RAIL-INDUSTRIAL PARTNERS

WHITE PAPER · RAIL INFRASTRUCTURE CONTROL STRUCTURES

# Buying Cash Flow Without Buying the Railroad

An Alternative Form of Control for the Operator, a Monetization Event for the Owner

# 1 Executive Summary

The North American short line acquisition market has repriced to a level where the arithmetic no longer works for most sponsors. Control of a Class II or Class III railroad today generally clears somewhere between 12x and 18x trailing twelve-month EBITDA. At those levels an unlevered buyer is underwriting a mid-single-digit return and depending on leverage, multiple expansion, or aggressive commercial upside to reach anything an institutional LP would recognize as an infrastructure return.

Railroads are not overpriced relative to what they are. The difficulty is that an acquisition requires a buyer to purchase four distinct things in a single bundle:

1. The present value of operating cash flow over a normal investment horizon;
2. The present value of cash flow beyond that horizon, the perpetual tail;
3. The residual value of land, right-of-way, and structures, independent of operations;
4. A scarcity premium set at auction by infrastructure funds with a lower cost of capital than a middle-market sponsor carries.

Only the first produces the returns the sponsor is underwriting. The other three are why the multiple is 15x rather than 5x.

A long-term operating concession unbundles them. The grantor, whether a state, a port authority, a municipality, or a Class I railroad, retains title to the land, the right-of-way, and the fixed civil infrastructure. The concessionaire acquires the exclusive right to operate, maintain, recapitalize, and commercially develop the railroad for a fixed term, typically 30 to 50 years, in exchange for a negotiated package of upfront consideration, committed capital investment, revenue share, and performance obligations.

The financial insight at the center of this is that the term costs very little. At an 8% to 10% discount rate with modest growth, a 50-year cash flow stream captures roughly 94% to 98% of the present value of a perpetual one. An acquisition requires the buyer to pay full price for a residual worth two to six percent of the DCF, along with land it does not intend to monetize and an auction premium it cannot afford.

The structure is two-sided, which is what makes it executable. For the operator it is a route to control that does not require winning an auction against a lower cost of capital. For the owner it is a monetization event, converting an illiquid and capital-hungry operating asset into an upfront cash receipt, a committed private capital program that requires no appropriation, an ongoing revenue-share annuity, and a retained reversionary interest in the asset itself. The owner sells the cash flows and the operating risk while keeping the railroad.

There is a further point that matters more than the monetization, and public owners tend to reach it late. The capital a concession brings to a railroad was never available to that railroad under public ownership, at any price. Rehabilitation competes for appropriation against schools and highways and loses. It competes for public debt capacity against every other capital need in the jurisdiction. And no public ownership structure has a mechanism for attracting private equity risk capital against the asset's own commercial upside. A concession creates that mechanism and prices it against the cash flows the investment will generate.

The model is not theoretical. It is how most of the rail networks in Mexico and Brazil have been operated for nearly thirty years, and under a different name it is already how a large share of the U.S. short line industry gains control of track today. Lease-and-operate transactions are a routine, class-exempt filing at the Surface

Transportation Board. A concession is a structured, long-dated, capital-committed version of a transaction the U.S. regulatory system already processes on a seven-day clock.

## 2 The Problem: Entry Multiples Have Outrun the Return Math

### 2.1 Where pricing sits

Short line and regional railroads have been progressively reclassified in the minds of allocators, moving from cyclical transport operating companies into core infrastructure. They are now priced against an infrastructure cost of capital rather than an industrials one.

The landmark data point remains the take-private of Genesee & Wyoming by Brookfield Infrastructure and GIC, announced in July 2019 at approximately $8.4 billion including debt, a 39.5% premium to the unaffected share price.[1] Contemporaneous sell-side commentary placed the transaction at roughly twelve times EBITDA and characterized the price as high but defensible for a high-quality, steady-cash-flow business.[2]

That was a platform of 120 railroads with global scale, bought by two of the lowest-cost-of-capital buyers in the world, six years ago. Single-asset short lines with concentrated customer bases now routinely trade above that level. A sponsor pursuing control of a Class II or Class III property should expect to clear 12x to 18x TTM EBITDA in the current market, with the upper end reserved for lines carrying contracted volume, industrial development land, or a Class I interchange that a strategic buyer wants defensively.

### 2.2 What that pricing implies about returns

The following is illustrative and is not drawn from any specific transaction.

Consider a regional short line generating $10.0 million of TTM EBITDA. Assume $3.0 million of annual maintenance capital expenditure, depreciation and amortization of $3.5 million, and a blended federal and state cash tax rate of 24%. Unlevered free cash flow is approximately $5.4 million.

| ENTRY MULTIPLE | ENTERPRISE VALUE | YEAR-1 UNLEVERED FCF YIELD | IMPLIED UNLEVERED IRR AT 2.5% PERPETUAL GROWTH |
|---|---|---|---|
| **12.0x** | $120.0M | 4.5% | ~7.0% |
| **15.0x** | $150.0M | 3.6% | ~6.1% |
| **18.0x** | $180.0M | 3.0% | ~5.5% |

*Illustrative. Assumes stable margins, no multiple expansion, and no incremental commercial development.*

A 5.5% to 7.0% unlevered return is a reasonable outcome for a pension fund with a thirty-year liability profile and a 6% actuarial hurdle. It does not support a fundless sponsor, a middle-market fund carrying a 15% unlevered pre-tax threshold, or a promote structure with a meaningful preferred return.

A sponsor bidding against that cost of capital has three options. Lose the auction. Lever aggressively into a cyclical freight base. Or underwrite commercial upside so heavily that the LP is effectively funding a development story at an infrastructure price. None of the three is attractive.

### 2.3 Decomposing the multiple

The 12x to 18x is not irrational. It is the sum of components a sponsor may not want or need.

**Operating cash flow over a normal horizon.** This is what the sponsor is buying and the only component that generates operating returns.

**The perpetual tail.** Rail is one of the few asset classes where perpetual life is a defensible assumption, and buyers capitalize it accordingly. Section 4 shows this component is worth very little in present value, though it is priced as though it were worth a great deal, because a terminal-value calculation at a low discount rate makes it look large in nominal terms.

