MR. VILTER: Good morning, Chairman Nober, Vice Chairman Mulvey and Commissioner Buttrey. My name is Paul Vilter. I am Amtrak's Vice President for Freight Railroad relation. Accompanying me is Fred Ohly, Amtrak's Senior Associate General Counsel. Thanks for the opportunity to recap Amtrak's written comments and answer any questions you may have.

As described in our written comments, this proceeding is important to Amtrak for two primary
reasons. First, Amtrak is Norfolk/Washington/Chicago train, the Cardinal, operates over a good portion of the line that is proposed to be leased. The Cardinal is one of Amtrak's 16 long distance intercity rail passenger trains.

Between Charlottesville and Indianapolis, the Cardinal provides the only intercity rail passenger service to predominantly rural areas of Virginia, West Virginia, Kentucky, Ohio and Indiana. With the exception of the cities of Cincinnati and Charleston, these areas have few other transportation options. Amtrak seeks to avoid a deterioration in the transportation service that we provide via this route.

Second, the proposed transaction has broader implications beyond the Cardinal. Amtrak's fiscal year 2005 strategic plan identifies ten rail lines over which Amtrak operates, in addition to the line involved in this proceeding, that are at risk of ownership change or potential downgrade because the owning railroads may not elect to fund the investments necessary to maintain these lines at current levels.

As a result, Amtrak feels the Board can
expect to see more transactions similar to this one presented for its approval. As you review such transactions, it's important that the Board carefully examine their impact on preserving the national passenger and freight rail network with particular attention to issues of preserving present and future rail line capacity.

Amtrak takes no position as to how the Board should rule on the application in this proceeding. However, Amtrak asks that, if the Board does approve this transaction, the Board make clear that it expects the Applicant to adhere to their representations, particularly that Buckingham Branch continue to maintain track conditions on the line to at least the FRA trackclass standards existing as of the commencement date of the proposed lease, that CSXT may terminate the lease in the event that Buckingham Branch fails to fulfill its obligations, and as is contemplated in the draft lease, that CSXT and Buckingham Branch should reach an agreement, that Buckingham Branch will provide CSXT's agents, facilities, and services as necessary to comply with
CSXT's obligations under the CSXT/Amtrak agreement.

Thank you.

CHAIRMAN NOBER: Questions, whenever you want to start.

VICE CHAIRMAN MULVEY: Gentlemen, in your statements you say that this transaction is a sham and you cite several ICC and STB decisions involving reported acquisitions and leases of rail lines that have also been rejected by the Commission and the Board. The term "sham" suggests that the true reason for an action is different from the stated reason. In your view, what is the true underlying reason why they are trying to get out of their common carrier obligations?

You are representing, the Brotherhood of Maintenance of Way Employes are you concerned about the quality and the safety of the rail operations? Or there also an issue of the reorganization of the employees after this takes place?

MR. EDELMAN: We are certainly concerned about that, and obviously I think the BMWE has long expressed frustration and concern and anger over use
of STB's processes to avoid unionization or to sell off lines. But many of those things we deal with we had to deal with through the new crammed down provision for other events.

I litigated quite a few cases involving short line sales in the late '80s and early '90s where I made those arguments, would that I had been more successful at the time. So we certainly feel that there is a move of many carriers, although not in a situation like this where it's in the middle of the CSX track. It's not quite the same for this situation, but our argument here is strictly within, we believe, the statute.

VICE CHAIRMAN MULVEY: With regard to Amtrak, what would you expect from the transaction from Buckingham to ensure that Amtrak trains continue to receive priority when running over this part of the line and that the track is adequately maintained? They say that they understand the ramifications of taking over this responsibility for passenger service as well, and they are going to do their best. What more would you expect from them as a guarantee that
your needs are going to be met?

MR. VILTER: Well, with regard to the first part of your question about priority and performance, one of the things that Amtrak would look for in terms of the relationship between Buckingham and CSXT would be that the performance incentive payments or penalties which Amtrak currently has as a provision in our arrangement with CSXT would be reflected back to Buckingham.

