3)	CPKC	Lazaro Cardenas to Shreveport	1,591	203	estimate

Line	Color
BNSF	(yellow)
CN	(cyan)
CS	(magenta)
CPKC	(red)
NS	(green)
UP	(blue)
Other	(gray)

Source: CSXT -13
Carey V.S at Section
V and Figures 11-12
at page 38 - 40

Conclusion

- My competition analysis shows that the illegal MSLLC Line EAs harmed shippers

- Eliminating the EAs and opening the Meridian Corridor (Meridian and Shreveport gateways) will have the following impact:

  – Ensure traffic can move over the most economically efficient routes (with commercially reasonable terms over the MSLLC corridor)

  – Enable competitive market forces to achieve the maximum benefits for shippers from the CPKC transaction by fostering competition, including inducing rail throughput and enhanced service, and as many trucks off the road as possible

  – These results are consistent with the public interest

Appendix

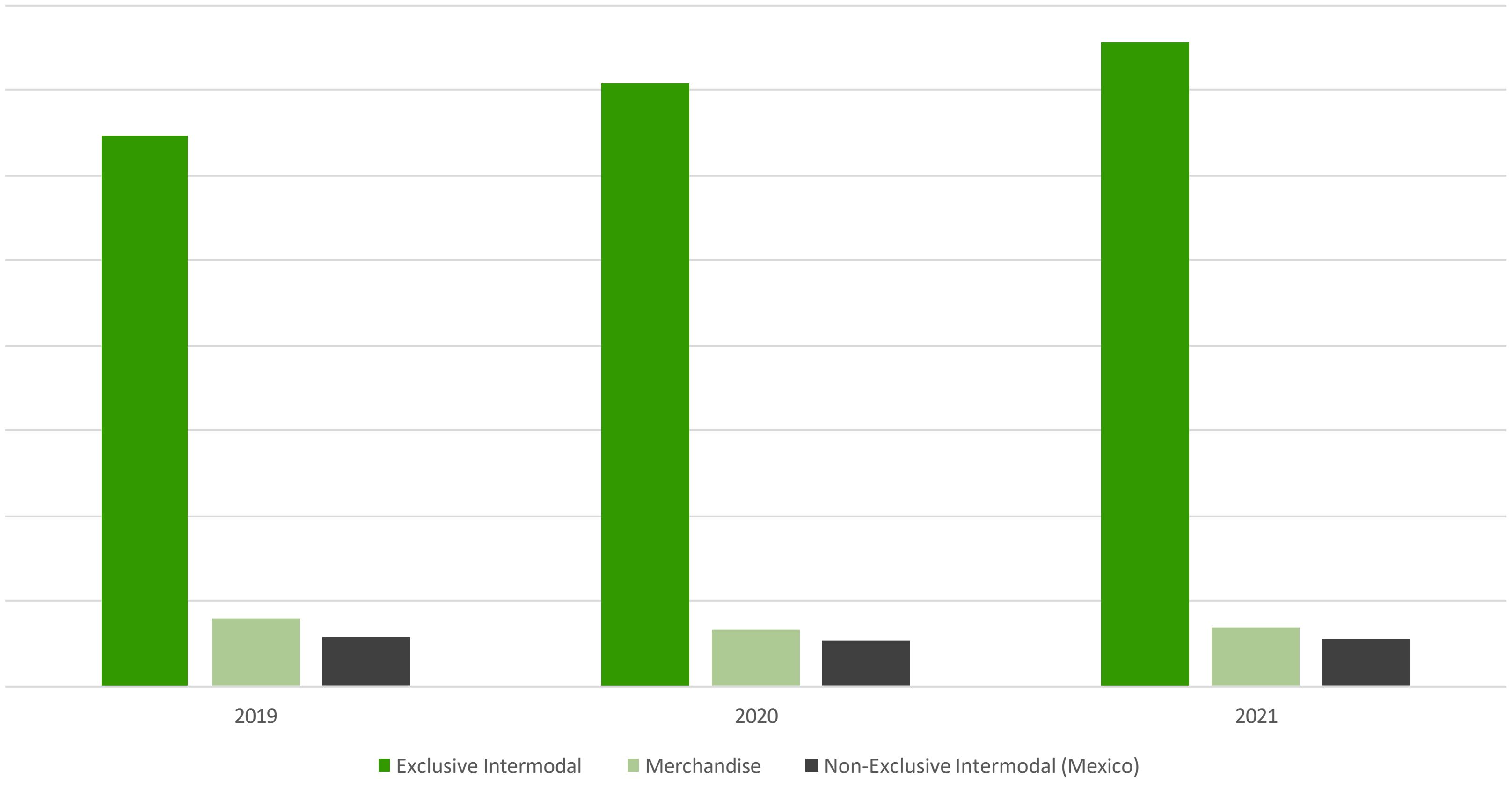
Response to NS's Expert "Actual Economic Effects" Competition Analysis

