TESTIMONY BEFORE THE

RAILROAD SUBCOMMITTEE

OF THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

STATUS OF THE SURFACE TRANSPORTATION BOARD AND RAILROAD ECONOMIC REGULATION

MARCH 31, 2004

SUBMITTED BY

CHARLES E. PLATZ
PRESIDENT, BASELL NORTH AMERICA INC.

ON BEHALF OF

CONSUMERS UNITED FOR RAIL EQUITY
AMERICAN CHEMISTRY COUNCIL

Mr. Chairman and Members of the subcommittee, my name is Charles E. Platz, President of Basell North America Inc. Thank you for the opportunity to testify here today. I appear on behalf of the employees and shareholders of my company, the American Chemistry Council and Consumers United for Rail Equity, of which I serve as co-chair.

In the next few minutes, I want to discuss with you a problem with our current national rail policy that is having a devastating effect on the ability of many chemical companies in this nation to remain competitive and is, I believe, contributing to the export of United States manufacturing jobs. In fact, during both 2002 and 2003, for the first times in the history of our industry, the United States spent more money importing chemicals than we earned by exporting chemicals. If not yet, then soon, we will export U.S. jobs as well as U.S. dollars. The trend lines are not good. The problem: current policy allows railroads to deny their customers use of existing rail competition.

The problem I bring to your attention today cannot be resolved in discussions between the railroads and their customers. We've tried to make that happen and the railroads have made it very clear that they will not entertain discussions about policy changes. And, while we appreciate Mr. Nober's more open-door policy and his public acknowledgement that we have legitimate issues, the Surface Transportation Board has made it clear that it too will not act on its own to address this problem. Therefore, Mr. Chairman, our problem is left squarely in the hands of Congress. We believe that it is imperative that this Congress address this problem immediately.

BASELL NORTH AMERICA, INC.

Basell North America is headquartered in Elkton, Maryland. Basell has manufacturing facilities in Texas, Louisiana and Tennessee, and markets products manufactured at a plant in Linden, New Jersey. We produce raw material plastic resin that our customers use in a variety of applications such as automobile components, textiles, packaging, medical products and numerous household goods. We are heavily rail dependent with 100% of our products at our Louisiana and Texas facilities being loaded directly into hopper cars for transportation. The vast majority of our customers demand delivery by rail. To enable this transportation, we own or lease - and maintain - 4,000 hopper cars with a replacement value of $260 million. Our plants produce about 14,000 hopper carloads of product annually.

BASELL EXPERIENCE AS A "CAPTIVE" TO A SINGLE RAILROAD

Mr. Chairman, I am before you today testifying on an issue that I knew little about when I returned from Europe five years ago to run our operations in the Americas. In the ensuing years, I have had quite an education.

My company operates in a highly competitive global market. The margins of profitability on our products are exceedingly narrow. Customers have many choices of suppliers so it is difficult to pass cost increases on to our customers. To remain in business, we must constantly work at becoming more efficient and reducing the cost of producing and delivering our product.

As I began to review the cost structure of our operations in the U.S., I noticed that our railroad transportation costs at our Texas facility, which is served by a single railroad, were grossly out of proportion. In fact, these costs were meeting or exceeding the fixed costs of producing our product and made them the largest cost component after the cost of our raw material. Rail transportation costs remain among our largest cost components today.

Obviously, as a businessman, I began to focus on how we could bring these costs in line or achieve greater efficiency in rail transportation. I was surprised to be told by my transportation managers that the rates and level of service we received couldn't be changed because our single railroad carrier would not negotiate with us.

Rather, our railroad carrier set the rates and we had no opportunity to drive service requirements. We had no choice but to pay the railroad's rates and endure the existing poor service. Frankly, at first, I didn't believe that this could be true. As a businessman, my experience is that you can and should negotiate everything in a competitive market.

