

ENTERED  
Office of Proceedings  
June 10, 2024  
Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36785

---

CITY OF CHARLOTTE, NORTH CAROLINA  
—ACQUISITION EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY

---

**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

Robert A. Wimbish  
Thomas J. Healey  
Stephen J. Foland  
Fletcher & Sippel LLC  
29 North Wacker Drive, Suite 800  
Chicago, Illinois 60606-3208  
rwimbish@fletcher-sippel.com  
Telephone: (312) 252-1500

**ATTORNEYS FOR THE CITY OF  
CHARLOTTE, NORTH CAROLINA**

FEE RECEIVED  
June 10, 2024  
SURFACE  
TRANSPORTATION BOARD

Dated: June 10, 2024  
FILED  
June 10, 2024  
SURFACE  
TRANSPORTATION BOARD

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

FD 36785

---

CITY OF CHARLOTTE, NORTH CAROLINA  
—ACQUISITION EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY

---

**VERIFIED NOTICE OF EXEMPTION OF  
THE CITY OF CHARLOTTE, NORTH CAROLINA  
PURSUANT TO 49 C.F.R. PART 1150, SUBPART D**

The City of Charlotte, North Carolina (“Charlotte”), a municipal corporation in Mecklenburg County, North Carolina, a political subdivision of the State of North Carolina, and a non-carrier, hereby files this verified notice of exemption (the “Notice”) pursuant to 49 C.F.R. part 1150, subpart D, to acquire certain railroad assets owned and operated by Norfolk Southern Railway Company (“NSR”). However, in keeping with certain conventions of Surface Transportation Board (“Board”) practice and pursuant to an agreement between the parties to the proposed transaction, Charlotte concurrently has filed a motion to dismiss the Notice (the “Motion”), thereby seeking a determination under *State of Maine*<sup>1</sup> and its progeny that the present transaction, as structured, does not require the Board’s authorization.

Charlotte seeks to acquire from NSR certain interests in roughly 29.04 miles of railroad right-of-way – part of NSR’s “O Line” – located in Mecklenburg and Iredell Counties,

---

<sup>1</sup> *State of Me., Dep’t of Transp.—Acquisition Exemption, Me. Cent. R.R. Co.*, 8 I.C.C.2d 835 (1991) (“*State of Maine*”).

North Carolina, and extending between mileposts O-0.04 at Charlotte, North Carolina, and O-29.08 at Mooresville, North Carolina (collectively, the “Assets”). Charlotte will acquire the Assets from NSR subject to NSR’s retention of a permanent and exclusive easement as necessary for NSR to continue to fulfill its common carrier and related freight services (the “Easement”). NSR will retain the Easement to provide rail service to customers over, on, and connecting to the Assets, pursuant to a Contract of Purchase and Sale (“Purchase Agreement”) and Comprehensive Rail Agreement (“Comprehensive Agreement”) between Charlotte and NSR.

Notably, the Purchase Agreement and Comprehensive Agreement expressly prohibit Charlotte from: (1) providing freight service to customers located along the Assets; and (2) unreasonably interfering with NSR’s exercise of its retained freight service rights and obligations over the Assets. The terms of the Purchase Agreement and Comprehensive Agreement are structured to ensure that the proposed transaction satisfies the Board’s *State of Maine* criteria, hence the concurrently filed Motion.

Pursuant to 49 C.F.R. § 1150.33, Charlotte submits the following information:

**Full Name and Address of Applicant: 49 C.F.R. § 1150.33(a)**

City of Charlotte  
Office of the City Attorney  
600 East Fourth Street  
Charlotte, NC 28202

**Applicant’s Representative: 49 C.F.R. § 1150.33(b)**

Robert A. Wimbish  
Fletcher & Sippel LLC  
29 North Wacker Drive, Suite 800  
Chicago, IL 60606-3208  
rwimbish@fletcher-sippel.com  
(312) 252-1500

**Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)**

Pursuant to the draft Purchase Agreement, Charlotte will acquire NSR's right, title, and interests in the right-of-way, track, and related physical assets of the above-referenced O-Line (again, the Assets), as part of the planned expansion of the Charlotte Area Transit System ("CATS") regional transit network to better link northern suburban communities with the City of Charlotte. This conveyance of the Assets will be subject to NSR's retention of a freight service Easement as noted above, and the Purchase Agreement and Comprehensive Agreement both have been framed to ensure that NSR will be able to continue to provide freight service over the assets without unreasonable interference.

