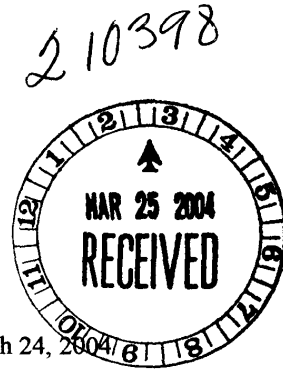


LACKAWANNA COALITION
Box 283
Millburn, N.J. 07041



Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K St., N.W., Rm. 700
Washington, D.C. 20423

Re: CSX Corp, CST Transportation, Inc., Norfolk Southern Railway Co. – Control and
Operation Leases/Agreements – Conrail, Inc. and Consolidated Rail Corp. (General
Oversight), Docket No. FD-33388 (sub 91)

Dear Mr. Williams:

Enclosed please find Original and ten copies of the Statement, including Exhibits, which
the Lackawanna Coalition wishes to submit for the record in the hearing on the above matter, to
be held in Trenton, New Jersey on April 2d.

As we notified you previously, a representative of the Lackawanna Coalition will also be
speaking at the hearing.

Thank you for your consideration.

Yours very sincerely,

DAVID PETER ALAN
Chair

Encls: Statement (7 pages, original and 10 copies)
Exhibits (7 pages, 11 copies)

Cc: New Jersey Dept. of Transportation
North Jersey Transportation Planning Authority
New Jersey Transit
New York & Greenwood Lake Railway Co.
William R. Wright

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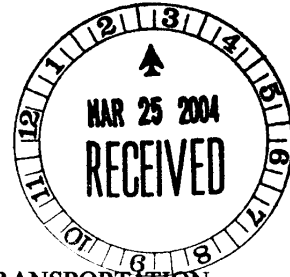
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MAR 26 2004 LACKAWANNA COALITION

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Millburn, N.J. 07041



STATEMENT BY LACKAWANNA COALITION BEFORE SURFACE TRANSPORTATION

BOARD HEARING OF APRIL 2, 2004, HELD AT TRENTON, NEW JERSEY.

Re: CSX Corp., CST Transportation, Inc., Norfolk southern Railway Co. – Control and
Operation Leases/Agreements – Conrail, Inc. and Consolidated Rail Corp. (General
Oversight), Docket No. FD-33388 (sub 91)

The Lackawanna Coalition, Inc. is a not-for-profit corporation of the State of New Jersey. The Coalition is an independent organization, whose Principal Members are the counties and municipalities along New Jersey Transit's Morris & Essex and Montclair-Boonton Lines. Our Associate Members are individuals concerned with the quality of the rail service offered on our lines of concern. The Coalition advocates on behalf of the riders of our rail lines, and for better passenger transit in the region generally.

We express our concern today that the current arrangement between CSX and NS for operations in the Conrail Shared Assets (CSA) area in New Jersey is inherently harmful and does not allow for circumstances that benefit potential rail passengers in our region. Potential riders of rail lines in our region are a constituency who should be served. The STB acts to promote the "public interest, convenience and necessity" by its own rules; 49 CFR, part 1150, subpart C. The Lackawanna Coalition advocates on behalf of the riders who use existing rail lines, and we have supported extensions of rail passenger service to lines within the concern of the STB in this proceeding. We claim standing to speak on behalf of the rail riders of our region under *Federal*

Election Commission v. Akins, 524 U.S. 11 (1998) and *United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1966). The Lackawanna Coalition is concerned solely with passenger rail services in our area. We appear in this proceeding, because the STB-mandated structure in question directly affects potential passenger rail services.

The purpose of the Railroad Reorganization and Regulatory Reform Act of 1976 ("4R Act") is to help railroads become independent and economically viable. In keeping with this purpose, the Coalition wishes to extend this ideal beyond the actual mileage of the former Conrail lines to other railroads. The New York & Greenwood Lake Railway Co. (NY&GL), which wishes to operate passenger trains in our region, is an example.

We believe that looking at economic issues concerning only NS and CSX as entities in a vacuum is too narrow a view. Looking at the broader picture, the STB, like its predecessor, the Interstate Commerce Commission (ICC), is required to operate in the public interest, convenience and necessity (*see* 49 U.S.C. Sec. 11324). In this time and place, the public interest, convenience and necessity requires that the public have as much access as possible to our rail network, while also promoting other forms of transportation and intermodal connections. This includes both Class I carriers and other railroads, including short lines.