**Residual real property.** Right-of-way, yards, sidings, industrial land. For a buyer with an industrial development thesis this is real value. For an operator whose plan is to run trains it is an illiquid, environmentally encumbered, largely non-monetizable balance-sheet item that nonetheless carries a full price. Right-of-way is close to impossible to realize, being a linear easement encumbered by common-carrier obligations and, in many cases, by reversionary interests.

**Auction premium.** Sale processes for quality rail assets are competitive and clear at the price the lowest-cost-of-capital bidder will pay. That bidder is structurally not the middle-market sponsor.

The thesis of this paper follows directly. A concession is a mechanism for buying the first component and declining the other three.

## 3 What a Concession Is

A rail operating concession is a long-term contract under which a public or institutional owner grants a private operator the exclusive right to operate, maintain, recapitalize, and commercially develop a defined rail network for a fixed term, while retaining title to the underlying assets.

### 3.1 What transfers

- Exclusive right to provide common-carrier freight service over the network
- Commercial control: pricing, marketing, contracting with shippers, car supply
- Operating control: crews, dispatching, mechanical, maintenance-of-way
- Development rights over designated industrial land, typically on a defined framework
- Obligation to maintain the network to agreed condition standards
- Obligation to invest committed capital
- The revenue and the operating risk

### 3.2 What does not transfer

- Title to land, right-of-way, track structure, bridges, and other fixed civil infrastructure
- The right to sell, encumber, or abandon the network
- Salvage rights
- In most structures, pre-existing environmental liabilities attributable to the owner's period of operation

Mexico's rail law states the principle plainly. Under the Ley Reglamentaria del Servicio Ferroviario, the concessioned track, right-of-way, traffic control centers, and railway operating signals revert to the Nation at the end of the concession, and public-domain assets subject to a concession may not be encumbered.[3] The commercial consequence is that a concessionaire does not carry the value of the infrastructure on its balance sheet, though it does carry the value of the concession itself.[4] Section 9 addresses what that means for lenders.

### 3.3 The consideration package

Concession consideration is a package rather than a price. Four elements are always present, and the negotiation concerns the relative weight of each.

**Upfront concession payment.** A lump sum at financial close. This is the closest analogue to a purchase price and the number both sides tend to fixate on.

**Committed capital program.** A binding obligation to invest a defined amount over a defined period, usually front-loaded into the first five to ten years for rehabilitation and capacity. This capital goes into the asset rather than to a seller.

**Ongoing consideration.** Fixed concession fees, revenue share, profit share, or some combination. Revenue share aligns the grantor with commercial growth and is generally preferable to a fixed fee from the concessionaire's perspective, because it flexes with performance.

**Performance obligations.** Service levels, safety standards, condition standards for the returned asset, employment commitments, public-benefit obligations.

A grantor's objectives are rarely purely financial. States and port authorities typically optimize for capital investment, service quality, economic development, employment, and political durability, with cash consideration a secondary concern. This is the structural reason concession consideration prices below auction-cleared M&A: the counterparty is not maximizing price. A sponsor that can credibly commit capital and operating capability bids into a scoring framework where money is one criterion among several, rather than into an auction where money is the only one.

### 3.4 Concession, lease, and contract operation

The concession, the long-term lease, and the contract operating agreement are points on a single spectrum rather than different species. All three separate ownership from operation. They differ in duration, in who carries revenue risk, in how much capital the operator must commit, and in whether the operator holds any claim on the value it creates.

| | CONTRACT OPERATING AGREEMENT | LEASE AND OPERATE | CONCESSION |
|---|---|---|---|
| **Typical term** | 3–10 years | 5–20 years | 30–50 years |
| **Revenue risk** | Owner | Operator | Operator |
| **Operator compensation** | Fee, often subsidized | Revenue less rent | Revenue less concession consideration |
| **Capital obligation** | None | Maintenance only | Committed program, front-loaded |
| **Recovery of unamortized capex** | Not applicable | Rarely provided | Core term |
| **Development rights** | None | Rare | Negotiated |
| **Payment direction** | Owner pays operator | Operator pays rent | Operator pays upfront plus revenue share |
| **Usual U.S. filing** | Modified certificate | Class exemption | Class exemption |

Most publicly owned rail in the United States sits in the left column. A state DOT or port authority owns the track, pays or subsidizes a contract operator to run it, and retains every dollar of capital risk. Whatever commercial upside the line carries accrues to nobody, because no party in the structure holds either the incentive or the mandate to pursue it. For a conversation with a public owner this is a more useful starting point than an abstract case for concessions, because the ask becomes concrete: move one column to the right.

The regulatory treatment differs as well, in a way that is poorly understood. Where a State acquires a line that has been abandoned or approved for abandonment and contracts with an operator to provide service, the acquisition falls outside the Board's jurisdiction and only the operator incurs the common carrier obligation. The operator files a notice for a modified certificate of public convenience and necessity under 49 CFR Part 1150, Subpart C, and may commence operations immediately upon filing.[56]

The modified certificate carries a feature with no analogue in a standard lease. The State through its operating agreement, or the operator, may impose preconditions on service, including payment of a subsidy, and the certificate obliges the operator to provide complete common carrier service only to shippers meeting those preconditions.[5] The common carrier obligation is narrower under this pathway than under the standard certificate a lessee-operator holds. Connecticut and Washington have both used it for state-owned lines.[78]

A caution attaches for public owners acquiring active track. Whether the acquiring public body takes on a common carrier obligation is fact-dependent and turns on how the freight operating right is handled. Santa Cruz County's regional transportation commission obtained a declaratory order confirming it could acquire the physical assets of a branch line without acquiring the right and obligation to provide freight service, which was retained by the seller and passed to a third-party operator.[9] On the record before it in a Monterey County acquisition, the Board indicated the opposite result.[10] Structure determines the answer, and the question should be settled before the acquisition rather than after.

The label matters commercially. A public owner that will not sign a document titled "concession," a word now carrying the freight of the Chicago parking meter transaction, will sign a long-term lease and operating agreement with identical economics. Class I railroads will not use the word at all, though several have granted long-term leases with capital commitments that function as concessions in everything but name. A sponsor should optimize for the terms in Section 9 and treat the title as a drafting convenience.