- NS's expert erroneously claims that the "absence of competitive harm (pro-competitive effects)" is supported by a visual review of the estimates of NS's MSLLC line traffic volumes and prices (NS 15, Mayo pp 28-30 and Exhibit 8)
  - In isolation, the chart of price and volumes is inadequate to evaluate competitive harm or pro-competitive effects
  - Exhibit 8 utilizes estimated data because NS did not provide the information in discovery despite being asked
- Exhibit 8 only reports a subset of NS volumes in the initial period (2004-2008) which had not "*increased* [as] *dramatically*" as NS claims. (NS-15 at 21 and Mayo VS at p 29) See Slide 5
  - Carey's use of the understated volumes is conservative for the intended use (i.e., a conservative estimate of NS's contribution margin) but not for Mayo's claims
- Exhibit 8 reports an estimate of NS's historical average revenue per unit based on the change in rail costs and does not use the actual NS rail rates (which were not provided by NS in discovery)
  - Estimated average revenue per unit is not evidence of the change in NS's actual rates
  - Estimated average revenue per unit inadequately addresses yearly changes in the average route distances
  - Carey's use of the estimated average revenue per unit for NS moves was reasonable for the intended use to estimate NS's contribution margin

Source: *see* CSXT -13 Carey V.S at Figures 15 and pages 57-59 and footnotes 263-264.

NS Exclusivity Intermodal Volumes Over the MSLLC compared to Non-Exclusive Volumes (Mexico Intermodal and All Merchandise)

- Exclusivity Transcontinental and Dallas Intermodal Traffic are substantial; NS is the primary beneficiary of those movements