The reason for this is that the public interest, convenience and necessity encompasses far more than the mere cost of shipping goods from one place to another. A significantly more important issue is public access to our rail lines for actual passenger transport, to take people to places where they cannot currently go by rail. Our rail lines are an especially vital resource for passenger transportation in our region, since our region is so densely populated, our highways are so severely overcrowded, and our rail lines are often so wastefully underutilized.

Today, the cases sustaining this Board's broad authority ((*See, e.g. Erie-Niagara Steering Committee v. STB*, 247 F.3d 437 (2d Cir. 2001); *Missouri-Kansas-Texas RR. Co. v. ICC*, 632 F.2d 392 (5th Cir. 1980)) do not appear to apply to the situation which our region of New Jersey presently faces. The cases deal solely with issues of costs of shipping freight and access to line capacity for freight shipment only. While these are important economic issues, they pale in comparison to the right of the public to travel. The public's right of access to transportation from one place to another is far more vital than the saving of a few dollars on shipping costs. At the present time, New Jersey's highways are crowded, while rail lines that could carry passengers do not. The Lackawanna Coalition is directly concerned with proposed rail passenger services on the NY&GL line (Glen Ridge to Hoboken, in cooperation with New Jersey Transit) and the former Lackawanna Cutoff Line which, when rebuilt, can provide rail service to Scranton and connect with other existing track to points as far away as Syracuse and Buffalo. Other projects for new passenger services in our region have been proposed. These include Bound Brook to West Trenton, Raritan Valley Line extension to Phillipsburg and Allentown, an east-west line in Bergen and Passaic Counties on the New York, Susquehanna & Western, and others. If only the narrow interests of Class I carriers like NS and CSX are considered, eventual restoration of these services becomes less likely than under a regulatory scheme that considers the right of people to travel to be part of the public interest, convenience and necessity.

The regulatory scheme of the past sixty years has been concerned largely with the elimination of passenger rail services provided by private railroads. Except for tourist excursions, every scheduled passenger train operating in the United States today is operated either by Amtrak or by a local transit authority, such as New Jersey Transit. The NY&GL has proposed operation of a passenger service, financed by revenues obtained by shipping freight.

While this was an idea that built the railroads many years ago, it is also an ideal that has not been proposed within the lifetimes of most of us living today. Given the act by NS of removing one of the tracks over which NY&GL would operate this service, it is clear that NS is acting in contravention of the public interest by making it more difficult to restore a passenger rail service than it would have been if they had not committed this act. For the STB to condone such practices by looking solely at the narrow interests of the Class I railroads would frustrate the public interest and militate against the intent of the 4R Act.

For the STB to consider only costs of shipping freight as its sole issue of concern would be like taking a freeze-frame photograph of the present use and capacity of the Conrail Shared Assets (CSA) area. This would preclude further development of new capacity for carrying passengers, and even other freight capacity, in contravention of 49 U.S.C. Sec. 11324. As with all freeze-frame photographs, this one does not depict motion. It is universally understood the "motion" is what transportation is all about.

In short, THE CURRENT ARRANGEMENT IS INHERENTLY ANTICOMPETITIVE, and this Board should not continue to condone it.

This lack of competitiveness in our region negatively impacts the possibility for restoration of rail passenger service between Hoboken, N.J. and Scranton, Pa., on the line formerly known as the Lackawanna Cutoff. Restoring passenger service to this line could be facilitated by allowing CP Rail/D&H to operate over the restored Cutoff Line and the Boonton Line, to the New York metropolitan area. Since NS and CSX appear to be acting as a single carrier within our region of concern, the standard of encouraging two or more Class I railroads to serve a region should be applied by allowing CP Rail/D&H to enter this market, if they desire to

do so. We endorse this idea, since funding from a major freight carrier to rebuild the abandoned Cutoff Line and upgrade it to a standard which could support a viable passenger service, could be combined with the funding already pledged by New Jersey Transit and Monroe and Lackawanna Counties in Pennsylvania. Such combined funding could have a synergistic effect in building a much stronger rail line, both technically and in terms of operational capacity, than funding from either the public or private entities alone could provide.

