

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 BMWWE 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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