MR. KRAUS: Thank you for giving me the
mike, Chairman Nober and Vice Chairman Mulvey. I also
want to thank you for the opportunity to participate
in today’s hearing as well as your grant of an
extension which afforded us an opportunity to present
the written comments to you in a timely manner. I’m
here today on behalf of the Rail Labor Division of the
Transportation Trades Department that is an
organization representing virtually all of the major
rail unions. The only one that’s not participating is
my colleague, Mr. Elliot, representing the UTU.

My name is Mitchell Kraus. I am general
counsel of the Transportation and Communications Union
which is one of the affiliated organizations of the
TTD. I’d like to start very briefly and I don’t
intend to use all of my time either and I will attempt
to summarize the written testimony that was previously
submitted. Certainly, I’ll be glad to answer any
questions that either of you may have. But I’d like
to start very briefly with looking at what the current
regulatory environment is which the Petitioner is saying they need relief from.

And as Petitioner acknowledged, the statute itself which is a good place to start, says that the Board should grant abandonment only if it finds that the present or future, and then it uses the term quite clearly, public convenience and necessity, require or permit the abandonment or discontinuance. That has been interpreted by the United States Supreme Court as a balancing test where the interest of those served by the line have to be balance against a burden on the line to continue providing that service. And the Board itself has indicated that it is accepting that test and again, will judge the relative burden on the railroad seeking to abandon as opposed to the burden on the community and shippers who are served by the abandoning line.

There are a number of factors that the Board is to consider and among them is opportunity cost which is effectively whether a line may well be profitable albeit not significantly profitable enough. And this procedure places the burden where we believe
the burden ought be on the petitioning carrier seeking
the abandonment to come up with the data which they
have. Whether there could be a change in the format
that that data is required, there’s some technical
points in the Petitioners’ position that I’m not
really going to comment on and I’d like to focus on
the major thrust of their argument.

Clearly, they have the data and it should
not be a huge burden for them to come up with it. The
current exemption process at the Board grants the
exemption for abandonment unless there is significant
shipper opposition and even in the face of opposition,
it will be granted if it’s quite clear that the costs
of operating the line are simply marginal at best. So
the exemptions are routinely granted as Petitioner has
acknowledged.

What Petitioner is focused on as I
understand it is what they refer to as the pre-
petition or pre-filing period being the big problem,
and, of course, there’s no evidence as to how long
that period is, whether it is in fact, years, months,
whatever goes on in that period except counsel’s
argument that it goes on for a long time, and during that period lots of bad things happen on the line so that at the end of the day no one will buy it.

What’s missing from this analysis that emphasizes the benefits of the market is any reference to the market itself. There is nothing preventing the small line carriers from the day they decide that they no longer want to operate a line to try to sell it and there is nothing to prevent in today’s regulatory environment for them to voluntarily sell it from day one when they make that decision for the net liquidation cost of the line. There is nothing to prevent them from publicizing it. There’s nothing to prevent them from getting out into the real community generally a variety of data that a perspective purchaser might want to look at. And so the claimed benefits of this for the public seem to me to be largely illusory as Petitioners would contend as it pertains to the sale process to any other potential interested buyers.

What Petitioner ignores is several factors. One, although they acknowledge that
subjectively the short line may make an error, in some of the abandonment cases where exemption was denied and the one they use as the poster child is the Illinois Central case. In point of fact, that line was not abandoned. It was, in fact, sold and at least to my knowledge is still operating. It certainly was, at least as reported from what I could tell from the Board’s procedures.

The last issue which is -- there are two last issues, excuse me, that I wanted to cover. One is the concern we have by giving the Petitioners carte blanche to abandon simply via a notice may well, and there’s no comment from Petitioners on this, result in an increase in abandonments, an increase in abandonments of lines that would not otherwise be necessarily good candidates for abandonment.

And secondly, and I won’t go into it in detail but just to reiterate the point that Dan made, I think all of the rail unions have a genuine concern that this process could be abused in a sort of two-step dance permitting Class I carriers to easily abandon existing lines by using the Class II’s and
III’s and thereby avoiding any regulatory consideration as far as an abandonment is concerned from this body. And that certainly is one of the concerns of Rail Labor.

With that, I’ll conclude my remarks. I thank you very much and, again, I would certainly be glad to answer any questions that you may have.

CHAIRMAN NOBER: Well, thank you very much, Mr. Kraus, and thank all of you for your excellent testimony and thoughts. Mr. Sidman, do you want to take your time now to respond or do you want to --

MR. SIDMAN: Yes, I would.