Although CSX and NS claim to be competitors in our region, their filings in reply to the Coalition's initial filing to the Board strongly state otherwise.

On July 10, 2003, the Lackawanna Coalition filed objections to the practices by NS that could lead to increasing difficulty in reinstating passenger services in our region. Copies of that filing and the resolution to which it alludes are submitted collectively as Exhibit "A" herewith. The response to this filing by CSX (Document No. 208608, filed August 4, 2003) is particularly noteworthy. The reply by CSX objected to our complaints about its purported competitor, NS. It is particularly interesting that CSX objected to our complaints about NS even more vociferously and in stronger language than did NS itself (reply by NS also filed August 4, 2003; Document No. 208621).

The very fact that CSX made ~~an~~ objection ~~to the Coalition's~~ to the Coalition's complains about its purported competitor shows that the relationship between the two carriers is not competitive, but collusive; at least in our region of New Jersey. It makes no sense that any reasonable firm, especially in an oligopolistic industry, would complain that a third party objects to its competitor's practices. A reasonable firm in that situation would be delighted that a third party complained about its competitor, even if it did not express that delight in an administrative filing. The Coalition has previously expressed this opinion in its filing of September 12, 2003. A copy

is submitted as Exhibit "B" herewith. This filing was not considered in prior proceedings. *See* Decision No. 11, dated January 16, 2004 at 11 and note 5.

It appears that, in reality, NS and CSX are not competitors, but colluders who wish to share the spoils of New Jersey. It appears to us that the comments by CSX in its filing indicate sufficient anticompetitive motive that it is incumbent on the Board to keep this proceeding open, with an eye toward eventually forcing the establishment of a truly competitive situation where at least two Class I railroads serve our area.

The Lackawanna Coalition is also concerned with the recent practices of NS on the Lower Boonton Line, in the geographical area of Bloomfield and Glen Ridge. The New York & Greenwood Lake Railway Company has proposed operating a passenger shuttle service between Hoboken and Benson Street Station in Glen Ridge, in cooperation with New Jersey Transit. The Lackawanna Coalition has consistently supported this proposal. However, NS has torn up one of the tracks in the affected area, making restoration of passenger service more difficult. If NS abandons the DB Drawbridge over the Passaic River (and NS has never denied such intent), restoration of this service will become impossible. It is in the public interest, convenience and necessity that provision should be made for possible restoration of a service that has been proposed and is actively under consideration.

NS has complained, in response to the document filed last July by the Coalition, that the Coalition has proposed to confiscate PRR's (not NS's own) assets without paying for them. Yet, NS has actually abandoned the second track in the affected area, and has not denied that it intends to abandon the drawbridge that links this line to tracks that provide access to Hoboken Terminal. Under the circumstances, the protestations by NS are so disingenuous as to be laughable. Essentially, NS is complaining that we are proposing that someone might steal their

garbage. It is clear that NS has little interest in operating this line, and they have no interest at all in operating the portion of the right-of-way that consists of the track that was removed. If NS, by its own action, has demonstrated that it does not want that portion of their former line, they should not be permitted to keep it. Another operator wants to operate that line for the direct benefit of persons who reside in the towns along that line. NS should not be permitted to retain right-of-way that it has expressly abandoned by ripping up the track located on it.

The Lackawanna Coalition expressly incorporates the documents submitted with our written statement as part of our comments in this matter. We renew our request that the Board continue its oversight in the present case, and we repeat our opinion that this Board should give the lines which NS does not wish to operate in the interest of the people of our region to another operator who will operate them in keeping with the restoration of the passenger services we mentioned in our earlier filings. We express no opinion about freight operations in the region, except inasmuch as they impact on future passenger operations. We strongly support the restoration of passenger services that once ran in our area. We also state our belief that the public interest, convenience and necessity require policies that promote the eventual restoration of these services.

