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October 30, 2024

ENTERED
 Office of Proceedings
 October 30, 2024
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 Public Record

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
 Chief, Section of Administration
 Office of Proceedings
 Surface Transportation Board
 395 E Street, S.W., Room 1034
 Washington, DC 20423-0001

Re: **Docket No. FD 36807**
Carload Express, Inc. – Control Exemption –
The Maryland and Delaware Railroad Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Petition for Exemption of Carload Express, Inc.**, dated October 30, 2024. The sum of \$9,600, representing the appropriate fee for this filing, has been tendered electronically via Pay.gov. Please note that expedited consideration of the Petition is requested.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

/s/ Thomas J. Litwiler

Thomas J. Litwiler
 Attorney for Carload Express, Inc.

TJL:tl

Attachment

FILED
 October 30, 2024
 SURFACE
 TRANSPORTATION BOARD

FEE RECEIVED
 October 30, 2024
 SURFACE
 TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36807

CARLOAD EXPRESS, INC.
-- CONTROL EXEMPTION --
THE MARYLAND AND DELAWARE RAILROAD COMPANY

**PETITION FOR EXEMPTION OF
CARLOAD EXPRESS, INC.**

EXPEDITED CONSIDERATION REQUESTED

Thomas J. Litwiler
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Suite 800
Chicago, Illinois 60606-3208
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**ATTORNEYS FOR
CARLOAD EXPRESS, INC.**

Dated: October 30, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36807

CARLOAD EXPRESS, INC.
-- CONTROL EXEMPTION --
THE MARLAND AND DELAWARE RAILROAD COMPANY

**PETITION FOR EXEMPTION OF
CARLOAD EXPRESS, INC.**

Pursuant to 49 U.S.C. § 10502 and the regulations of the Surface Transportation Board (the “Board”) at 49 C.F.R. § 1121, Carload Express, Inc. (“Carload”), a non-carrier, submits this petition for an exemption from the prior review and approval requirements of 49 U.S.C. § 11323(a)(5) for Carload to acquire control of The Maryland and Delaware Railroad Company (“MDDE”), a Class III rail carrier, through the purchase of the outstanding equity shares in MDDE from Old Line Holdings, Inc. (“Old Line”). Carload currently controls three other Class III rail carriers, one of which – Delmarva Central Railroad Company (“DCR”) – operates a rail line that connects with each of MDDE’s three disconnected line segments. But for those connections, Carload’s proposed control of MDDE would qualify for the class exemption provided in 49 C.F.R. § 1180.2(d)(2). As demonstrated further below, individual exemption of the proposed transaction clearly is warranted under the relevant standards of Section 10502.

Concurrently with this Petition, Old Line is filing a notice of exemption pursuant to 49 C.F.R. § 1150.32 to acquire a portion of one of MDDE’s rail line segments immediately prior to Carload assuming control of MDDE.¹ In another related transaction, DCR filed a notice of

¹ Docket No. FD 36806, *Old Line Holding Company, Inc., d/b/a Old Line Railroad – Acquisition and Operation Exemption – Line of The Maryland and Delaware Railroad Company*.

exemption pursuant to 49 C.F.R. § 1150.42 to directly acquire the other portion of that MDDE line segment.² Carload seeks expedited consideration of this petition, so that the parties may consummate this related series of transactions by January 31, 2025.

A map showing the rail lines of MDDE and DCR is attached hereto as Exhibit A.

In support of this Petition for Exemption, Carload submits the following:

I. BACKGROUND

A. Identification of Parties

Petitioner Carload is a non-carrier holding company which currently controls DCR as well as two other Class III rail carriers that operate in southwestern Pennsylvania.³ DCR is a Class III rail carrier which leases or operates approximately 187 miles of rail line on the Delmarva Peninsula in Delaware, Maryland and Virginia.⁴

The complete name and address of petitioner Carload is:

Carload Express, Inc.
519 Cedar Way
Building 1, Suite 100
Oakmont, Pennsylvania 15139-2010
(412) 426-2800

² *Delmarva Central Railroad Company – Acquisition Exemption – Line of The Maryland and Delaware Railroad Company*, Docket No. FD 36805 (STB served Oct. 4, 2024).