CAPTIVE RAIL CUSTOMERS HAVE NO BARGAINING POWER

When Basell attempted to open negotiations with the railroad carrier that provides single line service at our Texas plant, I quickly found out that my managers were correct. In fact, our position in negotiations was so poor that, for a long time, our railroad carrier used our captivity in Bayport, Texas to force us to use their service at higher than market prices at our Louisiana plant, which is served by several rail carriers. Allowing our rail carrier at Bayport to handle our cars at Lake Charles was the only method we had to even slightly temper the grossly out-of-market rates we pay for rail transportation out of our Bayport, Texas facility.

THE RATE RELIEF PROCESS AT THE STB DOESN'T WORK FOR CHEMICAL COMPANIES

Since our high rail rates are not tolerable in the long run and are jeopardizing the continued operation of our Bayport facility, we began to look at our options for containing and reducing our rail costs. First, we examined whether we had any chance of relief from the Surface Transportation Board (STB). After all, in 1980 Congress anticipated that there would be captive rail customers and directed the Interstate Commerce Commission (now the STB) to protect rail customers from the abuse of railroad monopoly power where competition does not. One potential option was a rate case at the STB that could determine whether our rate was unreasonably high. Unfortunately, we found that, since railroad deregulation, no chemical company has ever won a rate case at the STB and our advisors indicated our success would be highly unlikely. Moreover, as the Chairman of the STB has testified to this committee, a rate

case begins with a filing fee of up to $62,100, takes at least two years and would cost us up to $3 million – not a very attractive process to enter with the hope of becoming the first successful chemical company plaintiff in an STB rate case.

THE STB ALLOWS RAILROADS TO BLOCK THEIR CUSTOMERS' USE OF EXISTING RAILROAD INTERCHANGES TO REACH COMPETITION

Our second option at the Surface Transportation Board involved a competing railroad line that runs within approximately five miles of our plant. Our single line rail carrier could deliver our hopper cars to that competing line. Even though we would have to pay a high rate to our single line carrier for the first five miles of our movement, we would then have competition that could reduce our overall costs and greatly improve our efficiency through better service. Of course, our single line carrier could choose to compete and retain our business for the entire length of the movement. Clearly, our single line carrier would have no incentive to allow us to escape captivity by gaining access to the competing railroad. However, it would also seem logical, and consistent with every market approach applied in every other business in this country, that the Surface Transportation Board, in implementing railroad deregulation, would force one railroad to allow us access to another railroad where the two already exchange traffic.

Despite being contrary to the fundamental economic principles of our country and the tenets of deregulation, in 1996 the STB interpreted the deregulation act to allow railroads to deny customer use of existing railroad interchanges to reach competition. So, instead of being captive for five miles, the STB policy makes us captive for movements of up to thousands of miles, most of which is covered by competitive railroad options. We just aren't allowed to use those options.

CAPTIVE RAIL CUSTOMERS CAN BUILD THEIR OWN RAIL LINES TO A COMPETING RAIL CARRIER

Finally, we identified the only option to reach competition that the STB favors. We could build our own railroad out to the competing railroad. With the opportunity to increase their business, the competing railroad will provide a contract for rail movement at rates and service requirements that can, over a period of years, allow the amortization of the new line and still result in reduced transportation costs and greater operating efficiency.

After repeated unsuccessful attempts to negotiate more reasonable rates from the single line carrier, San Jacinto Rail Limited was born in 2001. Basell, along with three other chemical companies (Atofina, Lyondell, Equistar) and the BNSF railroad formed the San Jacinto Rail Limited to fund, build and operate a new rail line to reach competition. A schematic on the proposed San Jacinto Rail line is attached. After two years of review, the STB approved the project, which is expected to cost approximately $80 million. Today, approaching three years after the public announcement of the project, we hope that we can build this new, yet redundant, route. Unfortunately, it is not at all clear that this project will succeed.