Prepared by the Legal Committee
Of the Lackawanna Coalition:

Abbot D. Gorin, Esq., Legal Committee Chair
David Peter Alan, Esq., Lackawanna Coalition Chair
John David Healy, Esq., Presenting Attorney at Hearing

Dated: March 23, 2004

LACKAWANNA COALITION
Box 283
Millburn, N.J. 07041

July 10, 2003

Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K St., N.W., Room 700
Washington, D.C. 20423

Re: CSX Corp., CST Transportation Inc., Norfolk Southern Railway Co. – Control and
Operation Leases/Agreements – Conrail, Inc. and Consolidated Rail Corp. (General
Oversight), Docket No. FD-33388 (sub 91)

Dear Mr. Williams:

The Lackawanna Coalition is an independent organization which advocates on behalf of rail riders on New Jersey Transit's Morris & Essex and Montclair-Boonton Lines. While we are concerned with issues regarding passenger rail service in our geographic area, the present matter is an instance where rail freight issues directly impact upon proposed passenger services of interest to rail riders and potential rail riders in our region.

We have adopted a resolution in support of a proposal by the New York & Greenwood Lake Railway Co. to operate commuter passenger service between Benson St. Station on the Boonton Line (former Greenwood Lakes Line) and Hoboken. A portion of the line proposed for this service is part of Conrail Shared Assets (CSA) and is operated by the Norfolk Southern Railway Co. (NS). Commuter rail passenger service was operated on this line by New Jersey Transit until September 20, 2002, and the New York & Greenwood Lake Railway Co. has proposed to restore this service. We are concerned that the recent removal of one of the tracks on this portion of the line (formerly double tracked), despite urgings by the New Jersey Department of Transportation to leave the line intact, has reduced the likelihood of the restoration of this passenger service. For passenger service to be restored, DB Drawbridge (over the Hackensack River) must be kept intact and operable. We are concerned that NS could decide to discontinue operations on the bridge, thereby rendering restoration of commuter service impossible.

We have also been informed that NS has attempted to entice shippers to move away from locations along this line (which it operates in New Jersey as part of CSA), in favor of other locations on its line in Pennsylvania. Such practices must inevitably result in the diminution of the usefulness of this line to the region of New Jersey which it serves, both in terms of current freight and future passenger operations. Every major metropolitan area should be served by two Class I freight railroads. It appears that NS has not acted as if it is willing to serve the New York area through its CSA line in New Jersey. This leaves only CSX to serve the nation's largest market. If NS does not wish to actively compete with CSX in New Jersey, the line should be turned over to an operator that would. Perhaps a revenue sharing arrangement between NS and CSX is inherently flawed, since it creates an inherent conflict, and should be abandoned.

EXHIBIT "A"

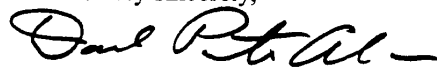
The Lackawanna Coalition has also adopted a resolution supporting rebuilding of the Lackawanna Cutoff Line between Morris Jct. and the Pennsylvania side of the Delaware Water Gap, for the restoration of passenger rail service to Scranton and possibly beyond. We have been informed that the restoration of the Lackawanna Cutoff would allow the Canadian Pacific Railway Co./Delaware & Hudson Railway Co. (CP/D&H) access for freight shipments to the New York area, through the Boonton Line, which is part of the line currently operated by NS. We are concerned that NS could engage in practices that will have the impact of preventing competition from CP/D&H. Such a result would have an anticompetitive effect in serving the New York area through rail lines in New Jersey. Moreover, infrastructure investment by CP Rail, as a major freight carrier, could help to defray the cost of rebuilding the Lackawanna Cutoff Line. A prospective partnership with CP Rail to develop this line for both freight and passenger service could result in significant cost savings for the organizations that have pledged funds for rebuilding the line; New Jersey Transit, and Monroe and Lackawanna Counties in Pennsylvania.

The Lackawanna Coalition wishes to assist in the restoration of commuter service between Benson St. and Hoboken, as well as intercity service on the Lackawanna Cutoff Line to Scranton and points beyond. We believe that these ends can be effectively served by the removal of the line comprising the Boonton Line (including the former Greenwood Lakes Line), Orange Branch, Washington Secondary and Phillipsburg Branch from control and operation by NS, and giving such control and operation to a local, New Jersey-oriented entity. Such an entity could be either an independent railroad company established to operate the line at issue, or a consortium of existing short line railroads currently operating in the region (such as the Morristown & Erie). Accordingly, we request that you hold final acceptance of the present post-Conrail arrangement, and substitute an arrangement that makes the CSA line in New Jersey independent of CSX and NS. Such a move would promote both the viability of our freight rail infrastructure and the possibility of restoring two proposed passenger services in the region.