³ *See Carload Express, Inc. – Continuance in Control Exemption – Delmarva Central Railroad Company*, Docket No. FD 36072 (STB served Dec. 2, 2016). The operations of a fourth Carload Express subsidiary in Ohio were assumed by another rail carrier in 2021. *See Katahdin Railcar Services LLC – Change in Operators Exemption – Ohio Terminal Railway Company*, Docket No. FD 36487 (STB served Mar. 30, 2021); *see also Waterloo Railroad LLC – Change of Operator Exemption with Interchange Commitment – Union Pacific Railroad Company*, Docket No. FD 36798 (STB served Aug. 23, 2024) (change in operator effectively discontinues incumbent’s operation).

⁴ *Delmarva Central Railroad Company – Lease and Operation Exemption with Interchange Commitment – Norfolk Southern Railway Company*, Docket No. FD 36071 (STB served Dec. 2, 2016); *Delmarva Central Railroad Company – Change in Operator Exemption – Cassatt Management, LLC d/b/a Bay Coast Railroad*, Docket No. FD 36196 (STB served June 7, 2018 and June 8, 2018); *Delmarva Central Railroad Company – Modified Rail Certificate*, Docket No. FD 36239 (STB served Feb. 11, 2019).

MDDE is a wholly-owned subsidiary of Old Line and a Class III rail carrier which currently owns or operates three disconnected rail lines on the Delmarva Peninsula of Delaware and Maryland:

- MDDE operates the Centreville/Chesterton Line, which extends from a connection with DCR at MP 1.0 at Townsend, Delaware to MP 34.0 at Centreville, Maryland, and from MP 0.0 (MP 9.3 on the Centreville segment) at Massey, Maryland to MP 18.82 at Worton, Maryland, north of Chesterton, Maryland. The Centreville/Chesterton Line is owned by the Maryland Transit Administration (“MTA”), and operated by MDDE pursuant to a modified certificate of public convenience and necessity under 49 C.F.R. § 1150.23.⁵
- MDDE operates the Seaford Line, which extends from a connection with DCR at MP 2.3 at Seaford, Delaware to MP 24.24 at Linkwood, Maryland. The Seaford Line is owned by the MTA, and operated by MDDE pursuant to a modified rail certificate.⁶ The Seaford Line is currently inactive from MP 15.9 at Hurlock to Linkwood.
- MDDE owns and operates the Snow Hill Line, which extends from a connection with DCR at MP 39.0 at Frankford, Delaware to MP 65.7 at Snow Hill, Maryland.⁷

As noted, MDDE and DCR connect at Townsend, Seaford and Frankford, Delaware, and DCR serves as MDDE’s sole physical link to the remainder of the national rail system. MDDE and DCR do not serve any common industries at Townsend, Seaford or Frankford.

⁵ *Maryland and Delaware Railroad Company – Modified Rail Certificate*, Docket No. FD 29830 (ICC served Feb. 9, 1982) (“*MDDE Modified Rail Certificate*”). See *Maryland and Delaware Railroad Company – Certificate of Interim Trail Use and Partial Termination of Modified Rail Certificate*, Docket No. FD 29830 (STB served Nov. 5, 2010) (noting termination of MDDE’s modified rail certificate between Worton and Chesterton).

⁶ *MDDE Modified Rail Certificate*. MDDE has recently terminated its modified rail certificate on the MTA-owned line between Linkwood and Cambridge, Maryland and over two short MTA-owned connecting segments at Hurlock, Maryland. Docket No. FD 29830, MDDE Notice filed March 1, 2024.

⁷ *Maryland and Delaware Railroad Company – Acquisition Exemption – Snow Hill Shippers Association, Inc.*, Docket No. FD 33772 (STB served Feb. 24, 2000).

