

8 MR. GITOMER: Mr. O'Brien will begin. Mr.
9 Shudtz will follow up and then we'll fill in with
10 anything that we think we missed. How much time do we
11 have?

12 CHAIRMAN NOBER: Ten minutes.

13 MR. GITOMER: Ten minutes. Thank you very
14 much.

15 MR. O'BRIEN: Mr. Chairman, Commissioners,
16 BMW, gave short shift to the shippers on this line.
17 You have attached to Mr. Bryant's statement some very
18 strong indications of interest in, and anxious
19 shippers who want to avail themselves of the service
20 that the BB wants to provide. Included in that
21 support incidentally, is also public support from
22 local communities and, at a broader scope, support

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1 from the public indicating that the transaction should
2 become a reality, which again puts to question the
3 assertions made by BMW. There is public support for
4 this transaction.

5 BB is going to provide five day a week
6 service, four trains a day, on this line, which is not
7 available now. The shippers on this line are going to
8 benefit tremendously from what BB wants to provide
9 here.

10 BMW also talks about the capabilities of
11 BB's management. In Mr. Bryant's statement and in the
12 management structure of BB itself, there is an
13 indication, a clear indication, that there is broad
14 experience with Class I operations. Mr. Bryant
15 himself was with C&O for a great number of years and
16 knows about operations of a Class I railroad and he
17 has been responsible for the last 15 years for a very
18 effective operation of a short line railroad, the 17
19 mile line that they currently operate.

20 They know. They have been there. They've
21 been with the Class Is, know what's required of a
22 Class I. They know what's required for operating a

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1 short line operation that's responsive to local
2 shippers and their needs and they have tremendous
3 support here from the local community and the shippers
4 for this.

5 Now BMW wants to dictate the terms of an
6 agreement between the parties. This Board has often
7 said the parties should work out arrangements between
8 themselves. Mr. Bryant and CSX have had vigorous
9 negotiations. I can attest, to that and there's been
10 give and take through this and they have worked out
11 between themselves what they believe to be a workable
12 arrangement that's going to benefit all concerned.
13 It's not for someone else as an outsider to dictate
14 what that arrangement should be.

15 BB feels that it's in the position to
16 provide a very responsive service to these shippers on
17 the line. They are thoroughly committed to
18 maintaining the line as they committed to do. They
19 have the plan that you have before you as far as their
20 maintenance is concerned.

21 They are ready, willing and able to get on
22 this I talked with Mr. Bryant this morning, he said he

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1 would have preferred to be down talking to his
2 potential customers, but he thought this was a first
3 priority so he is here. So we submit that this Board
4 should approve this transaction and allow Buckingham
5 Branch to get on with providing the service it's
6 committed to do and let those shippers benefit from
7 what is provided.

8 CHAIRMAN NOBER: Mr. Shudtz.

9 MR. SHUDTZ: I would like to address two
10 points, the issue about the sham and the issue about
11 the maintenance. I would like to put this again all
12 in context. CSX and Buckingham Branch have hid
13 nothing. We have a full application here. It's a
14 minor transaction. All of our information is public
15 and we've given the full agreement pertaining to this
16 transaction.

17 We have a light density line here and we
18 have a lease with the reservation of trackage rights.
19 These are not novel concepts. These are not novel
20 transactions. It's a minor transaction. We should
21 focus on the future and the competitive impact of that
22 transaction.

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1 The Buckingham Branch and the CSX have
2 demonstrated at least that it will improve service to
3 the customer and it will provide for the future
4 maintenance of the line and effective and economic
5 transportation service and will address the
6 competitive impact of the line. We have a positive
7 competitive impact with this transaction.

8 CSXT, like all Class I, has limited
9 capital, management and employees and resources. We
10 need to concentrate those on our main lines. This is
11 a light density line and it's a light density line
12 that's most appropriate for operation by Buckingham
13 Branch.

14 The short lines and regionals, have
15 demonstrated over the years in the industry at large
16 that they have great success in running operations of
17 a former Class I and also in logging the traffic base
18 and in maintaining the property as well. Mr. Bryant
19 here has demonstrated that very clearly at Buckingham
20 Branch.