In other words, if they performed well and gave us priority and moved our trains, they would receive performance incentives that we would pay to CSX under our existing agreement for that service. Likewise, if they did not do so and incurred a performance penalty, we would look for that to be paid by Buckingham.

VICE CHAIRMAN MULVEY: And those penalties and those bonuses do not transfer to Buckingham under the current lease agreement at this stage? Would CSX be responsible at that point since they are the lessors?

MR. VILTER: Amtrak's understanding from
the documents we've seen is that CSXT and Buckingham expect to enter into an agency agreement which would call for Buckingham to fulfill CSXT's obligations under the CSXT/Amtrak agreement. We do not know of the nature of that agreement or if it has been reached at this time.

CHAIRMAN NOBER: Commissioner Buttrey.

COMMISSIONER BUTTREY: I have a question for Mr. Edelman. It sounds like a lot of what you're encouraging the Board to do is to get on to the slippery slope of substituting our safety views for those of the FRA. Can you distinguish what you're saying about that concept?

MR. EDELMAN: Sure. A couple of things. First of all, you were saying about a slippery slope argument as the first step. Frequently, you're entirely right and maybe they'll ask and our in describing it that way doesn't necessarily make it so. We do not think that the Board should become the primary enforcer of track safety and track standards. We don't argue that and we're not arguing that here.

I think what we are saying is you have to
be cognizant of those factors. I mean, they are built into the rail transportation policy as a matter of those policies. But in particular with regard to the facts in this case, you have a lease here, something called a lease here, that is not a lease and the question is why. Well, CSX doesn't want to maintain this track and also the problem here is beyond legal. It's safety. It's the quality of the common carrier obligation. It's the obligation of maintaining the track. All of those things.

Once they lease, they are no longer responsible for that. They are not going to be responsible for maintaining the track and right-of-way. They are not going to be responsible for derailments that happen on that line if something spills into the local community. All of those things, they get out of it. They have a track here.

We've shown you a record from the FRA, which is responsible, which demonstrates the serious problems that exist on this line today and that they keep getting cited. The question is now they are engaging in a transaction where they seek to avoid all
of that responsibility, but at the same time, retain their full ability to serve the major local shipper on the line and their important worth for reverse-flow movements because to coordinate this, their James River line, they come down on the one line and back on the other. But if they had to go back on the James River line, there would be a substantial reduction of that operation.

I think the point is not merely do you take into account that they have not done a good job of maintenance or merely that safety concerns mandate that they ought to fix it. But look at a transaction that's being presented to you that has all of these elements that are problematic and reasonably don't add up to a lease and then say why.

They are looking, and they've said that part of their rationale for doing this is planned rationalization and reduction in capital investment on the part of CSXT to concentrate their capital in other places. But they are not selling the line. So what they want is they want out of responsibility for maintaining these lines and yet to keep everything
they want in terms of operation of the line and then
the ability to take it back in ten years when they
can. It's a major part of their operation. So our
point is not to say "You need to be the auxiliary
safety police for the FRA," but that you can consider
the safety background and facts as they relate to this
particular situation.

COMMISSIONER BUTTREY: Do you have any
information from customers possibly that we don't have
about their concern over their shipments being on the
side of the tracks somewhere or off in a ditch
somewhere? There doesn't seem to be anything in the
record about customers being concerned about this
matter. I just wondered if you have some thoughts on
that.

MR. EDELMAN: No, I don't, but in my
experience in handling these sorts of cases, you get
a customer on the line. They are not particularly
happy with the way things are going. The railroad
says that they are going to sell to somebody else.
They are going to be more local. They have no choice.
What are they going to do? Write a letter and say,
"We oppose this transaction. We don't think this is a particularly good idea" when they look at the possibility that this is the party that's going to serve them. I don't think that happens.

