

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. FD 36549

APPLEATCHA LAND, LLC
Acquisition and Operation Exemption
Vaughan Railroad Company

Verified Notice of Exemption
PURSUANT TO 49 C.F.R. § 1150.31, Et Seq.

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Attorneys for AppleAtcha Land, LLC

Dated: October 18, 2021

Note: Map attached as Exhibit A contains color

FILED
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PURSUANT TO 49 C.F.R. § 1150.31, Et Seq.**

Pursuant to 49 U.S.C. § 10502(a) and the Board's regulations at 49 C.F.R §§ 1150.31 *et seq.*, AppleAtcha Land, LLC ("AppleAtcha"), a non-carrier, hereby submits this Verified Notice of Exemption from the prior approval requirements of 49 U.S.C. § 10901 to permit AppleAtcha to acquire from Vaughan Railroad Company ("Vaughn") and operate approximately 14 miles of rail line between MP 7.5 near Belva, EV and MP 22.0 on Twentymile Creek northeast of Vaughn, WV (the "Line").

Notice

In accordance with 49 C.F.R. § 1150.33, AppleAtcha hereby provides the following information:

- a. The full name and address of AppleAtcha: AppleAtcha Land, LLC, 200 Park Avenue, Suite 400, Orange Village, Ohio, 44122.
- b. The name, address and telephone number of the representative of AppleAtcha who should receive correspondence: Andrew Fleischman, Kaplan Johnson Abate & Bird, LLP, 710 West Main Street, 4th Floor, Louisville, KY 40202, (502) 416-1632.

c. AppleAtcha, AppleAtcha's affiliates, Vaughan, and Vaughan's affiliates have entered into that certain Purchase and Sale Agreement under which AppleAtcha will purchase the Line in addition to certain other assets.¹

d. The Line has not been used since 2012 and there are presently no active customers. If a customer requires service, AppleAtcha intends to provide the service itself or contract with a third party to provide such service.

e. Brief Summary of the Proposed Transaction: Under the proposed transaction, AppleAtcha seeks authority to acquire from Vaughan and operate approximately 14 miles of rail line. The Line is subject to a trackage rights agreement with CSX Transportation Inc. and a separate trackage rights agreement with Norfolk Southern Railway. *See CSX Transp., Inc. – Trackage Rights Exemption – Vaughan Railroad Co.*, ICC Finance Docket 32695, 60 Fed. Reg. 28168 (May 30, 1995); *Consolidated Rail Corp. – Trackage Rights Exemption – Vaughan Railroad Co.*, ICC Finance Docket 32670, 60 Fed. Reg. 21553 (May 2, 1995).

1) The name and address of the railroad transferring the Line: Vaughan Railroad Company, 1000 CONSOL Energy Drive, Canonsburg, PA 15317.

2) The parties propose that the transaction be consummated as soon as possible; however, the transfer of the Line will not occur until the exemption is effective 30 days after this Notice is filed.

¹ AppleAtcha is purchasing the Line from Vaughan. On August 24, 2016, the Board granted Southeastern Land, LLC's Notice of Exemption for acquisition of the same line from Vaughan (Docket No. 36055). For unrelated business reasons that transaction was never consummated. The Line is currently owned by Vaughan and has not been used since 2012.

3) AppleAtcha will acquire the Line located in Nicholas and Fayette County, West Virginia, between MP 7.5 near Belva, WV and MP 22.0 on Twentymile Creek northeast of Vaughan, WV. As stated above, the Line is not currently in use and, if a customer requires service on the Line in the future, AppleAtcha intends to provide the service itself or contract with a third party to provide such service.

4) The total route miles being acquired are approximately 14 miles.

f. Attached as **Exhibit A** to this Notice of Exemption is a map of the Line.

g. AppleAtcha hereby certifies that this transaction will not result in AppleAtcha becoming a Class II or Class I rail carrier. Upon consummation of this transaction, AppleAtcha will become a Class III rail carrier. AppleAtcha additionally certifies that its projected annual revenue from the Line will not exceed \$5,000,000 per year. Accordingly, the requirements of 49 C.F.R. § 1150.32(e) do not apply to this transaction.

h. The agreement between AppleAtcha and Vaughan does not contain any provision that prohibits Vaughan from interchanging traffic with a third party or limits AppleAtcha's ability to interchange traffic with a third party.

Environmental and Historic Impacts

AppleAtcha is acquiring the rail line from Vaughan. Further Board approval is required for AppleAtcha to abandon any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years or older.

Therefore, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

AppleAtcha's acquisition of the rail line will not result in significant changes in carrier operation. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of this line to motor carriage. This transaction will not result in: (1) an increase in rail traffic of at least 100 percent or an increase of at least eight trains a day on the Line since the Line was last operated in 2012; (2) an increase of rail yard activity of at least 100 percent since the Line was last operated in 2012; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day since the Line was last operated in 2012. AppleAtcha's acquisition of the rail line will not affect a Class 1 or nonattainment area under the Clean Air Act. The thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded as a result of this transaction. Finally, this transaction does not contemplate the transportation of any ozone depleting materials. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect the quality of the human environment or energy conversation.

Caption Summary

Attached hereto as Exhibit B is the caption summary required by 49 C.F.R. § 1150.34.

Conclusion

Accordingly, AppleAtcha requests that the Board issue an exemption notice reflecting the information set forth herein.

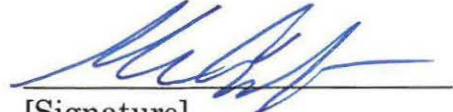
Respectfully Submitted,

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andrew@kaplanjohnsonlaw.com
(502) 416-1632
Attorneys for AppleAtcha Land, LLC

VERIFICATION

I, Michael Cavanaugh, verify under penalty of perjury that statements contained in the foregoing are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on October 18, 2021.


[Signature]

STATE OF OHIO,
COUNTY OF CUYAHOGA, TO-WIT:

The foregoing instrument was acknowledged before me this 18th day of October 2021 by Michael Cavanaugh, Manager, on behalf of the Company, a Delaware limited liability company.

Given under my hand this 18th day of October 2021,


Notary Public

My commission expires: No Expiration.

[Notary Seal]



SEAN T. O'BRIEN
Attorney At Law
NOTARY PUBLIC
STATE OF OHIO
My Commission Has
No Expiration Date
Section 147.03 O.R.C.

EXHIBIT A – MAP

(See Attached)

Exhibit B – Caption Summary

AppleAtcha Land, LLC (“AppleAtcha”), a noncarrier, has filed a Notice of Exemption to acquire from Vaughan Railroad Company and operate approximately 14 miles of rail line in Nicholas and Fayette County, West Virginia, between MP 7.5 near Belva, WV and MP 22.0 on Twentymile Creek northeast of Vaughan, WV. The rail line is currently not in use and presently has no active customers.

Comments must be filed with the Board and served on AppleAtcha’s representative, Andrew Fleischman, Kaplan Johnson Abate & Bird, LLP, 710 West Main Street, 4th Floor, Louisville, KY 40202, (502) 416-1631.

The Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.