The distinction matters most in the other direction, when a sponsor is handed a lease and underwrites it as though it were a concession. Four provisions account for most of the gap. Rent that is flat or escalates on a fixed schedule captures none of the commercial growth the operator creates, where revenue share at least aligns the parties. Absence of a recovery mechanism for unamortized capital means the operator should not invest late in the term. Absence of development rights means the operator builds traffic on land whose appreciation belongs to someone else. And assignment restrictions drafted for a landlord's convenience can leave the interest unfinanceable and unsaleable. A twenty-year lease missing all four is a service contract with extra steps.

## 4 The Value of Term

This is the analytical core of the argument and is worth stating precisely.

The present value of a growing cash flow stream over N years, as a fraction of the present value of the same stream in perpetuity, is:

$$1 - [ (1 + g) / (1 + r) ]^N$$

Applied across realistic infrastructure discount rates and growth assumptions:

| TERM | R = 8%, G = 2% | R = 9%, G = 2.5% | R = 10%, G = 2% |
|---|---|---|---|
| **20 years** | 68.1% | 70.8% | 77.9% |
| **30 years** | 82.0% | 84.2% | 89.6% |
| **40 years** | 89.8% | 91.5% | 95.1% |
| **50 years** | **94.3%** | **95.4%** | **97.7%** |

A fifty-year concession captures 94% to 98% of the present value of perpetual ownership of the same cash flow stream. A thirty-year concession, the shorter end of the typical range, still captures 82% to 90%.

Two conclusions follow.

First, the perpetual tail is nearly worthless in present value and is nonetheless fully priced. A buyer at 15x is paying for a residual contributing roughly five percent of the DCF, and is implicitly underwriting fifty-plus years of regulatory, technological, and commodity-mix risk in order to own it. Traffic bases turn over. Coal did. The buyer paying for perpetuity is paying for the right to bear that risk.

Second, term length is the most important commercial term in a concession, and the marginal value of term declines sharply. Moving from 30 to 50 years adds twelve to fourteen points of captured value. Moving from 50 to 70 adds two or three. A grantor pushing the term below 30 years is destroying the concessionaire's ability to amortize heavy early capital, whether or not it understands that at the time. Brazil's experience with early renewal makes the point from the other direction: a guaranteed contractual horizon is what allows a concessionaire to commit to capital-intensive investment and begin it immediately.[11]

### 4.1 Where the capital goes

The second-order effect matters as much as the first.

In a $150 million acquisition, roughly $150 million goes to the seller. The asset receives whatever the buyer's capital plan provides afterward, funded from cash flow or incremental capital, and constrained by the leverage taken on to fund the purchase.

In a concession the consideration is deliberately split. A negotiated upfront payment goes to the grantor while a committed capital program goes into track, bridges, sidings, and terminals. The grantor prefers this, since investment in the asset is politically and economically more valuable to a state than a one-time cash receipt. The concessionaire prefers it as well, because capital deployed into rehabilitation and capacity earns a project-level return, whereas capital paid to a seller earns only the multiple.

The Brazilian renewal cycle demonstrates the scale involved. When Brazil renewed Rumo's Malha Paulista concession eight years early in May 2020, extending it from 2028 to 2058, the concessionaire committed to grant payments of R$2.9 billion and an investment program of more than R$6 billion in works, track, wagons, and locomotives, with the stated purpose of raising the corridor's capacity from roughly 35 million tonnes per year toward 75 million and ultimately 100 million.[12] The state's return on that transaction was the capacity, not the grant fee.

## 5 The Grantor's Case

Nothing in this structure works unless the owner wants to do it. Sponsors routinely present concessions from one side only, as a clever way to pay less, and then wonder why public owners are unresponsive. The grantor's case is at least as strong as the concessionaire's and it is a different case.

### 5.1 What the owner monetizes

A public or institutional owner of a rail asset typically holds something with four uncomfortable properties. It is illiquid. It consumes capital the owner must appropriate or borrow. It carries operating and safety risk the owner is not structurally well suited to bear. And it usually cannot be sold, for statutory, political, or fiduciary reasons, or simply because selling public rail infrastructure is a decision no administration wants on its record.

A concession monetizes the first three without triggering the fourth. The owner sells the cash flow stream and the operating risk for a defined term while title, reversion, and ultimate control stay where they are. That is a far easier proposition to take to a legislature, a board, a port commission, or a city council than a sale, and it is the reason concessions clear where sales do not.

### 5.2 The four-part receipt

The grantor's consideration mirrors the concessionaire's outlay. It is worth setting out from the owner's side because the components have very different political and accounting characteristics.

**Upfront capital.** A lump sum at financial close, unrestricted or ring-fenced to a designated purpose. This component behaves most like a sale and funds things the owner could not otherwise fund.

**A committed private capital program.** A binding obligation on the concessionaire to invest a defined amount over a defined period. From the owner's perspective this is capital investment in a public asset requiring no appropriation, no bond issuance, no debt capacity, and no addition to the balance sheet, with the improvements reverting to the owner at the end of the term. For a capital-constrained public owner this is frequently worth more than the upfront payment, and it is what the electorate can actually see.

**An ongoing revenue share.** A participation in commercial growth for the life of the concession. This converts a single monetization event into a lump sum plus a multi-decade annuity and keeps the owner economically aligned with the asset's performance rather than indifferent to it once the check clears.

**Retained ownership and reversion.** The owner still owns the railroad. At expiry it receives back an asset that has been rehabilitated, recapitalized, and commercially developed at private expense, along with the right to re-tender, renew, or resume operation.

### 5.3 Capital that public ownership cannot reach

The four-part receipt describes how the owner is paid. The more consequential point concerns what gets built, and it is the argument public owners tend to arrive at last.

A concession does not simply move capital from one balance sheet to another. It reaches capital that public ownership cannot access at any price.

Consider the position of a state DOT, port authority, or municipality that owns underinvested track. Rehabilitation capital must come from one of three places. Appropriation, where rail competes against schools, highways, and health care in a zero-sum budget and consistently loses, because a rehabilitated siding is a poor political product relative to a new interchange. Public debt, where the project competes against every other capital need in the jurisdiction for finite bonding capacity, and where debt limits, rating considerations, and voter approval requirements all bind independently. Or federal grants, which are competitive, non-recurring, require local match the owner may not have, and cannot be relied upon for a multi-decade program.

