

14 MR. VILTER: Good morning, Chairman Nober,
15 Vice Chairman Mulvey and Commissioner Buttrey. My
16 name is Paul Vilter. I am Amtrak's Vice President for
17 Freight Railroad relation. Accompanying me is Fred
18 Ohly, Amtrak's Senior Associate General Counsel.
19 Thanks for the opportunity to recap Amtrak's written
20 comments and answer any questions you may have.
21 As described in our written comments, this
22 proceeding is important to Amtrak for two primary

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1 reasons. First, Amtrak is Norfolk/Washington/Chicago
2 train, the Cardinal, operates over a good portion of
3 the line that is proposed to be leased. The Cardinal
4 is one of Amtrak's 16 long distance intercity rail
5 passenger trains.

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

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

22 As a result, Amtrak feels the Board can

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1 expect to see more transactions similar to this one
2 presented for its approval. As you review such
3 transactions, it's important that the Board carefully
4 examine their impact on preserving the national
5 passenger and freight rail network with particular
6 attention to issues of preserving present and future
7 rail line capacity.

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

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1 CSXT's obligations under the CSXT/Amtrak agreement.

2 Thank you.

3 CHAIRMAN NOBER: Questions, whenever you
4 want to start.

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

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

20 MR. EDELMAN: We are certainly concerned
21 about that, and obviously I think the BMWWE has long
22 expressed frustration and concern and anger over use

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1 of STB's processes to avoid unionization or to sell
2 off lines. But many of those things we deal with we
3 had to deal with through the new crammed down
4 provision for other events.

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

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

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1 your needs are going to be met?

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

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

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

22 MR. VILTER: Amtrak's understanding from

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

7 CHAIRMAN NOBER: Commissioner Buttrey.

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

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

22 I think what we are saying is you have to

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

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

18 We've shown you a record from the FRA,
19 which is responsible, which demonstrates the serious
20 problems that exist on this line today and that they
21 keep getting cited. The question is now they are
22 engaging in a transaction where they seek to avoid all

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1 of that responsibility, but at the same time, retain
2 their full ability to serve the major local shipper on
3 the line and their important worth for reverse-flow
4 movements because to coordinate this, their James
5 River line, they come down on the one line and back on
6 the other. But if they had to go back on the James
7 River line, there would be a substantial reduction of
8 that operation.

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

16 They are looking, and they've said that
17 part of their rationale for doing this is planned
18 rationalization and reduction in capital investment on
19 the part of CSXT to concentrate their capital in other
20 places. But they are not selling the line. So what
21 they want is they want out of responsibility for
22 maintaining these lines and yet to keep everything

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1 they want in terms of operation of the line and then
2 the ability to take it back in ten years when they
3 can. It's a major part of their operation. So our
4 point is not to say "You need to be the auxiliary
5 safety police for the FRA," but that you can consider
6 the safety background and facts as they relate to this
7 particular situation.

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

16 MR. EDELMAN: No, I don't, but in my
17 experience in handling these sorts of cases, you get
18 a customer on the line. They are not particularly
19 happy with the way things are going. The railroad
20 says that they are going to sell to somebody else.
21 They are going to be more local. They have no choice.
22 What are they going to do? Write a letter and say,

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1 "We oppose this transaction. We don't think this is
2 a particularly good idea" when they look at the
3 possibility that this is the party that's going to
4 serve them. I don't think that happens.

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

14 COMMISSIONER BUTTREY: Thank you.

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

22 The track isn't being maintained now

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

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

19 But also there is a history. There is a
20 substantial body of STB precedents, like I said, going
21 back to the ICC in Marin County, but others more
22 recent involving the STB where the STB, has rejected

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1 transactions because they are not what they appear to
2 be.