MDDE and DCR are both handling carriers for Norfolk Southern Railway Company (“NS”),⁸ and neither are directly involved in pricing of traffic that moves via NS interline routings. MDDE-NS traffic is handled on a haulage basis by DCR between the MDDE/DCR interchanges at Townsend/Seaford/Frankford and the DCR/NS interchange at Clayton, Delaware. MDDE and DCR also handle certain interline traffic between local points on their respective lines.

B. The Proposed Transaction

Pursuant to a Purchase Agreement dated as of August 1, 2024 between Carload, Old Line and MDDE, Carload proposes to acquire control of MDDE through the purchase from Old Line of all of the outstanding equity shares in MDDE. The Purchase Agreement contemplates that Old Line will retain ownership of the Snow Hill Line south of milepost 42.0 at Selbyville, Delaware (the “Snow Hill South Line”), and that DCR will acquire directly the three miles of the Snow Hill Line north of Selbyville to the DCR connection at Frankford (the “Snow Hill North Line”). Each of these related transactions is the subject of a separate proceeding at the Board.⁹ The structure of the transactions among Carload, Old Line, MDDE and DCR accommodates certain tax treatment of the Snow Hill North Line acquisition, and will result in: 1) Carload’s control of MDDE, which will operate the state-owned Centreville/Chesterton Line and Seaford Line under a modified certificate; and 2) the division of ownership of the Snow Hill Line between DCR and Old Line.¹⁰

⁸ DCR interchanges with NS at Clayton and Tasker (New Castle), Delaware. DCR does not interchange with any rail carriers other than NS and MDDE. NS is thus the only Class I connection for both DCR and (via DCR) MDDE.

⁹ See notes 1 and 2, *supra*.

¹⁰ As a result of DCR’s acquisition of the Snow Hill North Line and Old Line’s acquisition of the Snow Hill South Line, the current DCR-MDDE interchange at Frankford will be replaced by a DCR-Old Line interchange at Selbyville.

Following consummation of the proposed control transaction, rail operations on MDDE will be closely coordinated with those of DCR, and Carload and DCR will provide administrative and other support for MDDE's operations. Carload does not anticipate changes in MDDE service levels on the Centreville/Chesterton and Seaford Lines.

No shipper will lose rail service or any existing competitive options as a result of the proposed control transaction. All MDDE traffic currently moves over DCR's rail line, and will continue to do so after Carload assumes control of MDDE and MDDE and DCR become affiliated carriers. Neither MDDE nor DCR control pricing on their interline traffic with NS, and common control of the two carriers will not alter that arrangement.

II. JURISDICTION AND STATUTORY STANDARDS

Pursuant to 49 U.S.C. § 11323(a)(5), acquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers requires prior approval by the Board. Because Carload's proposed control of MDDE does not involve two or more Class I railroads, the Board would be required to approve the transaction unless: 1) the transaction was likely to result in a substantial lessening of competition; and 2) the anticompetitive effects of the transaction outweighed the public interest in meeting significant transportation needs. 49 U.S.C. § 11324(d).

Under 49 U.S.C. § 10502, however, the Board must exempt a transaction from regulation under Part A of Subtitle IV of Title 49 of the U.S. Code (including Sections 11323-11325) if the Board finds that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either (a) the transaction is of limited scope or (b) regulation is not necessary to protect shippers from the abuse of market power.

In enacting the Staggers Rail Act of 1980, Congress made clear its intent that the Interstate Commerce Commission would use its expanded exemption authority under former Section 10505 to free certain transactions and service from the administrative and financial costs associated with continued regulation:

The policy underlying this provision is that while Congress has been able to identify broad areas of commerce where reduced regulation is clearly warranted, the Commission is more capable through the administrative process of examining specific regulatory provisions and practices not yet addressed by Congress to determine where they can be deregulated consistent with the policies of Congress. The conferees expect that, consistent with the policies of this Act, the Commission will pursue partial and complete exemption from remaining regulation.