None of these mechanisms can price commercial risk. A public owner has no way to raise equity against the expected commercial upside of an industrial development program, because it has no equity to sell and no instrument through which an investor could take that risk. The capital simply is not reachable. This is the reason publicly held rail assets so often carry decades of deferred maintenance in the presence of obvious commercial opportunity: the opportunity is visible and the capital to pursue it does not exist within the ownership structure.

A concession creates the instrument. The concessionaire raises equity from investors who are underwriting the commercial upside directly, and raises debt sized against the cash flows the investment itself will generate. Neither pool of capital was available to the public owner. Neither competes with schools. Neither consumes bonding capacity. And the resulting improvements revert to the owner at the end of the term.

This reframes what the grantor is selling. The transaction exchanges a defined-term claim on today's cash flow for a capital program that could not otherwise have been funded, plus a share of the growth that program creates. Where the concession is well-structured, the grantor's reverted asset at term is worth substantially more than the asset it conceded, and the difference was financed by capital that public ownership could never have summoned.

### 5.4 The U.S. precedent for public monetization

American public owners have already run this playbook at scale outside rail.

In January 2005 the City of Chicago transferred operation of the Chicago Skyway, a 7.8-mile elevated toll road, to a Cintra–Macquarie consortium under a 99-year operating lease in exchange for an upfront payment of $1.83 billion. It was the first long-term lease of an existing toll road in the United States, and the payment allowed the city to establish a people, neighborhood, and business investment fund.[13] Eighteen months later Indiana leased the 157-mile Indiana Toll Road for 75 years to a Ferrovial–Macquarie consortium for $3.8 billion, with the state citing both the upfront payment and the long-term maintenance obligation as the public benefit.[14] In December 2008 Chicago's City Council approved a 75-year concession over roughly 36,000 parking meters for a lump sum of approximately $1.15 billion, closing in February 2009.[15]

Three lessons transfer directly to rail.

**Concession valuations disperse enormously, and process design captures the difference.** In the Skyway auction the winning bid of $1.83 billion was roughly 2.6 times the next highest bid, and more than three times the $505 million offered by the third bidder.[16] Different bidders held wildly different views of the same 99-year cash flow stream. A grantor running a genuinely competitive process with a well-drafted agreement captures that dispersion. A grantor negotiating bilaterally with a single counterparty does not.

**Term and price have to be solved together.** The Chicago parking meter transaction is the standing cautionary tale in U.S. public finance. The City Council approved a 500-page agreement within days, and in June 2009 the city's Inspector General concluded that Chicago had been paid, conservatively, $974 million less than it would have received from 75 years of meter revenue had it retained the system on the same terms.[17] A long term granted cheaply is the most expensive mistake available to a public owner.

**Reserved powers must be drafted before the term is set.** The parking meter concession also obligated the city to compensate the operator whenever meters were taken out of service for construction, festivals, or street redesign, which converted routine municipal decisions into contractual liabilities for three generations.[17] The rail equivalent is any provision that compensates the concessionaire for the grantor's exercise of ordinary public authority. A grantor should identify the policy levers it must retain and price them into the term, rather than discovering them in year fifteen.

### 5.5 Why rail owners are strong candidates

Rail sharpens each of these dynamics. Publicly held rail assets are disproportionately capital-starved for the reasons set out in Section 5.3. They carry safety and common-carrier obligations that public owners are not organized to discharge efficiently. Their commercial upside, in industrial development, new traffic, and terminal and transload revenue, requires a marketing and business-development capability that most public owners do not have and cannot easily build.

A rail concession also differs from a toll road concession in a way that favors the grantor. On a toll road the traffic already exists and the concessionaire is buying an annuity, which is why the Chicago and Indiana transactions turned so heavily on whether the upfront price was right. On an underinvested railroad the concessionaire's investment is what creates the incremental volume. The grantor's revenue share and its reverted asset are both worth more because of it, and the negotiation is correspondingly less zero-sum.

# 6 Precedent in Rail

## 6.1 Mexico

Mexico's 1996–1999 privatization of Ferrocarriles Nacionales de México is the template. The government did not sell the railroad. It auctioned 50-year concessions with 30-year exclusivity periods over the primary corridors: the Northeast to what became Kansas City Southern de México, the Pacific-North and Bajío to Ferromex, and the Southeast to Ferrosur.[18]

The KCSM concession is the best-documented. It took effect in June 1997, runs 50 years, and is renewable under certain conditions for up to a further 50 years. It is exclusive for the first 30 years, subject to mandatory trackage rights granted to the other concessionaires, and the Ministry of Transport may grant additional concessions or access rights to third parties beginning in June 2027. The consortium paid approximately $1.46 billion for 80% of the operating company.[19]

Several features carry over to a U.S. context.

The 50-year term with a 50-year renewal option is economically close to perpetuity while leaving the state a genuine reversion and a genuine lever. Exclusivity was time-limited rather than permanent, and sponsors should expect and price the reopening. And the concessions have proven durable across multiple changes of ownership and government, with the KCSM concession surviving the TFM-to-KCSM transition, the buyout of the original Mexican partner, and the 2023 CPKC merger.

One caution sits alongside this. The World Bank's assessment of the Mexican reform notes that the winning bid was priced off the market power the concession design conferred, which made subsequent regulatory attempts to force competitive access contentious: opening access on inadequate terms would have attacked the value the concessionaire had paid for.[20] A sponsor pricing exclusivity should assume the grantor will eventually want it back, and a grantor granting it should assume it has sold something it will later want to reclaim.

## 6.2 Brazil

Brazil's 1996–1998 concessioning of the RFFSA network used 30-year terms. The renewal cycle now underway demonstrates both the upside and the downside of the structure.

The upside is Malha Paulista. Originally awarded to Ferroban in 1998 and due to expire in 2028, the concession was renewed early after negotiations that began in 2016, with approval from the Federal Audit Court and a contract signed in May 2020 extending the term to 2058.[21][12] A 2024 addendum added a further R$600 million of investment.[22] Early renewal converted a wasting asset with a ten-year residual life back into a full-term concession, in exchange for capital commitments rather than a control premium. Renewal is the point in a concession's life where the concessionaire has the most leverage and the grantor has the most to gain, and it is a value event with no analogue in an outright purchase.

