

15 MR. GITOMER: Good morning, Chairman
16 Nober, Vice Chairman Mulvey and Commissioner Buttrey.
17 I'm Lou Gitomer. I'm representing CSXT. To my left
18 moving down the table is Bob Bryant, President and one
19 of the principal owners of the Buckingham Branch,
20 Keith O'Brien of Ray Cross, Buckingham Branch's
21 counsel, and Peter Shudtz of CSXT and with us today in
22 the front row is Ron Johnson of Akin Gump, also

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1 counsel to CSXT. As the chairman said, we would like
2 to reserve ten minutes for rebuttal.

3 There's no evidence in the record before
4 the Board that a substantial lessening of competition,
5 creation of a monopoly or restraint of trade in a
6 significant region of the United States will be caused
7 by the lease of this 200-mile line between Richmond
8 and Clifton Forge from CSXT to the Buckingham Branch.
9 Without a showing that the proposed lease will cause
10 anti-competitive effects, the Board must grant the
11 application under Section 11324(d). Section 11324(d)
12 was enacted in the Staggers Act as amended by the ICC
13 Termination Act.

14 Since the first decision interpreting
15 11324(d), the ICC and the Board have consistently
16 applied this anti-competitive analysis. From the
17 Norfolk Western purchase of Illinois Terminal in 1981
18 through the Wilmington Terminal lease from CSXT in
19 1990 and up to the Canadian National control of the
20 Duluth Messabi and Iron Range Railroad early in April
21 2004, the Board has applied this competitive analysis.
22 All we are asking you to do is to follow your clear

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1 precedents developed by the Board and the ICC.

2 Throughout the morning, we expect that you
3 will hear a great deal about issues other than
4 competition involving the lease of this line. Please
5 keep in mind that the very specific and clear statute
6 49 USC 11324(d) governs this proceeding and requires
7 that the Board grant the application unless there is
8 an anti-competitive effect.

9 The joint application filed by the
10 Buckingham Branch and CSXT demonstrates that there are
11 no anti-competitive effects from the lease. The lease
12 from CSXT to Buckingham Branch is part of CSX's
13 ongoing plant rationalization program which involves
14 the abandonment, sale and lease of railroad line.
15 CSXT expects that this transaction will provide
16 benefits to the shippers on the line and will result
17 in the safe maintenance of this line by the Buckingham
18 Branch.

19 Buckingham Branch Railroad, which is owned
20 by the Bryant family, is an independent Class III
21 railroad that successfully outbid five other parties
22 to lease the line. Since Buckingham Branch was the

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1 successful bidder, it's been involved in arm's length
2 negotiation with CSXT to complete the lease of the
3 line.

4 As is the case with many other leases that
5 CSXT has entered into, this is a 20-year lease. CSXT
6 entered a 20-year lease with the Wilmington Terminal
7 back in 1990 and just a couple of months ago the Board
8 approved a notice of exemption where the CSXT leased
9 the Fort Wayne line to a subsidiary of Rail America
10 also for 20 years.

11 CSXT has maintained this line safely
12 contrary to allegations in the record. There have
13 been no FRA-reportable track-caused derailments on the
14 line since January 8, 2002. The Federal Railroad
15 Administration inspects the lines of all Class I
16 railroads. When it finds violations, it prepares a
17 report, issues fines and requires corrections to the
18 line. CSXT, on a system wide basis and on this line
19 specifically, resolves the fine, repairs the line,
20 puts the line back in service and continues to operate
21 the line safety. For 2004 to date, CSXT has the
22 lowest FRA-reportable track-caused-derailment rate of

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1 0.65 derailments per one million ton miles. That's
2 the lowest of all the Class Is in the United States.

3 Amtrak's operations over CSXT are governed
4 by a contract between Amtrak and CSX. CSX is the host
5 to more Amtrak-train starts per day than any other
6 private railroad in this country, about 62 trains per
7 day. We believe that through negotiations between CSX
8 and Amtrak, and the Buckingham Branch, we can resolve
9 any of Amtrak's concerns with this proceeding.

10 CSXT and the Buckingham Branch welcome the
11 opportunity to respond to your questions today and
12 respectfully request the approval of this application
13 subject only to the condition for the protection of
14 employees under the Mendicino Coast decision as
15 modified by the Wilmington Terminal case. At this
16 point, Mr. Bryant will make a brief presentation.
17 Bob.

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