H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 105 (1980). Congress reaffirmed this policy in the conference report accompanying the ICC Termination Act of 1995,¹¹ which reenacted the existing exemption provisions as Section 10502. H.R. Conf. Rep. No. 422, 104th Cong. 1st Sess. 168-169 (1995).

An exemption from the requirements of Sections 11323-11325 for Carload's acquisition of control of MDDE would be fully consistent with the standards set forth in Section 10502. Detailed scrutiny of the transaction, through an application for review and approval under Section 11323, is unnecessary to carry out the rail transportation policy of 49 U.S.C. § 10101. In fact, exemption from such review and approval would further several of the objectives established in the transportation policy. Moreover, the proposed transaction is of limited scope and will not result in any abuse of market power.

¹¹ Pub. L. No. 104-88, 109 Stat. 803 (1995).

III. EXEMPTION CRITERIA

A. Regulation is Not Necessary to Carry Out the Rail Transportation Policy of 49 U.S.C. § 10101.

Carload's acquisition of control of MDDE is wholly consistent with the rail transportation policy outlined in 49 U.S.C. § 10101. The proposed transaction will bring to MDDE the strengths and resources of an established short-line operator, and will assure the continued preservation and viability of the local rail service currently provided by MDDE. As such, exemption will promote the continuation of a sound rail system to meet the needs of the public. 49 U.S.C. § 10101(4). Carload's common control of MDDE and DCR will allow coordination of the railroads' connecting operations, enhancing effective rail management and the economic benefits of MDDE's service. Thus, this transaction also will promote efficiency, coordination among rail carriers and competition with other transport modes. *See* 49 U.S.C. §§ 10101(5) and (9).

Granting the relief sought herein will advance several other goals enumerated in the rail transportation policy as well. Section 10101 provides that the Board should minimize the need for federal regulatory control over the rail transportation system, reduce the barriers to entry into and exit from the rail transportation industry and provide for the expeditious resolution of all proceedings. 49 U.S.C. §§ 10101(2), (7) and (15). The statutory exemption contained in Section 10502 obviates the need for the expensive and time-consuming processes attendant to a proceeding under Sections 11323-11325. By limiting the level of regulatory review of this transaction and by relying upon the adequate and more expeditious exemption procedure, the Board would minimize the burden of unnecessary regulation on this transaction. *E.g., Livonia, Avon & Lakeville Railroad Corporation – Acquisition and Operation Exemption – Line of Consolidated Rail Corporation,*

Docket No. FD 32754 (STB served Mar. 11, 1996) at 4. Other aspects of the rail transportation policy will not be adversely affected.

B. Regulation Is Not Necessary to Protect Shippers From an Abuse of Market Power

Carload's acquisition of control of MDDE will have no adverse impact on competition. While MDDE and DCR connect today at Townsend, Seaford and Frankford, they do not serve any common industries. In addition, because all rail traffic currently handled by MDDE is necessarily handled by DCR as well, the common control of both carriers will not increase DCR's market power or otherwise lessen competition or transportation options for shippers on MDDE's lines or for businesses that may locate on MDDE in the future. This is particularly the case given that pricing on all interline traffic with NS is controlled by NS rather than either MDDE or DCR. Instead, MDDE will simply be incorporated into the Carload family of short-line carriers, and shippers potentially will benefit from greater efficiencies while receiving the same service. *E.g., Pinsly Railroad Company – Control Exemption – Warren & Saline River Railroad Company*, Docket No. FD 35293 (STB served Nov. 3, 2009) at 2-3 (no abuse of market power likely in acquisition of control of railroad that connects solely with railroad already controlled by petitioner).¹² Accordingly, the transaction satisfies the market abuse standard set forth in 49 U.S.C. § 10502(a)(2)(B).

C. The Transaction Is Limited in Scope

Because regulation is not necessary to protect shippers from an abuse of market power, Carload need not demonstrate that the proposed transaction is of limited scope. 49 U.S.C.