I think the other point I want to make is the issue of is there a public transportation benefit to the local shippers by getting a local entity to serve them, which is something that can easily be handled by a trackage rights arrangement, and as I said, this looks otherwise like one. What you have here is BB taking over the service of certain of the local customers but CSX continues to serve the main customer.

COMMISSIONER BUTTREY: Thank you.

CHAIRMAN NOBER: Let me ask and try and follow on Commissioner Buttrey's point. Let's just say everything you just said about the transaction is true that it's all of those things. Where does this let us take any of that into account? It's otherwise not causing any shippers to lose two options when they had one.

The track isn't being maintained now
according to you, and we're not safety experts. At least I can speak for myself. I'm certainly not, and if there's a safety problem, we have an entire Federal regulatory agency whose mission it is to ensure that it's being kept up and as you said, you don't think the track is being well maintained now. It's not going to get worse. It's just going to stay the same. We should be happy that they are going to a different entity. So let's just say everything that you said is true, where does the statute let us make a decision based on those factors?

MR. EDELMAN: Sure. Well, there are two things. One, you have the rail transportation policies that we cited, but I submit you can rely on them. You can rely on, for example, honest and efficient management. This is not a straight-up deal. It's true. You can consider that in rejecting the application.

But also there is a history. There is a substantial body of STB precedents, like I said, going back to the ICC in Marin County, but others more recent involving the STB where the STB, has rejected
transactions because they are not what they appear to be.

CHAIRMAN NOBER: Well, for example, we had one where it was claimed that the company was going to operate the line and they really wanted to salvage it.

MR. EDELMAN: Right.

CHAIRMAN NOBER: And we rejected that as a sham.

MR. EDELMAN: Right.

CHAIRMAN NOBER: That's not what's happening here. Nobody is saying that they are going to try to starve the line in order to take up the tracks and sell them. BB is not a salvage company. As I said, let's just say that they are doing this to relieve themselves of the maintenance obligation. We'll take it in the worse possible light to get cheaper maintenance. Okay. We'll just say it that way. Again that may not be a noble motive on CSX's part, maybe it is, but how do we take that into account?

MR. EDELMAN: Because it's not a real lease as I said. Because for example if they sold
that line and we came you and said, "Don't let them sell the line because you know if they're really responsible, they should have fixed this track all along and they should have taken care of all of this and they let it get to this state. That's their job and it was their job and it should have been done," I think your question would be harder one for me to answer because I would say, "Well, how can I stop this?"

But the point is because what they are doing is in fact keeping control of the line both in terms of dominance of use and in terms of the duration and the other aspects of it. It's not a lease. They can call it a lease. It doesn't make it a lease. If you look at all the elements that has been put together, it's not a lease and they are using the Board's processes.

They are calling it a lease and they are asking the Board, they are coming to the Board, for approval of a transaction that is not what it is. So I think you have that authority. I think we also cited a case for the Board that it has the general
authority to protect from abuse of its own processes.

CHAIRMAN NOBER: Now last year we had a case up in Maine where there was an argument between Amtrak and one of the regional railroads over the safety condition of the line and essentially, the Board stepped back and said that's what the FRA is here to do. How would you distinguish that situation where we've said if there's a safety problem on the line, you know we're an economic regulator, and we allowed in that case Amtrak to operate up to 79 miles per hour. And what the particular operational characteristics of the line were and how fast they could go on any given day was up to the FRA and not to us even though the carrier had asked us to look at that. How here should we take into account? I mean you've submitted a lot of evidence. I have no basis for saying it isn't true that the line isn't in great condition now. If that's the case, why aren't you going to the FRA and petitioning them for an upgrade as opposed to us? That's the most analogous situation I can think of from my view.

MR. EDELMAN: Sure. I don't think it is
because I don't think we're asking you to make them improve the lines and return it to the standards where it was.

What we're asking you to do is to say that those facts that we've demonstrated to you show you why they are doing it. This transaction as we've described to you through all of its separate elements is not a lease as we say. We've shown you all of those facts. What we are also showing you is why. Why this particular structure is being adopted.