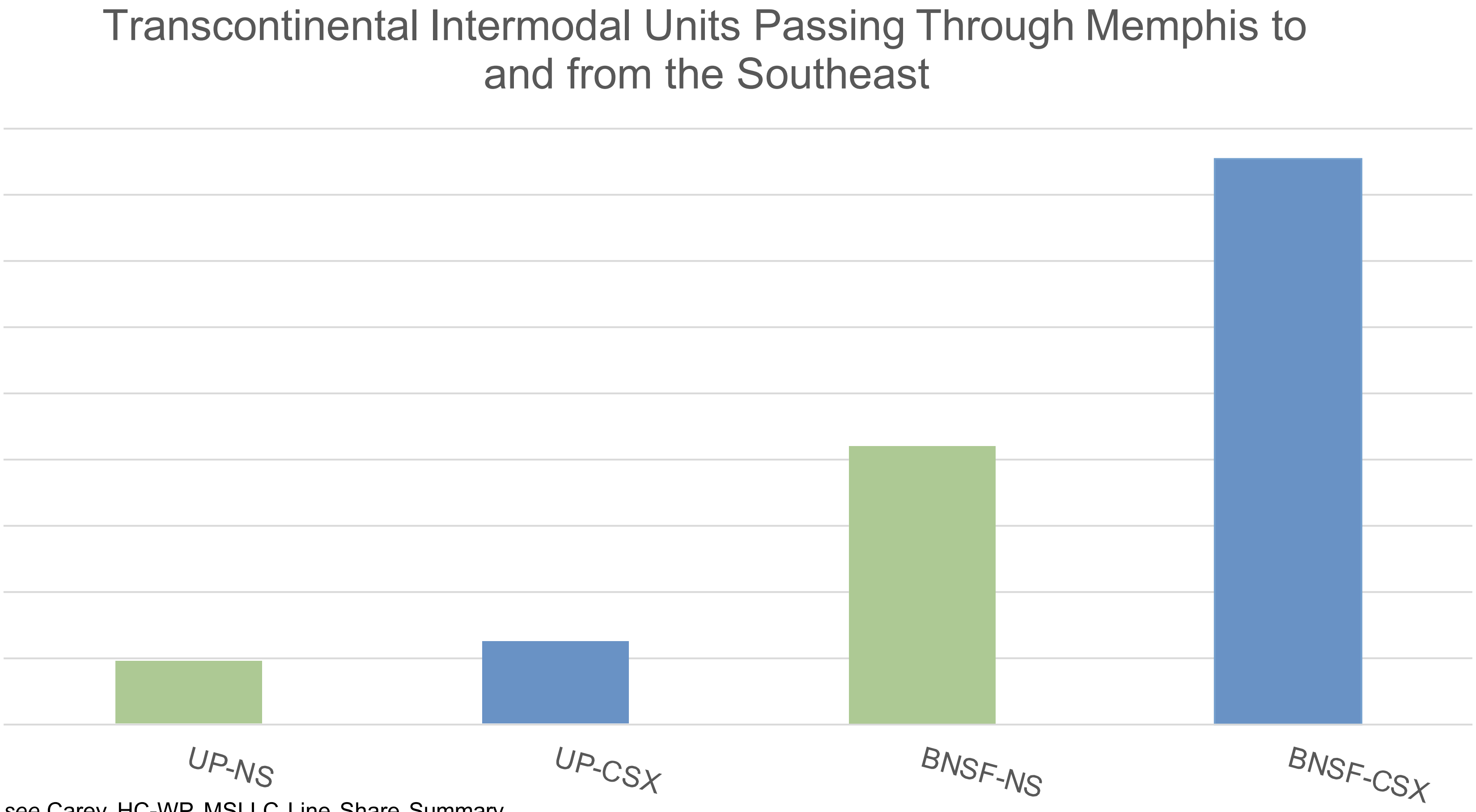


- Contrary to NS's claim that the exclusivity traffic is a "narrow category of intermodal traffic." (NS-15 p 12 and 19)

Source: *see* CSXT 13 Carey VS at Figure 3 for speedway units 2019-2021.

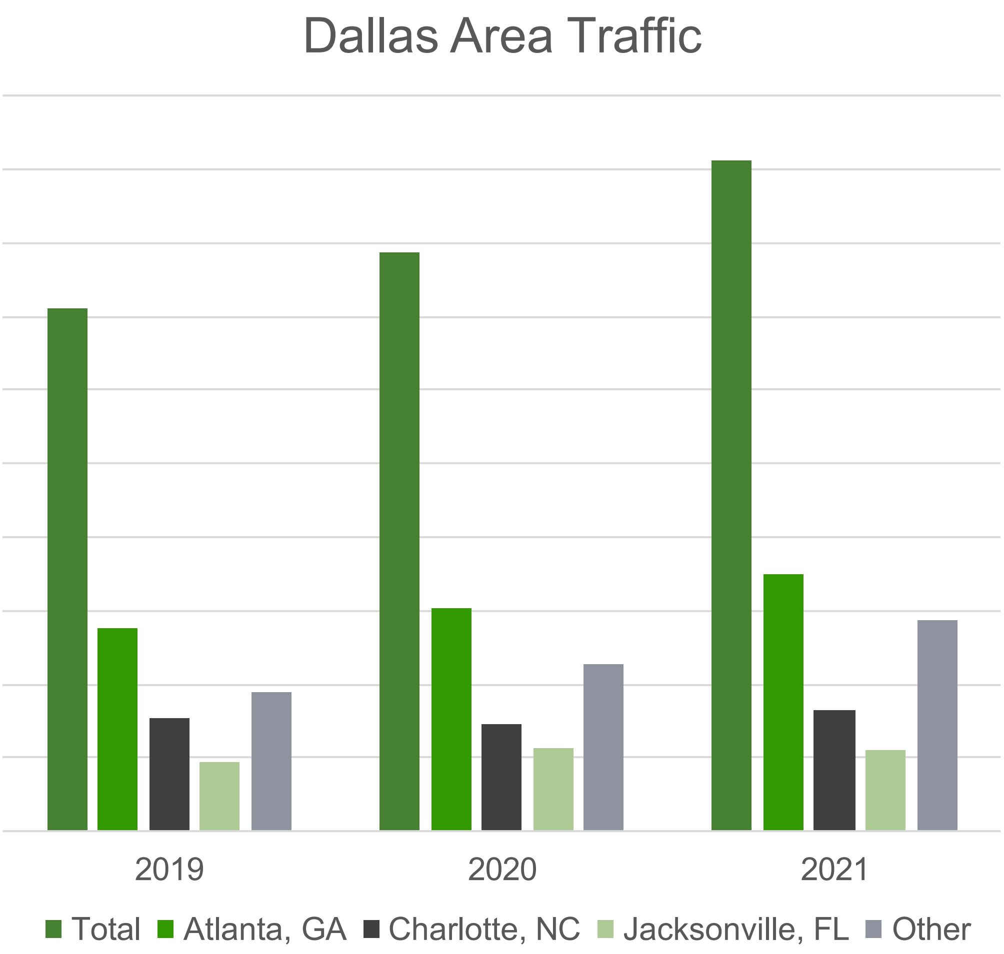
The Memphis Gateway Provides Shippers with Several Railroad Options on Both Sides of the Gateway