¹² But for the fact that the each of the rail lines of MDDE connects with DCR , the proposed transaction would be subject to the class exemption for control of non-connecting carriers at 49 C.F.R. § 1180.2(d)(2). As indicated, however, the MDDE-DCR connections have no competitive significance, since all MDDE traffic must be routed via DCR regardless of whether MDDE and DCR are commonly controlled by Carload and NS controls the pricing on all MDDE-DCR-NS interline traffic.

§ 10502(a)(2); *Finger Lakes Railway Corp. – Control Exemption – Ontario Central Railroad Corp.*, Docket No. FD 35062 (STB served Oct. 5, 2007) at 2. Nevertheless, it is clear that Carload’s acquisition of MDDE satisfies this criterion as well. The proposed transaction involves a change in control of a small Class III rail carrier operating two relatively light-density, state-owned lines pursuant to a modified certificate. Accordingly, the Board should find that this transaction is of limited scope within the meaning of Section 10502(a)(2)(A).

IV. LABOR PROTECTION

Under 49 U.S.C. § 10502(g), the Board may not exempt a rail carrier from otherwise applicable employee protection obligations. However, pursuant to 49 U.S.C. § 11326(c), no employee protective conditions may be imposed on this transaction. MDDE and all of Carload’s existing railroad subsidiaries are Class III rail carriers.

V. ENVIRONMENTAL ASSESSMENT

A petition for exemption must comply with the Board’s environmental reporting requirements, if applicable. 49 C.F.R. § 1121.3(b). Under 49 C.F.R. § 1105.6(c)(2)(i), Carload’s proposed acquisition of control of MDDE is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes in carrier operations, *i.e.*, changes that exceed the thresholds of 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(3), the proposed acquisition of control of MDDE by Carload also is exempt from historic preservation reporting requirements. Common control of MDDE and Carload’s existing rail carrier subsidiaries will not substantially change the level of maintenance of railroad property.

VI. INTERCHANGE COMMITMENT

The proposed acquisition of control transaction does not itself impose any form of interchange commitment, and thus the provisions of 49 C.F.R. § 1121.3(d) are not applicable here. *Macquarie Infrastructure Partners V GP, LLC – Acquisition of Control Exemption – Grenada Railroad, LLC and Florida, Gulf & Atlantic Railroad, LLC*, Docket No. FD 36566 (STB served Apr. 7, 2022) at 7 & n.13.

VII. EXPEDITED CONSIDERATION

Concurrently with this petition for exemption, Old Line is filing a notice of exemption pursuant to 49 C.F.R. § 1150.32 in Docket No. FD 36806 to acquire and operate the Snow Hill South Line. DCR has previously filed a notice of exemption pursuant to 49 C.F.R. § 1150.42 in Docket No. FD 36805 to acquire the Snow Hill North Line, and that exemption has now become effective. Carload, DCR, MDDE and Old Line hope to consummate all of the related transactions no later than January 31, 2025.

Carload thus requests that the Board expedite its consideration of this petition and issue its decision approving the proposed acquisition of control of MDDE to be effective on or before January 31, 2025. Old Line's class exemption to acquire the Snow Hill South Line will become effective on November 29, 2024, and an expedited decision in this matter would allow the parties to consummate the transactions by the end of January and avoid the expense and burden of multiple closings.

WHEREFORE, Carload respectfully requests that the Board grant an exemption from the provisions of 49 U.S.C. §§ 11323-11325 for Carload's acquisition of control of MDDE, and allow such exemption to become effective on or before January 31, 2025.