On June 23, 2003, the Lackawanna Coalition adopted a resolution in support of the objectives described in this letter. A copy of that resolution is enclosed. Copies of the other resolutions mentioned herein will be furnished on request.

Please consider this letter and the enclosed resolution to constitute the comments by the Lackawanna Coalition on the above-entitled matter.

Yours very sincerely,



DAVID PETER ALAN
Chair

Encl. as stated

Cc: Bruno Maestri, Esq.; Norfolk Southern Railway Co.
Commissioner Jack Lettiere, N.J. Dept. of Transportation
North Jersey Transportation Planning Authority
New Jersey Transit

RESOLUTION REGARDING PENDING SURFACE TRANSPORTATION BOARD REVIEW
OF OWNERSHIP AND OPERATION OF THE FORMER LACKAWANNA RAILROAD
MAIN LINE AND FORMER ERIE GREENWOOD LAKES LINE IN THE STATE OF NEW
JERSEY.

At a meeting of the Lackawanna Coalition, held in Millburn, New Jersey on June 23, 2003, the following resolution was adopted.

WHEREAS the Surface Transportation Board is currently reviewing the grant of ownership and operating rights given to the Norfolk Southern Railway Co. (NS) and CSX Transportation Co. (CSX) as a result of the breakup and redistribution of assets of the Consolidated Rail Corp. (Conrail); and

WHEREAS NS has been granted operating rights over railroad trackage from freight yards in New Jersey serving the New York area west to Philippsburg, New Jersey; the line in question comprising the former Greenwood Lake Branch (also known as the Lower Boonton Line), the Orange Branch, Boonton Line, Washington Secondary and Philippsburg Branch; in a financial arrangement with CSX, known as Conrail Shared Assets (CSA); and

WHEREAS we have secured a legal opinion that NS has engaged in anticompetitive practices such as enticing shippers out of New Jersey and away from the aforementioned rail line; and

WHEREAS we believe that such enticement weakens the economic viability of the aforementioned rail line for both freight and passenger services; and

WHEREAS the New York & Greenwood Lake Railway Co. has a proposal before the New Jersey Department of Transportation to operate a commuter-type passenger rail service to carry passengers on the portion of the aforementioned rail line nearest to Hoboken, N.J. and the Lackawanna Coalition has enthusiastically supported the operation of such service to replace service permanently discontinued by New Jersey Transit in September of 2002; and

WHEREAS the practices in which NS appears to be engaged would clearly have the effect of decreasing the likelihood of future operation of passenger service by the New York & Greenwood Lake Railway Co.; and

WHEREAS the rebuilding of the line between Morris Jct. and the Pennsylvania side of the Delaware River at the Delaware Water Gap (Lackawanna Cutoff Line) would allow the operation of a proposed rail passenger service between Hoboken and Scranton, Pa., with possible extension to Binghamton, N.Y. and beyond at a future time; and the Lackawanna Coalition (along with Monroe and Lackawanna Counties, the affected counties in Pennsylvania) has taken a position in support of the rebuilding of the Cutoff Line and the operation of such service; and

WHEREAS the rebuilding of the Lackawanna Cutoff Line would provide the Canadian Pacific Railway Co. (CP Rail) with a route through New Jersey over the Lackawanna Cutoff line,

the former Lackawanna Boonton Line and the former Erie Greenwood Lake Line, thereby increasing the economic viability of the rail line and, thereby, its availability for passenger service; and

WHEREAS a transfer of ownership or control over the aforementioned rail line by the STB would put an end to the anticompetitive practices apparently engaged in by NS along this line and facilitate the use of the line for both freight and proposed passenger rail services: it is hereby

RESOLVED that the Lackawanna Coalition hereby urges the Surface Transportation Board to remove the rail line comprising the Boonton Line (including portions formerly known as the ~~Oran~~ Greenwood Lakes Line), Orange Branch, Washington Secondary and Philippsburg Branch from control by the Norfolk Southern Railway Co. and either establish an independent railroad company to operate the line, or turn the line over to a consortium of short lines operating in New Jersey.