- Unlike exclusive transcontinental MSLLC traffic, Memphis traffic has competition on both sides of the gateway
- A substantial proportion of Dallas Intermodal Traffic into the Southeast uses the MSLLC



Source: *see* Carey HC-WP MSLLC Line Share Summary

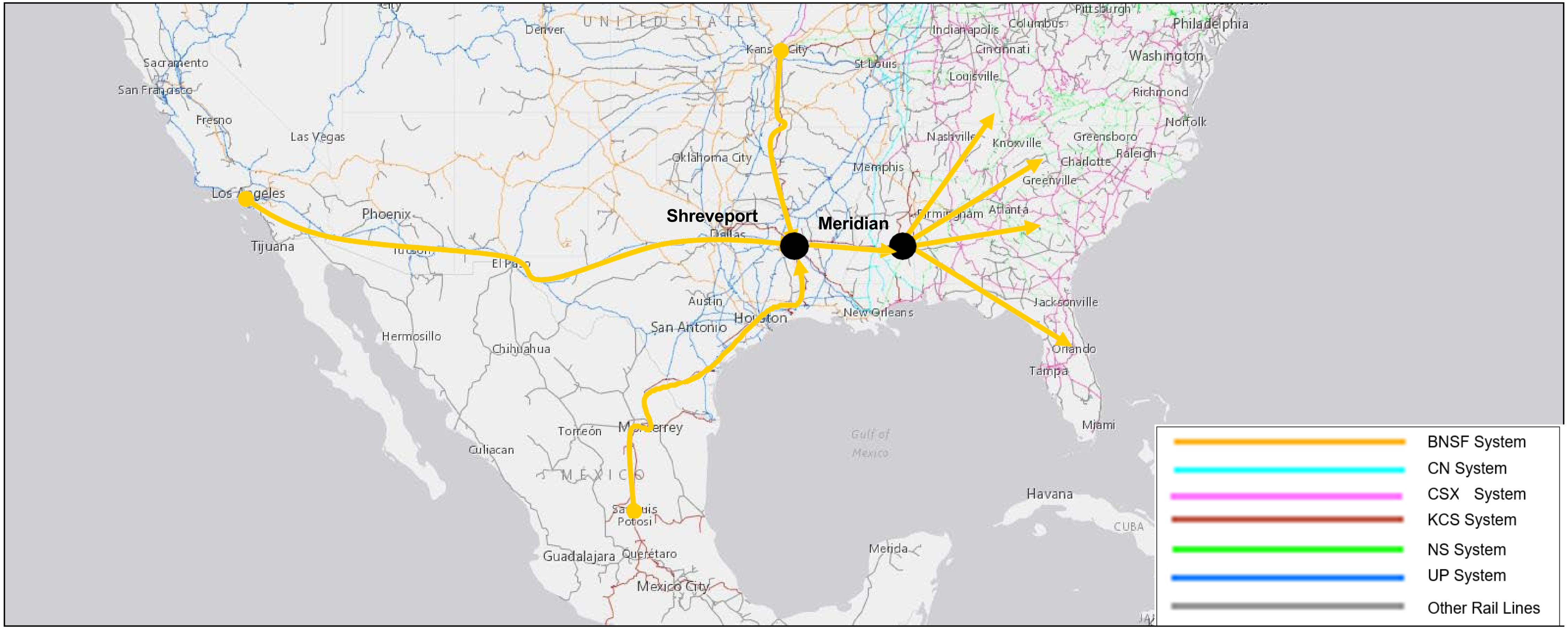
NS Intermodal Units Over the MSLLC Corridor by Southeast Location 2019-2021



Source: *see* CSXT 13 Carey at Carey HC-WP All Meridian Routes

Opening the Shreveport and Meridian Gateways Would Create Newly Competitive Truck to Rail Diversion Opportunities

- Large opportunities to make existing moves to and from the Southeast more competitive
- New market opportunities include Transcontinental, Texas, Kansas City, underserved automotive rail markets between MX and AL, TN, KY



Source: CSXT -13 Carey V.S at Section V and Figures 5-6 at page 29-30; See also, Giradot V.S. page 4.

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