**Operator of the Property: 49 C.F.R. § 1150.33(d)**

NSR will continue to operate over and provide freight service to customers over, on, and connecting to the Assets after Charlotte's purchase of the assets pursuant to the retained Easement. Charlotte, through CATS, will provide commuter transit service over the Assets (although such services fall outside the scope of the Board's jurisdiction). Charlotte will be contractually foreclosed from: (1) providing freight rail service over the Assets, and (2) unreasonably interfering with NSR's provision of freight service over the Assets.

**Summary of the Proposed Transaction: 49 C.F.R. § 1150.33(e)**

The name and address of the railroad transferring its ownership interest in the Assets is:

Norfolk Southern Railway Company  
650 West Peachtree Street NW  
Atlanta, GA 30308

NSR will convey the Assets, extending between mileposts O-0.04 in Charlotte and O-29.08 in Mooresville. NSR will continue to provide freight service to customers over, on, and connecting to the Assets pursuant to the Easement, Purchase Agreement, and Comprehensive Agreement.

**Map: 49 C.F.R. § 1150.33(f)**

A map of the location of the Assets and surrounding the area is attached hereto as Exhibit A.

**Certification of Prospective Class III Status: 49 C.F.R. § 1150.33(g)**

Charlotte does not provide common carrier freight service and will not be entitled to provide any freight rail services post-transaction under the governing agreements with NSR. Rather, NSR will retain all common carrier rights and responsibilities associated with the Assets, and, as such, will retain the exclusive interest in the Board-regulated “line of railroad” that is excluded from transfer to Charlotte. Consequently, Charlotte will generate no freight rail revenues as a result of its Assets ownership or from CATS’ anticipated future commuter rail service over the Assets. Charlotte certifies that its projected railroad operating revenues would not exceed those that would qualify Charlotte as being a Class III rail carrier. See Certification and Verification (attached).

**Transactions Imposing Interchange Commitments: 49 C.F.R. § 1150.33(h)**

The transaction which is the subject of this Notice does not involve any provision or agreement limiting future interchange with a third-party connecting carrier.

**Advanced Notice (Posting): 49 C.F.R. § 1150.42(e)**

The advance notice requirements of 49 C.F.R. § 1150.42(e) do not apply to this transaction. *See* Certification and Verification.

**Environmental and Historic Preservation Data: 49 C.F.R. § 1150.32**

Pursuant to 49 C.F.R. § 1105.6(c)(2), Charlotte's proposed Assets acquisition is exempt from environmental reporting requirements. The proposed transaction will not result in significant changes to freight rail operations, *i.e.*, changes which exceed the thresholds established pursuant to 49 C.F.R. §§ 1105.7(e)(4)-(5). Charlotte's proposed Assets acquisition will sustain NSR's continued freight rail operations, thus exempting the transaction from historical preservation reporting requirements pursuant to 49 C.F.R. § 1105.8(b)(1). NSR has no plans to discontinue service or abandon any part of the line (the exclusive freight Easement) because of this transaction. Moreover, Charlotte has no plans to dispose of or alter properties subject to the Board's jurisdiction which are fifty (50) years old or older.

**Caption Summary: 49 C.F.R. § 1150.34**

A caption summary in appropriate form is attached hereto as Exhibit B.