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

6 MR. EDELMAN: Right.

7 CHAIRMAN NOBER: And we rejected that as
8 a sham.

9 MR. EDELMAN: Right.

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

21 MR. EDELMAN: Because it's not a real
22 lease as I said. Because for example if they sold

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1 that line and we came you and said, "Don't let them
2 sell the line because you know if they're really
3 responsible, they should have fixed this track all
4 along and they should have taken care of all of this
5 and they let it get to this state. That's their job
6 and it was their job and it should have been done," I
7 think your question would be harder one for me to
8 answer because I would say, "Well, how can I stop
9 this?"

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

18 They are calling it a lease and they are
19 asking the Board, they are coming to the Board, for
20 approval of a transaction that is not what it is. So
21 I think you have that authority. I think we also
22 cited a case for the Board that it has the general

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1 authority to protect from abuse of its own processes.

2 CHAIRMAN NOBER: Now last year we had a
3 case up in Maine where there was an argument between
4 Amtrak and one of the regional railroads over the
5 safety condition of the line and essentially, the
6 Board stepped back and said that's what the FRA is
7 here to do. How would you distinguish that situation
8 where we've said if there's a safety problem on the
9 line, you know we're an economic regulator, and we
10 allowed in that case Amtrak to operate up to 79 miles
11 per hour. And what the particular operational
12 characteristics of the line were and how fast they
13 could go on any given day was up to the FRA and not to
14 us even though the carrier had asked us to look at
15 that. How here should we take into account?

16 I mean you've submitted a lot of evidence.
17 I have no basis for saying it isn't true that the line
18 isn't in great condition now. If that's the case, why
19 aren't you going to the FRA and petitioning them for
20 an upgrade as opposed to us? That's the most
21 analogous situation I can think of from my view.

22 MR. EDELMAN: Sure. I don't think it is

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1 because I don't think we're asking you to make them
2 improve the lines and return it to the standards where
3 it was.

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

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

18 CHAIRMAN NOBER: Mr. Vice Chairman.

19 VICE CHAIRMAN MULVEY: I have a couple of
20 additional questions. Does the Federal Railroad
21 Administration have the obligation and the authority
22 to reject the measure based on safety grounds?

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1 MR. EDELMAN: Not that I'm aware of.

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

5 MR. EDELMAN: That's absolutely clear.

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

11 MR. EDELMAN: Yes, sir.

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

19 MR. EDELMAN: No, correct. And also we
20 cited some other cases to you, for example, where
21 people did intercorporate dealings where they did
22 corporate restructuring and things and presented it to

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1 the Board or to the Commission for approval of the
2 transaction and then the Board said, "There's no real
3 transaction here. You're just invoking the Board's
4 processes to get some patina on a corporate
5 restructuring that you plan to do or to get exemption
6 from state regulation" or a variety of other things.
7 The Board has rejected things that invoke its
8 processes for not legitimate transportation purposes
9 before for reasons other than something that's illegal
10 under some other law.

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

17 MR. EDELMAN: I have no idea. I don't
18 know what their financial resources are to be able to
19 do it. I don't know what kind of revenue this
20 produces. I mean once this thing, for example, if you
21 know you only really have a line for ten years how
22 much are you going to invest in capital in that line?

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1 I mean where is the incentive there if that's the only
2 guarantee that you have. So I don't know.

3 I want to emphasize that beyond this, the
4 safety element for them is this is a complicated, this
5 operation, as I said, is involving CSXT running
6 156,000 empties. BB is going to be running local
7 service. CSX is going to be providing local service
8 and Amtrak is going to be running the Cardinal back
9 and forth.

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

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

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

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

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1 frustrated.

2 VICE CHAIRMAN MULVEY: Thank you.

3 CHAIRMAN NOBER: Do you have anything?

4 COMMISSIONER BUTTREY: I'm just curious.

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

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

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

21 COMMISSIONER BUTTREY: Thank you.

22 CHAIRMAN NOBER: I have no further

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1 questions.

2 VICE CHAIRMAN MULVEY: Nor do I. Thank

3 you.

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