We're not coming to you to say, "Make CSX fix the line." We realize that's not something we can do, but what we can say to you is we urge you not to approve a transaction which is designed to allow CSX to continue to operate and control and use this line through heavy use of this line while evading their obligations to maintain it.

CHAIRMAN NOBER: Mr. Vice Chairman.

VICE CHAIRMAN MULVEY: I have a couple of additional questions. Does the Federal Railroad Administration have the obligation and the authority to reject the measure based on safety grounds?
MR. EDELMAN: Not that I'm aware of.

VICE CHAIRMAN MULVEY: So in other words, the decision to reject or accept the lease agreement is solely in the hands of the Board. Right?

MR. EDELMAN: That's absolutely clear.

VICE CHAIRMAN MULVEY: So in reaching the decision, which is an economic decision, you would take into account, other factors including safety and other elements of the National Transportation Policy. Is that true?

MR. EDELMAN: Yes, sir.

VICE CHAIRMAN MULVEY: This question about the salvage value, we rejected a proposal transaction last year when salvage was involved, but if you look at salvage, I don't see salvage as a reason for rejecting it either, if indeed, it is a "sham transaction" that would not fit under Section 11324 either. Would it?

MR. EDELMAN: No, correct. And also we cited some other cases to you, for example, where people did intercorporate dealings where they did corporate restructuring and things and presented it to
the Board or to the Commission for approval of the transaction and then the Board said, "There's no real transaction here. You're just invoking the Board's processes to get some patina on a corporate restructuring that you plan to do or to get exemption from state regulation" or a variety of other things. The Board has rejected things that invoke its processes for not legitimate transportation purposes before for reasons other than something that's illegal under some other law.

VICE CHAIRMAN MULVEY: Wouldn't it be in Buckingham's interest to upgrade the track and to improve it if they obviously think of this as a business opportunity to expand greatly their scope of operations? Why wouldn't Buckingham want to invest in this track and try and maximize its potential?

MR. EDELMAN: I have no idea. I don't know what their financial resources are to be able to do it. I don't know what kind of revenue this produces. I mean once this thing, for example, if you know you only really have a line for ten years how much are you going to invest in capital in that line?
I mean where is the incentive there if that's the only guarantee that you have. So I don't know.

I want to emphasize that beyond this, the safety element for them is this is a complicated, this operation, as I said, is involving CSXT running 156,000 empties. BB is going to be running local service. CSX is going to be providing local service and Amtrak is going to be running the Cardinal back and forth.

VICE CHAIRMAN MULVEY: A question to Amtrak. Are you satisfied with the level of operation over this track today from CSX?

MR. VILTER: This track specifically, I guess I would say that, you mean just to Clifton Forge or CSX all the way to Chicago?

VICE CHAIRMAN MULVEY: Well, overall level. I guess the overall portion that the Cardinal travels.

MR. VILTER: I would say that it is better than many of the other trains that we operate over CSXT. We are not fully satisfied with any of the operations on CSXT. I guess I would call it
frustrated.

VICE CHAIRMAN MULVEY: Thank you.

CHAIRMAN NOBER: Do you have anything?

COMMISSIONER BUTTREY: I'm just curious.

Do Amtrak trains have priority on the track when they come through on a scheduled basis? All the Amtrak trains are scheduled trains presumably and when they want to come through the line, do they have priority?

Do the other trains have to get off the track and let you through or do they just stay on the track and you take a siding and get through whenever you can?

MR. VILTER: Well, there is a Federal statute, The Rail Passenger Service Act, which calls for Amtrak trains to have priority. There is also in the real world in terms of trying to get two trains across a single-track railroad, it is sometimes more efficient for an Amtrak train to wait for a freight to come through. We are not always given priority either on this line or on any line in the country. Not always.

COMMISSIONER BUTTREY: Thank you.

CHAIRMAN NOBER: I have no further
questions.

VICE CHAIRMAN MULVEY: Nor do I. Thank you.