Not unsurprisingly, some in the local community are significantly less than thrilled that a new, redundant rail line could be constructed near their neighborhoods. This strong public opposition has forced elected officials in the City of Houston to oppose the construction and, as a

consequence, the City has refused to allow the use of, or to convey, needed City property. Condemnation proceedings were undertaken to force access to this property, but the local trial court dismissed the condemnation proceeding. Now, this critical matter is mired in a state appellate court in Texas. So, while we have invested a lot of money, time and effort and have our STB approval, it is not clear that even this option will work for us.

Now, I ask you to examine this federal policy. Instead of preventing the incumbent carrier from blocking use of existing competitive options – which would seem to be a sound, if not fundamental, policy for a deregulated industry – we are forced to build our own railroad out to the point of competition. When the STB approved this project, the Chairman of the STB said that this represents "the right way" to obtain competition. This right way requires four chemical companies that are fighting to be competitive in a difficult global economy to enter the railroad business, invest $80 million that we would do better investing in our own businesses and build a railroad that nobody wants through a location where it is not welcome. I ask you: Is this the best policy for our nation?

And what if we are successful in building this railroad; what will be the result? First, the incumbent carrier will lose all or most of the business from our four companies for at least a number of years. Our new major railroad carrier will grow its business and, since they are willing participants, presumably increase their profits, all while offering us lower rates and better service. And finally, there will be competition for our business between the two railroads. The history of successful build outs whose primary purpose is to gain access to competition is that the redundant infrastructure often is idled when the initial rail carrier provides competitive rates and regains the business. Most Americans would view this entire exercise as disruptive, inefficient and a waste of investment capital.

Mr. Chairman, how can the current policy of allowing railroads to block customer access to competition at existing interchanges be defended? This policy would only make sense in a regulated system where rates are approved in advance by a regulatory agency. It makes no sense in a deregulated railroad industry. Moreover, this is not a benign bad policy that has minor side effects. Quite the contrary, we are trying to build our own rail line out to competition – at very high cost - because the high rail rates and poor service that results from our current captivity is jeopardizing the continued existence of the plants of our four companies in the Bayport, Texas area. Indeed, one company in the Bayport Industrial District has already closed its facility due in large measure to high transportation costs and moved its operations elsewhere. I have attached a verified statement by this company that was filed in the STB proceeding on San Jacinto Rail Limited, as well as a current picture of the plant site, which is for sale.

At the Bayport, Texas site, Basell has an idled production line that could be restarted with some investment. Restarting the line would create new jobs. The products from this line could also provide significant new revenue to the railroad. Without competitive rail rates, however, we cannot afford to restart the line. Basell will stay the course on the San Jacinto Rail Limited line, but will not invest in the Bayport site until we have competitive rates.

CONGRESS MUST REQUIRE RAILROADS TO ALLOW THEIR CUSTOMERS ACCESS TO COMPETITION AT EXISTING INTERCHANGES

Mr. Chairman, if railroad deregulation is to work for this country, railroad customers must be allowed use of existing railroad competition. Two bills are pending in the House that contain a provision that addresses this problem: H.R. 2924, the Railroad Competition Act of 2003, whose primary sponsor is Congressman Richard Baker (R-LA), a senior member of this Committee; and H.R. 2192, the Surface Transportation Board Reform Act of 2003, whose primary sponsor is Congressman Jim Oberstar (D-MN), the Ranking Minority Member of this committee.

The provisions in both bills are identical and require a railroad, when requested by its customer, to provide in writing a rate to a point on the railroad system where the customer can gain access to rail competition. The provision does not dictate the level of the rate or even require that the rate be reasonable, but only that a rate be provided so that the rail customer can gain use of existing rail competition.

We believe that the enactment of this provision will allow railroads and their customers to reach balanced commercial arrangements regarding transportation, will enable captive chemical plants to improve their competitive positions and will avoid the need to waste capital on build outs that are not designed to increase rail capacity and for that very reason often are unwelcome projects in a community. Allowing rail customer access to existing railroad competition makes sense in a deregulated railroad industry.