Respectfully submitted,

/s/ *R. A. Wimbish*

Robert A. Wimbish

Thomas J. Healey

Stephen J. Foland

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, Illinois 60606-3208

[rwimbish@fletcher-sippel.com](mailto:rwimbish@fletcher-sippel.com)

Telephone: (312) 252-1500

**ATTORNEYS FOR THE CITY OF  
CHARLOTTE, NORTH CAROLINA**

Dated: June 10, 2024

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FD 36785**

---

**CITY OF CHARLOTTE, NORTH CAROLINA  
—ACQUISITION EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY**

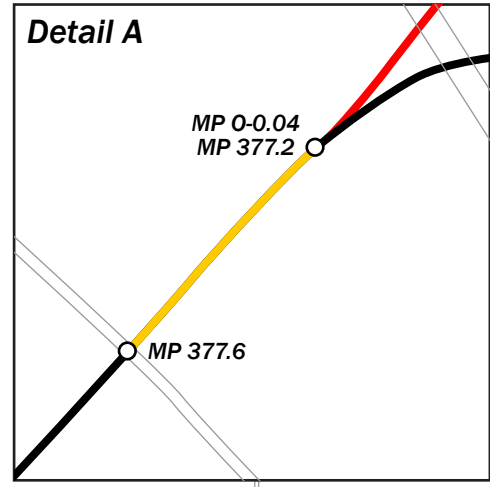
---

**EXHIBIT A**






**MAP**

# North Carolina

MP 0-29.08  
Mooreville



MP 0-0.04  
Charlotte  
Detail A

	<b>Norfolk Southern Corporation</b>
O-Line transaction exhibit	
 Proposed sale	 Roadways
 Proposed operating rights	
 NS Tracks	
June, 2024	AMB



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FD 36785**

---

**CITY OF CHARLOTTE, NORTH CAROLINA  
—ACQUISITION EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY**

---

**EXHIBIT B  
CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

Notice of Exemption

FD 36785

CITY OF CHARLOTTE, NORTH CAROLINA  
—ACQUISITION EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY

The City of Charlotte, North Carolina (“Charlotte”), a municipal corporation, political subdivision of the State of North Carolina, and non-carrier, has filed a verified notice of exemption under 49 C.F.R. part 1150, subpart D, to acquire from Norfolk Southern Railway Company (“NSR”) approximately 29.04 miles of track, a segment of NSR’s “O Line,” extending between mileposts O-0.04 at Charlotte, Mecklenburg County, North Carolina, and O-29.08 at Mooresville, Iredell County, North Carolina.

Charlotte’s representative in this proceeding is Robert A. Wimbish, Fletcher & Sippel LLC, 29 N Wacker Drive, Suite 800, Chicago, Illinois 60606-3208, 312-252-1500, [rwimbish@fletcher-sippel.com](mailto:rwimbish@fletcher-sippel.com).

This Notice is filed under 49 C.F.R. § 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to re-open the proceeding to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to re-open will not automatically say the effectiveness of the exemption.

By the Board, \_\_\_\_\_, Director, Office of Proceedings.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**FD 36785**

---

**CITY OF CHARLOTTE, NORTH CAROLINA  
—ACQUISITION EXEMPTION—  
NORFOLK SOUTHERN RAILWAY COMPANY**

---

**CERTIFICATION AND VERIFICATION**

**CERTIFICATION AND VERIFICATION**

I, Brent Cagle, being duly sworn, hereby certify and verify, under penalty of perjury, as follows:

1. I hold the position of Interim CEO, CATS with the City of Charlotte, North Carolina ("Charlotte"), and I am duly authorized to make this certification and verification on behalf of Charlotte;
2. I certify that Charlotte does not provide common carrier freight service, and will not be entitled to perform any rail freight services post-transaction under the governing agreements with NSR;
3. I certify that Charlotte will generate no railroad operating revenues resulting from its ownership of the Assets to be purchased from NSR;
4. I certify that Charlotte's anticipated freight rail revenues will not exceed \$5 million *per annum*;
5. I certify that the agreements controlling the proposed transaction contain no restrictions on interchange with third-party connecting railroads; and
6. I hereby verify that I have read the foregoing notice of exemption, that I know the contents thereof, and that the same are true and correct as stated to the best of my knowledge, information, and belief.

By: Brent Cagle  
City of Charlotte, North Carolina

Dated: June 6, 2024.