The downside is Malha Oeste, the first RFFSA network to run the full 30-year cycle to expiry and return to market for retender. The line is not operating on any stretch. The government concluded that the changes required to renegotiate with the incumbent were too extensive and opted for a new tender, and the parties are in dispute over liabilities owed to the federal government and compensation owed to the concessionaire, with the incumbent having filed suit challenging the compensation claims.[23]

Malha Oeste is the risk case in a sentence. End-of-term compensation is a contractual promise from a political counterparty, and it is worth exactly as much as the drafting and the enforcement environment make it worth. Section 9 addresses this directly.

### 6.3 The United States

North American sponsors sometimes treat concessions as an emerging-market structure. They should not. A large share of the U.S. short line industry already controls track it does not own, under long-term leases from Class I railroads, industrial park owners, state agencies, and port authorities.

The regulatory pathway is routine. Under 49 CFR 1150.31 a noncarrier may file a verified notice of exemption to lease and operate a rail line, becoming a Class III carrier upon effectiveness.[24] The Board's docket carries a continuous stream of these filings: R.J. Corman leasing and operating 14.9 miles in Kentucky;[25] Marquette Rail leasing from CSX;[26] SMS Rail Lines leasing 15 miles inside an industrial park in Albany County;[27] Sunrise Industrial Rail leasing and operating within a logistics center in Suffolk County;[28] TransloadX leasing and operating approximately 37 miles of two CSX branches in Maine.[29] The exemption is effective in seven days for most transactions and thirty for others, subject to certification thresholds and petitions to revoke.

The class exemption expressly reaches acquisition by a noncarrier of rail property that would be operated by a third party, and operation by a new carrier of rail property acquired by a third party, which is the separation of ownership from operation that a concession formalizes.[24]

The gap between current U.S. practice and a true concession is therefore commercial rather than regulatory, and Section 3.4 sets it out term by term. A U.S. short line lease is typically a five- to twenty-year arrangement with modest capital obligations and weak development rights. A concession is the same regulatory instrument stretched to 30 or 50 years, capitalized properly, and given a commercial development framework and a compensation mechanism at expiry.

### 6.4 A U.S. rail concession in all but name

The clearest domestic example sits at the Port of Brownsville. In June 2014 the Brownsville Navigation District, a political subdivision of the State of Texas that manages the port and owns the trackage within the port terminal area and Palo Alto Yard, entered a 30-year agreement with OmniTRAX to operate and commercially develop the Brownsville & Rio Grande International Railroad.[30][31] The railroad runs roughly 45 miles within the navigation district and five miles in the city of Brownsville,[31] and today interchanges with Union Pacific, BNSF and CPKC.[34]

The instrument was a Master Franchise Agreement between the District and OmniTRAX, under which OmniTRAX conveyed the railroad operating rights to a newly formed affiliate, Brownsville & Rio Grande International Railway, LLC. The Board processed it as a change in operator exemption with a concurrent continuance-in-control filing under 49 CFR 1180.2(d)(2), decided July 21, 2014, with consummation permitted from August 11.[32]

Most of the structural elements described in this paper are present. The District retained title. The term was 30 years. The operator became the common carrier and took the freight revenue and the operating risk.[32] The agreement obligated OmniTRAX to invest at least $8.5 million to develop and market a 1,200-acre, seven-parcel industrial park on District land, with a master plan due within one year, against a port land bank of roughly 40,000 acres.[33][30] Incumbent personnel were retained and the railroad continued under its existing president.[31]

Three of the four elements of the receipt described in Section 5.2 are on the public record here. The District transferred freight revenue and operating risk, obtained a committed capital program requiring no appropriation, and retained ownership and reversion along with the improvements. The ongoing consideration payable to the District is not public, and the figures that circulate for the revenue split come from a connecting carrier's reference page rather than from the parties, so they are not relied on here. Note also that none of the transaction documents use the word concession. The word used was franchise. The arrangement has remained in place for more than a decade.[34]

## 7 The U.S. Regulatory Path and What It Does Not Change

A concession is not a regulatory workaround and should never be marketed as one.

The concessionaire becomes a rail carrier. Upon effectiveness of the exemption the operator is a common carrier subject to the full apparatus: STB jurisdiction over rates, service, and common-carrier obligations; FRA safety regulation; the Railway Labor Act; the Railroad Retirement and Railroad Unemployment Insurance Acts; and the STB's abandonment and discontinuance authority. There is no diligence item a buyer would perform on an acquisition that a concessionaire can skip.

Continuance-in-control filings follow. Where the sponsor controls other Class III carriers, a concurrent continuance-in-control notice is required, as reflected across the docket examples in Section 6.3.

Environmental and historic review still applies. Most lease-and-operate transactions are categorically excluded under 49 CFR 1105.6(c) and exempt from historic reporting under 1105.8(b), but the analysis is transaction-specific.

Where the grantor is a public body a second regulatory layer exists. State procurement law, public-private partnership enabling legislation, legislative approval requirements for disposition of public rail assets, bond covenants, and federal grant assurances attached to prior CRISI, RAISE, or FRA funding can each independently constrain what a grantor may award and on what terms. This layer, rather than the STB, is usually the binding constraint and the long pole in the schedule.

Financing eligibility should be confirmed early. RRIF, CRISI, and RAISE each carry their own rules on applicant status, property interest, and matching requirements. A leasehold or concession interest is not automatically disqualifying and is not automatically qualifying, and the answer should be established before the capital plan is committed to in the concession agreement.

## 8 The Universe This Structure Reaches

The most consequential implication of the concession model is sourcing rather than pricing.

A substantial universe of North American rail assets is not for sale at any price and is therefore invisible to conventional M&A pipelines:

- **State-owned railroads and state DOT-held lines**, where disposition typically requires legislative authorization and is politically unavailable, but where operating agreements and long-term concessions sit within existing authority.

- **Port authority rail**, including on-dock and near-dock track, switching operations, and connecting lines, where the authority's mandate is throughput and regional economic activity rather than asset ownership returns. The Port of Brownsville transaction in Section 6.4 is the working model.
- **Municipal belt lines and terminal railroads**, often legacy assets carrying deferred maintenance, weak commercial management, and land the municipality will never convey.
- **Publicly owned industrial park track**, where the owner's objective is tenant attraction and the rail operation is a means to it.
- **Class I branch and secondary networks** that the owner will not convey, for network-control, competitive, or interchange reasons, but will divest operationally under a long-term lease with capital commitments.
- **Institutional and corporate-owned plant and industrial rail**, where the owner wants the service and not the operation.