While I can not candidly appear before you today and blame all of the job flight taking place from our country on rail pricing and service practices, I can confidently state that it is a factor contributing to job flight in the chemical industry. Companies with facilities served by only one rail carrier and no ability to reach existing competitive alternatives are forced to evaluate whether the facility can remain viable as competition from the global market intensifies. Once a company is forced to consider a move, a number of other factors will come into play, causing the company to ask the question: where should I invest? Given today's climate, it is virtually certain that they will decide not to invest at a site that lacks rail competition and may very well decide to invest in a new site overseas.

The railroads will not change their practice and the STB has made it clear that it will not change the substance of its existing policies. This leaves only one solution: change must come from Congress. We urgently request that this Committee ensure that this provision is enacted into law this Congress. Thank you, Mr. Chairman and members of the subcommittee, for the opportunity to bring this vital issue to your attention today.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34079

San Jacinto Rail Limited – Authority to Construct – and The Burlington Northern and Santa Fe Railway Company – Authority to Operate – Build-Out to the Bayport Loop in Houston, Harris County, TX

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Verified Statement of David Boswell
On Behalf of Velsicol Chemical Corporation
In Support of the Bayport Loop Build-Out

1. My name is David Boswell. I have been employed by Velsicol Chemical Corporation in various capacities since 1975. My current role is a Director of Materials Management. My business address is 10400 W. Higgins Rd, Suite 600, Rosemont, IL 60018.

2. My current responsibilities as Director of Materials Management include managing all transportation activities. In that capacity I am familiar with Velsicol's bulk transportation arrangements and economics.

3. Velsicol is a global corporation focused on producing high performance speciliaty chemicals based on benzoic acid and cyclopentadiene that serve a variety of niche markets.

4. Velsicol's top-selling products include a full line of specialty plasticizers ranging from innovative benzoate esters to high performance polymerics and monomerics. With such a broad line, Velsicol is able to serve the adhesives, caulks, sealants, coatings, and PVC resins markets.

5. Velsicol is the world's largest marketer of refined benzoic acid and derivatives.

6. Velsicol's third line of chemicals is cyclopentadiene, derivatives used in the production of flame retardants and agricultural pesticides.

7. Velsicol's headquarters is located at 10400 W. Higgins Road, Suite 600, Rosemont, IL 60018-3713, in suburban Chicago. It has manufacturing operations in Chestertown, MD; Memphis and Chattanooga, TN; Kohtla - Jarve, Estonia; and Manchester, UK. Additional information about our company can be found on our website at http://www.velsicol.com.

8. Until September of 2001, we produced Benzoflex plasticizers at our Bayport, Texas, facility. Due to recent market conditions we have had the unfortunate task of consolidating our Benzoflex production capacity at our Chattanooga, TN and Chestertown, Maryland plant sites. This resulted in our decision to idle the unit located in Bayport, TX late in 2001. When decisions were made in this regard, the production costs of the Bayport facility were taken into account, including costs of transportation into and out of Bayport. The high transportation costs were a significant factor in our decision to idle this unit. The Bayport facility is served by one rail line .

9. Although we will not directly benefit from the planned build-out proposed by BNSF and San Jacinto Rail, we nevertheless felt it important to voice our support for the project. If this type of competitive build-out had been completed earlier, it could have played an important role in whether we continued production at this plant.

10. We believe the new rail line will be a significant enhancement to the Bayport Industrial District and could help industries that are currently attempting to navigate in a generally weakened global economy. We support competitive rail access projects such as this and recommend that it be approved.

I hereby affirm on penalty of perjury that the foregoing is true based on my knowledge and information.