FURTHER RESOLVED that copies of this resolution and any supporting papers shall be sent to the Surface Transportation Board, members of the New Jersey Congressional Delegation in our area of concern, members of the New Jersey Legislature in our area of concern, the North Jersey Transportation Planning Authority, the Commissioner of the New Jersey Department of Transportation, New Jersey Transit and other persons to whom the Lackawanna Coalition deems it advisable to send such papers.

Dated: June 23, 2003


DAVID PETER ALAN
Chair

LACKAWANNA COALITION
Box 283
Millburn, N.J. 07041

September 12, 2003

Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K St., N.W., Room 700
Washington, D.C. 20423

Re: CSX Corp., CST Transportation Inc., Norfolk Southern Railway Co. – Control and
Operation Leases/Agreements – Conrail, Inc. and Consolidated Rail Corp. (General
Oversight), Docket No. FD-33388 (sub 91)

Dear Mr. Williams:

This is in response to Answers filed in the above matter by Norfolk Southern (NS) and
CSX Corp. (CSX) on August 4, 2003.

The Lackawanna Coalition is a nonprofit corporation of the State of New Jersey,
organized as the Lackawanna Coalition, Inc. in 1980. Since that time, the Coalition has
advocated on behalf of riders on New Jersey Transit's Morris & Essex Lines. The Coalition has
added the Montclair-Boonton Line of New Jersey Transit to its area of concern, and has
expressed support for resumption of rail passenger service over the former Lackawanna Cutoff
Line to the Pocono Mountain region and Scranton, and over the portion of the Boonton Line
where service was abandoned by N.J. Transit in September, 2002. The allegation by CSX (at 12)
that the Coalition consists of rail riders on the former NS Boonton Line is a blatant
mischaracterization. In fact, the Coalition consists of the counties and municipalities served by
N.J. Transit's Morris & Essex and Montclair-Boonton Lines, along with individuals from this
region who perform the tasks that assist the Coalition in advocating on behalf of rail riders on the
lines of concern. The Lackawanna Coalition has for many years supported N.J. Transit's efforts
to build the Montclair Connection, and we continue to support Transit's efforts to develop
ridership on the Montclair-Boonton Line. At the same time, we support the initiative by the New
York & Greenwood Lake Railway Co. (NY&GL) to independently serve the stations abandoned
by New Jersey Transit upon completion of construction of the Montclair Connection.

At the outset, it should be noted that CSX has taken it upon itself to ridicule the nonprofit
status of the North Jersey Transportation Planning Authority (NJTPA), another commenting
party, as "unsupported by any shipper or anyone else with an economic interest in the matter" (at
2). The Lackawanna Coalition is concerned that its own nonprofit status will bring upon it the
same derision and scorn heaped upon the NJTPA by CSX. The Lackawanna Coalition operates
in the public interest, on behalf of rail riders. Its interest is not unlike that of the United Church
of Christ in *United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1966), in which the
court upheld the right of the church, as an advocate on behalf of the listening public, to object to
a transfer of a radio station license by the FCC. The attitude expressed by CSX that the

EXHIBIT "B"

Lackawanna Coalition has no business objecting to the practices of NS is reminiscent of the oft-quoted attitude of "the public be damned" attributed to Cornelius Vanderbilt of the New York Central during the 19th Century. The Lackawanna Coalition is duly authorized to advocate on behalf of the rail riders of our region, and has been so recognized by New Jersey Transit and by the American Public Transit Association (APTA). We note the attitude expressed by CSX, and we state that, under no circumstances, will we voluntarily participate in our own damnation of that of our riders. We also question the motive of CSX in criticizing the Lackawanna Coalition, since our own criticism is aimed at NS, the purported competitor of CSX.