None of these assets appear in a broker's book. All of them are addressable through a concession or a concession-like long-term lease.

For a sponsor the concession structure is less a way to pay less for the assets already in the market than a way to reach the assets that are not in the market at all. The competitive dynamic differs entirely: the sponsor is not outbidding infrastructure funds on price, it is demonstrating operating capability, capital commitment, and credibility to a counterparty whose objectives are only partly financial.

For an owner, the corresponding point is that an asset it had written off as unsaleable and unfundable is in fact monetizable, on terms that leave ownership intact.

## 9 The Terms That Determine Outcomes

A concession's economics live or die on eight provisions. An agreement that is competitive on price and weak on these is a liability rather than an asset.

**Term and renewal.** A 50-year term is the objective. A 30-year term is workable only alongside a defined, non-discretionary renewal mechanism tied to objective performance criteria rather than to the discretion of a future administration. A renewal option exercisable at the grantor's sole discretion carries no reliable value.

**Capital Recovery Interest.** The concessionaire will invest heavily in an asset it does not own. There must be a contractual right to recover the unamortized book value of concessionaire-funded capital improvements at expiry or on early termination, calculated on a defined schedule, with a defined payment mechanism and a defined dispute path. Without it, capital deployed in the final fifteen years of the term earns nothing for the concessionaire, which is how a grantor ends up with a decayed asset at reversion and is close to the dynamic that produced the Malha Oeste dispute.

**Termination for convenience.** Public grantors will insist on the right. The formula matters more than the right itself: unamortized capital, plus return of the unamortized upfront payment, plus a defined measure of foregone cash flow, payable within a defined period, with interest on late payment.

**Performance regime.** Service levels, condition standards, and safety metrics should be objective and measurable, with a graduated remedy ladder of cure periods, financial penalties, and then step-in, and with default triggers requiring material, persistent, uncured failure rather than a single missed metric.

**Financeability and lender direct agreements.** Concession interests are weaker collateral than fee ownership and lenders will price that. Where the underlying infrastructure is public-domain property, it may not be pledged at all, as Mexican law makes explicit.[3] The mitigant is a direct agreement between grantor and lenders providing notice of default, extended cure rights, and the right to step in and appoint a replacement operator rather than see the concession terminate. The direct agreement belongs on the same negotiating timetable as the concession agreement, not after it, since an agreement that is commercially excellent and unfinanceable has no value.

**Environmental liability allocation.** Rail corridors carry legacy contamination from fueling facilities, creosote, and historical spills. The concessionaire should bear liability arising from its own operating period only, with a defined baseline environmental assessment at commencement, grantor indemnity for pre-existing conditions, and a defined mechanism for conditions discovered later but attributable to the prior period.

**Rate, access, and exclusivity.** What governs here is the scope and duration of exclusivity, the trackage rights the concessionaire must grant and receive, and whether the grantor reserves the right to award competing access and when. Mexico's thirty-year exclusivity window and the subsequent access disputes are the reference points.[19][20]

**Revenue share definition.** The base has to be defined precisely, whether gross freight revenue, net revenue, commercial revenue including development income, or EBITDA, with a commencement date that allows the ramp of early capital investment to be absorbed. A share beginning in Year 3 on commercial revenue behaves very differently from one beginning at close on gross revenue.

## 10 Where a Concession Is the Wrong Structure

Any sponsor presenting this thesis to an investment committee should present the negative case first.

**A concession is a wasting asset.** The concession fee and every dollar of capital invested must be amortized over the term. Book returns will look worse than an owner's. Exit value declines mechanically as the term runs, and a sale in year 35 of a 50-year concession is a sale of a 15-year cash flow stream, which is why the renewal dynamic in Section 6.2 matters so much.

A concession interest is nonetheless tradeable, and the secondary market for long-dated infrastructure concessions is real. The Chicago Skyway concession was sold in 2016, eleven years into a 99-year term, to a consortium of Canadian pension funds for approximately $2.8 billion against an original 2005 upfront payment of $1.83 billion.[16] A sponsor exiting a concession is selling a defined-term cash flow stream to a buyer whose cost of capital is built for exactly that, which is a narrower buyer universe than a fee-owned railroad would attract but not a thin one.

**There is no residual real property.** If the investment thesis rests on industrial land development, right-of-way monetization, or the appreciation of rail-served acreage, a concession that reserves land title to the grantor defeats the thesis. Development rights can be negotiated into a concession, but they are contractual rights within a term rather than fee ownership.

**There is no salvage or abandonment optionality.** An owner of a marginal branch line can pursue abandonment and salvage. A concessionaire generally cannot, and may carry an affirmative obligation to maintain and operate lines that lose money.

**The counterparty is political and the relationship lasts decades.** Administrations change. The value of end-of-term compensation, renewal expectations, and exclusivity all rest on the durability of a public commitment across multiple electoral cycles. Malha Oeste is one case study; the 2023 occupation of portions of Ferrosur's Veracruz lines by federal forces for public-utility projects is another.[18]

**Leverage is more expensive and more constrained.** Expect lower advance rates, tighter covenants, amortization tied to the concession term, and cash sweeps that lenders would not require against fee-owned track.

The right structure depends on what is being bought:

| SITUATION | BETTER VEHICLE |
|---|---|
| **Public owner legally or politically unable to sell** | Concession, often the only path |
| **Capital-starved asset needing heavy rehabilitation** | Concession, capital goes to asset rather than seller |
| **Grantor optimizing for investment and service over price** | Concession, no price auction |
| **Class I unwilling to sell but willing to divest operations** | Concession or long-term lease |
| **Thesis driven by industrial land development** | Acquisition |
| **Thesis requires abandonment or salvage optionality** | Acquisition |
| **Short hold, sale to a strategic or infrastructure fund** | Acquisition |
| **Asset already well-capitalized with stable traffic** | Either, decide on price |

## 11 Conclusion

Entry multiples in the short line market reflect what a perpetual, land-backed, competitively bid asset is worth to a buyer carrying a 6% cost of capital. They are a poor guide to what the operating business is worth to an operator, and no guide at all to what control costs when the owner is not selling.