Name

Dated: November 12, 2001

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B. Kelley Parker, III
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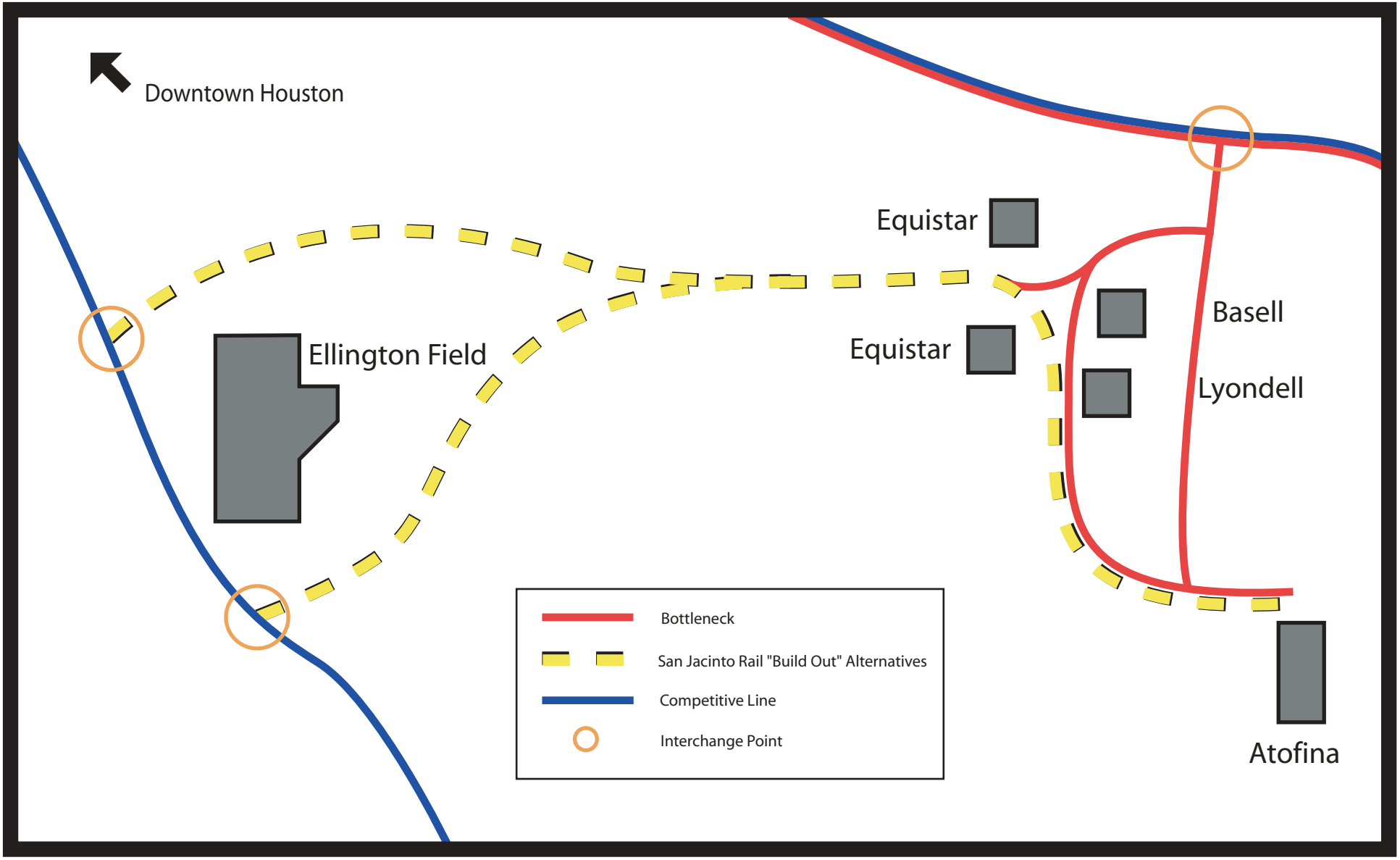
Bayport "Bottleneck"