Respectfully submitted,

/s/ Thomas J. Litwiler

By: _____

Thomas J. Litwiler

Bradon J. Smith

Fletcher & Sippel LLC

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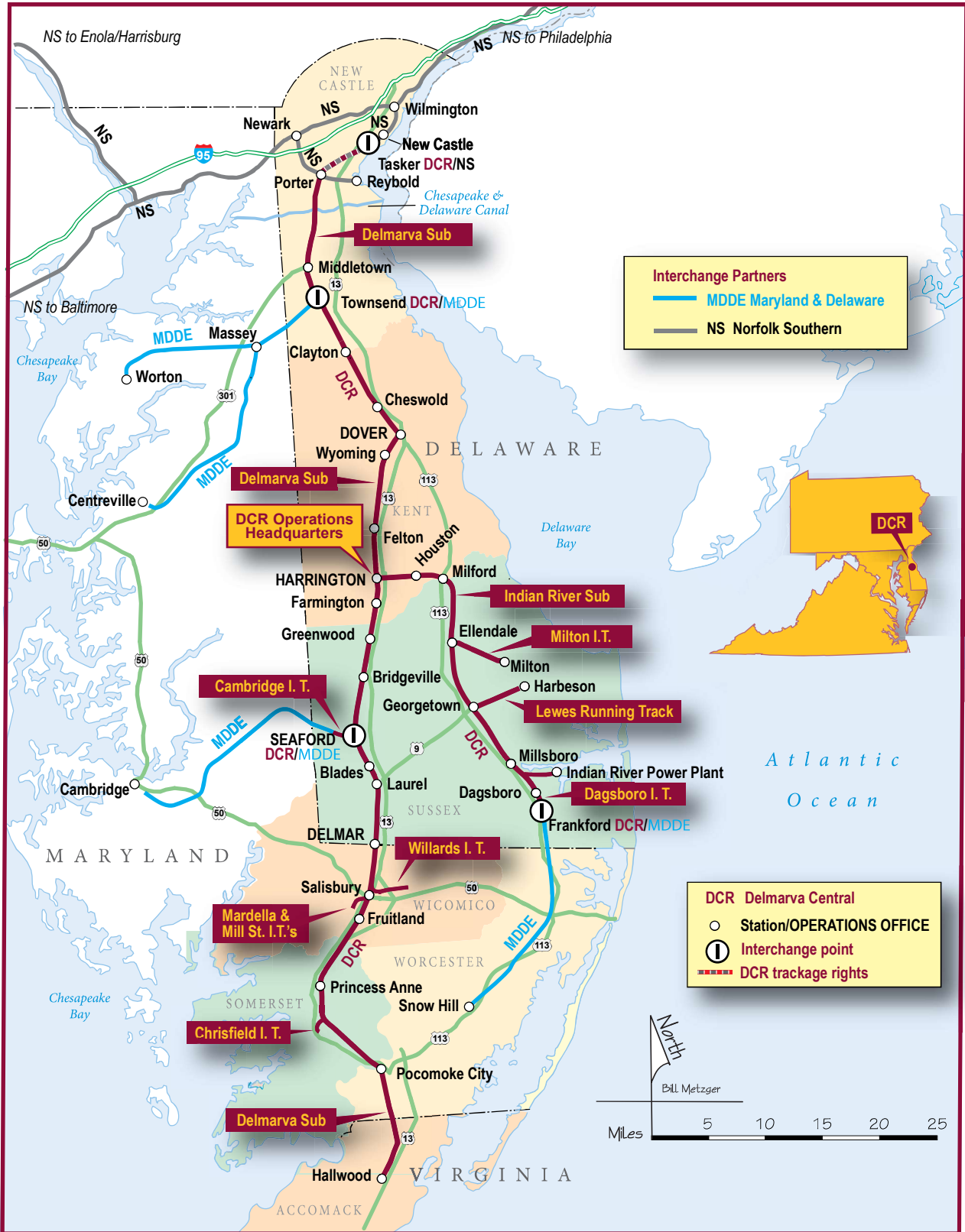
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**ATTORNEYS FOR
CARLOAD EXPRESS, INC.**

Dated: October 30, 2024

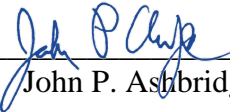
CARLOAD EXPRESS

Delmarva Central Railroad



VERIFICATION

I John P. Ashbridge, hereby verify under penalty of perjury that I am President & Chief Executive Officer of Carload Express, Inc., that I have read the foregoing Petition for Exemption and know the facts asserted therein, and that the same are true as stated to the best of my knowledge, information and belief.



John P. Ashbridge

Dated: October 29, 2024