A concession separates those questions. It prices operating cash flow over a term that captures nearly all of its present value, leaves the land and the perpetual tail with an owner who was never going to part with them, and substitutes a negotiated, multi-criteria award for an auction the sponsor was structurally going to lose.

For the owner it does something appropriation cannot. Capital that public ownership cannot reach at any price becomes available, priced against the cash flows the investment itself will generate, with the improvements reverting at term.

The structure fails in identifiable ways. A term too short to amortize the capital program. No recovery of unamortized investment at expiry. Reserved powers left undrafted until the grantor needs them. Exclusivity sold without a view on when the grantor will want it back. Financeability addressed after the commercial terms are set. Each is a drafting problem with a known answer, and each has been solved in a live transaction somewhere.

The decision rule is narrow enough to state plainly. Where the value of a rail asset lies in its land, its optionality, or its salability, buy it. Where the value lies in operating it well and investing in it, and where the owner cannot or will not sell, the concession is the better instrument and frequently the only one.

## APPENDIX A: ILLUSTRATIVE COMPARISON

*Regional short line, $10.0 million TTM EBITDA. Illustrative only and not drawn from any specific transaction.*

| | ACQUISITION | 50-YEAR CONCESSION |
|---|---|---|
| **Consideration to seller / grantor** | $150.0M (15.0x TTM) | Negotiated upfront payment |
| **Committed capital program** | Discretionary | Binding, front-loaded |
| **Land and right-of-way** | Conveyed to buyer | Retained by grantor |
| **Ongoing payment to counterparty** | None | Revenue share |
| **Cash flow horizon underwritten** | Perpetual | 50 years, ~95% of perpetual PV |
| **Residual at horizon** | Perpetual ownership | Reversion, with Capital Recovery Interest |
| **Salvage / abandonment optionality** | Retained | Generally none |
| **Collateral quality for lenders** | Fee | Concession interest, requires direct agreement |
| **Counterparty risk after close** | None | Ongoing, political, 50 years |
| **Competitive dynamic at entry** | Auction against infrastructure funds | Bilateral or scored, multi-criteria |

RAIL-INDUSTRIAL PARTNERS

### ABOUT THE AUTHOR

Tim Eklund is Managing Partner of Rail-Industrial Partners, LLC.

As Director of Acquisitions at OmniTRAX, Eklund led the team that entered into the 30-year Master Franchise Agreement with the Brownsville Navigation District for the Brownsville & Rio Grande International Railroad, the transaction described in Section 6.4.

### ABOUT RAIL-INDUSTRIAL PARTNERS

Rail-Industrial Partners is a specialized investment and strategic advisory platform focused on the North American freight rail, rail services and rail-industrial sectors.

The firm's partners and advisors have owned and operated shortline, regional and Class I railroads throughout North America, and carry global experience evaluating, structuring, and operating rail concessions.

## NOTES AND SOURCES


1 Genesee & Wyoming Inc. / Brookfield Infrastructure / GIC, press release, July 1, 2019. https://bip.brookfield.com/press-releases/bip/genesee-wyoming-inc-be-acquired-brookfield-infrastructure-and-gic-84-billion

2 Seeking Alpha, analysis of the Brookfield–G&W transaction, July 3, 2019. Analyst estimate rather than a company-disclosed figure. https://seekingalpha.com/article/4273361-genesee-and-wyomings-investors-score-win-brookfield-infrastructure-deal

3 Ley Reglamentaria del Servicio Ferroviario (Mexico), Art. 14 and related provisions: concessioned track, right-of-way, traffic control centers and operating signals revert to the Nation at the end of the concession; public-domain assets subject to the concession may not be encumbered. English machine translation of the consolidated law. Confirm against the current Spanish text before external use. https://www.global-regulation.com/translation/mexico/560373/law-regulation-of-the-service-rail.html

4 OECD / International Transport Forum, *Establishing Mexico's Regulatory Agency for Rail Transport: Peer Review of Regulatory Capacity*, 2016, on the accounting treatment of concessioned infrastructure. https://www.itf-oecd.org/sites/default/files/docs/16cspa_mexico-rail_regulation.pdf

5 49 CFR 1150.22, Exemptions and common carrier status. State acquisition of a fully abandoned line is outside Board jurisdiction; acquisition of a line approved for abandonment is exempt; where the State contracts with an operator, only the operator incurs the common carrier obligation, and service preconditions set in the operating agreement limit the scope of that obligation. https://www.law.cornell.edu/cfr/text/49/1150.22

6 49 CFR 1150.23, Modified certificate of public convenience and necessity: operations may commence immediately upon filing of the notice. Nomenclature changes to Part 1150 appear at 91 FR 4855 (Feb. 3, 2026). https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-B/part-1150/subpart-C/section-1150.23

7 *Central Washington Railroad Company and Columbia Basin Railroad Company, Inc. — Modified Rail Certificate*, 71 Fed. Reg. (Jan. 4, 2006), covering a line in Yakima County acquired by the State of Washington through an offer of financial assistance. https://www.federalregister.gov/documents/2006/01/04/06-9/central-washington-railroad-company-and-columbia-basin-railroad-company-inc-modified-rail

8 *Central New England Railroad Company — Modified Certificate of Public Convenience and Necessity*, 61 Fed. Reg. (Oct. 17, 1996), covering the Wethersfield Secondary Track owned by the Connecticut Department of Transportation. https://www.govinfo.gov/content/pkg/FR-1996-10-17/html/96-26603.htm

9 *Santa Cruz County Regional Transportation Commission — Petition for Declaratory Order*, STB (served 2012). Cited here from secondary reporting of the Board's digest; obtain the decision directly before external use.