It is also appropriate to address two disingenuous comments by CSX. First, CSX claims (at 12) that we are a group of local commuters without a concrete plan to operate the passenger service that we endorse. We are not required to formulate such a plan, since NY&GL is formulating such a plan and is now negotiating to put it into operation (it should be noted that NS backhandedly acknowledges the existence of these negotiations at 13). CSX further states (at 13) that we disagree with N.J. Transit concerning termination of service to a number of stations last September, but our filing expressed no opinion whatsoever on this decision, and merely mentioned it as fact. Had eminent counsel for CSX bothered to read our filing, they probably would have noticed this. Our disagreement (in our second paragraph) was expressed at the action by NS in removing one of the tracks in the affected area and the imminent abandonment of DB Drawbridge. Neither CSX nor NS denies that the track in question was removed, or that it would be an easy matter to discontinue operations over DB Drawbridge, thereby making it essentially impossible to restore commuter service under the NY&GL plan.

NS claims that we would "commendeer PRR property" (at 11). Curiously, CSX (the purported competitor of NS) also states (at 12) that the objection stated by the Coalition in its July filing "impermissibly proposes to confiscate private freight rail assets." Whatever relationship "PRR" might have to NS, NS took it upon itself to eliminate the existence of one of the tracks through the area in question. We do not comment on the extent to which this action by NS constitutes a "confiscation" or "commandeering" of the assets of the alleged entity PRR. That is for PRR, if it is indeed an independent entity and not a shell for NS, to question. However, it cannot be gainsaid that the destruction of a part of a rail line is an act done in furtherance of the public interest, convenience or necessity. Indeed, the Lackawanna Coalition questions the rationality of the allegations by both railroad companies about confiscation when NS wantonly destroys a line which it claims only to operate (and not to own), despite urgings by the New Jersey Department of Transportation (NJDOT), an allegation not denied by NS or CSX.

NS states: "conditions are imposed only to ameliorate or eliminate harms from the transaction itself" (at 12) and blames New Jersey Transit for the actual harm done to former riders of the Montclair-Boonton Line who now want alternate service provided by the NY&GL. In fact, the latest round of harm was caused by NS, when it tore up a track in the affected area, making resumption of passenger service far more difficult than it had been before that act.

In fact, the harm to the public occurred at the time of the breakup of Conrail, which created Conrail Shared Assets (CSA). The conduct of the two railroad companies which commented on the Lackawanna Coalition's own statement make it abundantly clear that there is now an anticompetitive situation among the Class I railroads in our region. NS claims that it

competes vigorously with CSX for business in New Jersey, but the very filings submitted in the present matter by the railroads belie this allegation. CSX, especially, has shown that it is not the competitor of NS, but its confederate. In a truly competitive situation, CSX would be reasonably expected to support our call for turning over the line now operated by NS to another operator who would be more responsive to local concerns. Instead, CSX heaps even more ridicule upon us than does NS for having the temerity to suggest that its "competitor" is acting in an anticompetitive manner.

It is no accident that NS and CSX appear to be acting in concert. The two companies share beneficial ownership of the lines operated by each other. This leads to an inherent conflict of loyalties, since a "victory" over the "competition" for either side means a diminution of the assets belonging to the "other" railroad. For example, if CSX were to vigorously compete with NS and lure shippers away from NS, NS would lose business and its shares would lose value. This could lead to a further diminution of the value of the rail lines under CSA joint ownership. Such a competitive "victory" by CSX could actually lead to lowered value for some of CSX's assets. A similar "victory" for NS could lead to a lowered value for its assets, in the same manner. Thus, the "shared assets" arrangement is anticompetitive and can easily lead to the two allegedly "competing" railroads acting more like partners than competitors. This is the harm that stems from the transaction itself. Therefore, we urge the Board to re-evaluate the establishment of the "shared assets" situation between NS and CSX.

Finally, we note that the concerns stated in our original filing have not been disputed or otherwise contested by either NS or CSX. We believe that the public interest, convenience and necessity demands that the rail lines in our region be operated in a competitive manner, and in such a way that proposed restoration of passenger services (specifically on the Lower Boonton Line and the Lackawanna Cutoff Line) becomes more likely, rather than less likely. We continue to urge that the Board give serious thought to turning the line in question over to an independent company that will operate the line truly in the interest of the shipping and potential riding public.

Yours very sincerely,



DAVID PETER ALAN
Chair

Cc: Bruno Maestri, Esq., Norfolk Southern Railway Co.
Commissioner Jack Lettiere, N.J. Dept. of Transportation
North Jersey Transportation Planning Authority
New Jersey Transit