21 In analyzing this line, CSXT determined
22 that we needed to rationalize and we considered

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1 abandoning this line, as the State of Virginia knows.
2 But rather than pursue an abandonment that would
3 disrupt service to the customers and to Amtrak, we
4 decided to lease the line and retain our limited
5 trackage rights. As with most leases of lines, CSXT
6 conducted a bid process, but we selected Buckingham
7 Branch after that bid process due to its proven track
8 record, its strong customer and community support, and
9 the reasonable terms that we were able to negotiate
10 with them.

11 We have no direct or indirect control of
12 Mr. Bryant and Buckingham Branch, and the lease is
13 negotiated upon reasonable commercial terms for the
14 customary short line transactions. I've been doing
15 short line transactions for a long time. CSXT is very
16 aware of the ICC and STB precedents concerning
17 transactions and sham transactions and we don't engage
18 in sham transactions.

19 In addressing Mr. Edelman's couple of
20 little points, there's a great concern about CSX
21 taking back. CSXT has no intention to take back this
22 line. That's why we're leasing it. That's why we had

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1 this limited reservation of trackage rights. We have
2 a transaction that we think will be successful. The
3 provision for rate negotiation, this is a long-term
4 arrangement.

5 We look forward to continuing our
6 arrangements with Buckingham Branch, and it's very
7 customary in a long-term arrangement to have a relook
8 at principal terms such as rentals. The STB has
9 jurisdiction over any discontinuance by the Buckingham
10 Branch and so I don't know what the concern is that
11 somehow in the middle of the night CSXT is going to
12 show up and take the property back.

13 Then lastly, I would like to address very
14 briefly Vice Chairman Mulvey's comment. I think if
15 you take a look at the additional rental provisions of
16 the agreement you will see that there is no paper
17 barrier. We have negotiated with Mr. Bryant who well
18 represents the customers short line interest of the
19 property a very reasonable additional rental. I think
20 when you compare that others you'll see it's quite
21 low.

22 As to maintenance, I think, contrary to

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1 the BMW's charges, I would just like to make a few
2 points. We have maintained this property over the
3 years. We have spent approximately \$9 million over
4 the last five years or so in capital investments. The
5 line has had reductions and I might add that those
6 were agreed to with Amtrak. We have, under Section 44
7 of our Amtrak agreement, it's quite clear, that this
8 light density line was contemplated to be reduced and
9 those have been discussed and negotiated with Amtrak
10 over the years.

11 Obviously the FRA regularly inspects the
12 line. Mr. Edelman made that quite clear and FRA will
13 continue to inspect it when the Buckingham Branch owns
14 it. We regret our violations and we resolve our
15 penalties with the FRA. That's the way we do
16 business. As a full process of resolution, we deal
17 with FRA every day.

18 I would last just to conclude that the
19 Buckingham Branch has a clear maintenance plan to deal
20 with this line and I think we should let them go
21 forward in a way that will benefit the customers and
22 all the parties involved. Thank you.

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1 CHAIRMAN NOBER: Any questions?

2 VICE CHAIRMAN MULVEY: Yes. One, we got
3 Mr. O'Brien's statement about agreements between
4 private parties. I tend to agree, but I respectfully
5 suggest that the Board does have the obligation to
6 make sure that these transactions between private
7 parties are in the public interest.

8 MR. O'BRIEN: We agree with that, Mr. Vice
9 Chair.

10 VICE CHAIRMAN MULVEY: I knew you would.
11 The other thing Mr. Shudtz said, that there was
12 nothing secret in the presentation, but it is in the
13 agreement, the additional rent for interchange with
14 other carriers, was redacted. While all the other
15 parts of that agreement and those other rents and
16 payments to each party were available, this part of it
17 was redacted. I was wondering why that was redacted
18 if it's such a trivial and unimportant cost. I have
19 looked at it and I can't discuss it obviously. I have
20 it in front of me right now. But a quick and dirty
21 calculation suggests that it may not be all that
22 trivial with regard to being a barrier for Buckingham

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1 to interchange with Norfolk Southern. I guess if it
2 was so unimportant and such a minor part of the final
3 lease agreement, it might be left out of potentially
4 it is not in the public interest.

5 The question that I have though, is if you
6 have no intention to take this track back in ten
7 years, then why not simply sell the track to
8 Buckingham so Buckingham would have this long-term
9 interest in making the investments in the track. Or
10 for that matter, if the agreement that you have is the
11 one you want, then given the way it's structured, why
12 not as the railroad to just enter into a trackage
13 rights agreement with Buckingham as opposed to the way
14 this is structured as a lease?

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