10 *Transportation Agency for Monterey County — Acquisition Exemption*, 68 Fed. Reg. (Oct. 3, 2003), in which the Board indicated on the record before it that the acquiring agency had taken on a common carrier obligation. https://www.govinfo.gov/content/pkg/FR-2003-10-03/pdf/03-25098.pdf

11 Revista Cultivar, reporting on Rumo's North-South Railway concession and the role of a guaranteed contractual horizon in enabling capital-intensive investment, 2019. https://revistacultivar.com/news/rumo-signs-concession-contract-for-the-north-south-railway

12 DatamarNews, "Rumo and ANTT renew Rumo's Malha Paulista railroad concession," May 28, 2020. https://datamarnews.com/noticias/rumo-and-antt-renew-rumos-malha-paulista-railroad-concession/

13 FHWA Center for Innovative Finance Support, *Infrastructure Case Study: Chicago Skyway Bridge*. https://www.fhwa.dot.gov/ipd/value_capture/case_studies/chicago_skyway_bridge.aspx

14 FHWA Center for Innovative Finance Support, *Infrastructure Case Study: Indiana Toll Road*. https://www.fhwa.dot.gov/ipd/pdfs/value_capture/case_studies/indiana_toll_road.pdf

15 Metropolitan Planning Council, *Innovative Infrastructure Delivery: Chicago Parking Meter Analysis*, on the December 2008 award and February 2009 close of the Chicago Metered Parking System Concession. https://metroplanning.org/projects/innovative-infrastructure-delivery-chicago-parking-meter-analysis/

16 FHWA Center for Innovative Finance Support, project profile: Chicago Skyway, including the October 2004 bid comparison and the February 2016 sale. https://www.fhwa.dot.gov/IPD/project_profiles/il_chicago_skyway.aspx

17 City of Chicago Office of Inspector General, *An Analysis of the Lease of the City's Parking Meters*, June 2, 2009, finding the city was paid conservatively $974 million less than 75 years of retained meter revenue on the same terms; and subsequent reporting on the concession's true-up payment obligations. Obtain the OIG report directly before external use.

18 OECD / International Transport Forum, *Establishing Mexico's Regulatory Agency for Rail Transport*, 2016. https://www.itf-oecd.org/sites/default/files/docs/16cspa_mexico-rail_regulation.pdf

19 Grupo Transportación Ferroviaria Mexicana, SA de CV, Form 10-K, U.S. Securities and Exchange Commission. https://www.sec.gov/Archives/edgar/data/1055291/000095013406007229/c03926e10vk.htm

20 World Bank / PPIAF, *Railway Reform: Toolkit for Improving Rail Sector Performance*, Mexico case study. https://www.ppiaf.org/sites/ppiaf.org/files/documents/toolkits/railways_toolkit/PDFs/RR%20Toolkit%20EN%20New%202017%2012%2027%20CASE9%20MEXICO.pdf

21 International Railway Journal, "Brazil approves early renewal of Rumo Paulista concession," April 2020. https://www.railjournal.com/freight/brazil-approves-early-renewal-of-rumo-paulista-concession/

22 Railway Gazette International, "Rumo to invest R$600m more in Paulista network," June 26, 2024. https://www.railwaygazette.com/infrastructure/2024/06/26/rumo-to-invest-r600m-more-in-paulista-network/

23 DatamarNews, "Brazil's first privatized rail concession expires after 30 years as government prepares new auction," June 2026. https://datamarnews.com/noticias/brazils-first-privatized-rail-concession-expires-after-30-years-as-government-prepares-new-auction/

24 49 CFR Part 1150, Subpart D. https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-B/part-1150/subpart-D/section-1150.31

25 STB Finance Docket No. 34326, *R.J. Corman Railroad Company/Central Kentucky Lines — Lease and Operation Exemption*, 68 Fed. Reg. (Apr. 14, 2003).

26 STB, *Marquette Rail, LLC — Lease and Operation Exemption — CSX Transportation, Inc.*, 70 Fed. Reg. 61879 (Oct. 26, 2005).

27 STB Finance Docket No. 34928, *SMS Rail Lines of New York, LLC — Acquisition and Operation Exemption*, 71 Fed. Reg. (Sept. 29, 2006).

28 STB Docket No. FD 36883, *Sunrise Industrial Rail, LLC — Lease and Change of Operator Exemption*, 90 Fed. Reg. No. 178 (Sept. 17, 2025).

29 STB, *TransloadX Railroad Company, Inc. — Acquisition and Operation Exemption — CSX Transportation, Inc.*, 91 Fed. Reg. (Apr. 2, 2026).

30 OmniTRAX, "Brownsville & Rio Grande International Railway," and OmniTRAX/Business Wire release, "OmniTRAX to Manage Brownsville & Rio Grande International Railroad and Develop New Industrial Park at Port of Brownsville," June 12, 2014. https://www.businesswire.com/news/home/20140612006495/en/OmniTRAX-Manage-Brownsville-Rio-Grande-International-Railroad

31 Progressive Railroading, "OmniTRAX to manage, operate Brownsville & Rio Grande," June 13, 2014; and Railway Gazette International, "OmniTRAX to manage Brownsville & Rio Grande International Railroad," June 2014. https://www.progressiverailroading.com/railPrime/details/OmniTRAX-to-manage-operate-Brownsville-Rio-Grande-6132014--72117

32 *Brownsville & Rio Grande International Railway, LLC — Change in Operator Exemption Including Interchange Commitment*, 79 Fed. Reg. (July 25, 2014), decided July 21, 2014; related continuance-in-control filing at *Patrick D. Broe — Continuance in Control Exemption*, STB Docket No. FD 35837. https://www.federalregister.gov/documents/2014/07/25/2014-17527/brownsville-and-rio-grande-international-railway-llc-change-in-operator-exemption-including

33 OmniTRAX, "OmniTRAX presents draft master plan at port workshop," on the agreement's requirement that OmniTRAX invest at least $8.5 million to develop and market a 1,200-acre, seven-parcel industrial park on port land, with a master plan due within one year. https://omnitrax.com/omnitrax-presents-draft-master-plan-port-workshop/

34 Port of Brownsville, "Brownsville & Rio Grande International Railway Celebrates 40th Anniversary," 2024, https://www.portofbrownsville.com/brownsville-rio-grande-international-railway-celebrates-40th-anniversary/; and Progressive Railroading, "OmniTRAX affiliate marks 40 years of serving Port of Brownsville," February 27, 2025, on current interchange with Union Pacific, Canadian Pacific Kansas City and BNSF. https://www.progressiverailroading.com/short_lines_regionals/news/OmniTRAX-affiliate-marks-40-years-of-serving-Port-of-Brownsville--73978 As of this writing the franchise term remains the original 30 years; no extension has been announced.


Note on figures. Transaction economics in Sections 2.2, 4, and Appendix A are illustrative and constructed for exposition. They are not drawn from any specific transaction, live or historical. This paper describes no live, pending, or contemplated transaction and contains no confidential or non-public information regarding any party.