CHAIRMAN NOBER: How much time does he have left? Nine minutes?

MR. SIDMAN: Thank you. Mr Elliot and Mr. Kraus raise one point with which Petitioners agree and that is that we do not intend the proposed exemption to be a conduit whereby Class I railroads would sell lines to Class II’s or III’s with the intention of those railroads turning around and immediately abandoning them. And while we don’t have our own
proposal today on how to address that, we think that’s
a legitimate concern and it should be addressed. It
could probably be addressed through holding periods or
the like.

CHAIRMAN NOBER: Yeah, some period of time
by which it would put a moratorium on that.

MR. SIDMAN: Exactly. But there’s several
things that I would like to respond to that both
gentlemen raised. The first is, conspicuously absent
from their presentations is any explanation of where
the harm to labor is in this. And I would submit to
you that there’s very little or perhaps none and the
reason why is that as a rail line heads towards
abandonment, there is a long period. Let’s take half
of the abandonments filed in the six-year period from

Fifty percent of those were done on the
two-year out of service exemption. You know, how
many years do you think it took to get an active line
to go from whatever traffic base it had to zero and
then keep it for two years. There are no employees on
those lines, none on those lines. Perhaps a
maintenance crew goes out periodically. But, in fact, what happens is that as these lines wind down towards their inevitable abandonment, the jobs are transferred or the jobs are abolished and that is well before the -- an abandonment is ever filed.

The second point is that there is this sense that -- several comments were made that why don’t the small railroads just sell these lines? There’s nothing that stops them from turning around and selling them. I think what that fails to recognize is the reality and an entrepreneur and admittedly some of these are publicly traded holding companies, but even the local -- the local management of a holding company or all of the other non-holding company railroads, they have an empire that is tiny. It’s a 100-mile empire. That’s all they do. That’s the only place they have in order to make their money and the last thing that anybody wants to do who runs that empire is to shrink it.

They don’t want to shrink their empire. They do everything that they can to grow the empire.

The lines, not in all cases, but in most cases, were
bought from Class I’s as low density lines. So those
dlines were abandonment candidates in the hands of the
Class I’s. The small railroad then spends as many
years and as many dollars as it can tolerate trying to
build that traffic base and at the point that it walks
away, the truth is, it is not going to work. I have
never, in all the years that I’ve represented short
line railroads I have never once seen a short-line
railroad say I want to get rid of this line that is
marginally profitable. It does not happen -- if
anything the opposite happens, these guys hang on way
too long because they -- you know, they think that the
-- you know, that the industrial park is going to
locate on the line next year, that sort of thing.

A question was raised about whether this
sort of carte blanche would increase the number of
abandonments. I think in the short term the answer is
yes, there is an inventory of abandonment candidates
out there that once you adopted this exemption, in
fact, you would have a spate of abandonments. But
once you got through that initial pipeline, I think
you would have essentially the same level of
abandonments. You know, it would just happen much faster and some additional lines would be bought in OFAs.

I think most of those, because the small railroad judgment is usually right, I don’t think entrepreneurs are going to be buying them. I think mostly local governments will step in and acquire lines because they think, as a public matter, as a matter of public policy, they think it’s a good expenditure of public funds to keep the rail infrastructure in place until that industrial park does locate on the line. So I don’t think you’re going to see -- you’re not going to see more abandonments because these guys want to be in the railroad business. They don’t want to be out of the railroad business and the unions suggest otherwise.

Very quickly to address the AAR issues, we appreciate the AAR’s support. We agree with them wholeheartedly that to the extent that an OFA purchaser would acquire any trackage rights or haulage rights that they would never exceed the limits of what the abandoning carrier had over the connecting Class
I, that makes absolute sense. In terms of the -- they raise a question of discontinuance and what would happen if a small railroad discontinued a line owned by a Class I which would typically be a leased situation or an operating agreement situation. The truth is we did not draft the proposal with discontinuances in mind. And if you read it carefully you’ll see that it doesn’t really address that, but we think the proposal is a good one. We think that it makes sense for it to apply to discontinuances. And in situations where the discontinuance is not a result of an expiration of a lease, for example, but is based on a lack of business opportunity, it would make sense to us that there be one proceeding rather than several proceedings. That strikes us as a good idea.

We also agree with the AAR’s request for categorized exclusions from the Shpo (phonetic) process and that, we agree, should happen whether or not this proposal goes forward. That concludes my comments.