

**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, DC**

Docket No. AB-290 (Sub-No. 210X)

224398

**NORFOLK SOUTHERN RAILWAY COMPANY
- ABANDONMENT -
IN ATLANTA, FULTON COUNTY, GEORGIA
- NOTICE OF EXEMPTION -**

Finance Docket No. 35215

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**NATIONAL RAILROAD PASSENGER CORPORATION --
APPLICATION UNDER 49 U.S.C. §24311(c) TO CONDEMN
CERTAIN RAIL CARRIER PROPERTY IN ATLANTA, FULTON COUNTY,
GEORGIA - - NORFOLK SOUTHERN RAILWAY COMPANY**

**REPLY OF THE ATLANTA DEVELOPMENT AUTHORITY AND
ATLANTA BELTLINE, INC.**

Communications with respect to this document
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Dated: January 26, 2009

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**REPLY OF THE ATLANTA DEVELOPMENT AUTHORITY AND
ATLANTA BELTLINE, INC.**

The Atlanta Development Authority (“ADA”) and Atlanta BeltLine, Inc (“ABI”) hereby submit this response (1) in opposition to the Motion of National Railroad Passenger Corporation (“Amtrak”) to Supplement its Earlier Filed Petition to Intervene in Support of Stay Sought by Georgia Department of Transportation (the “*Amtrak Motion*”) filed in STB Docket No AB-290 (Sub-No. 210X), *Norfolk Southern Ry Co. – Abandonment – In Atlanta, Fulton Co, GA (“NS Abandonment”)* on January 21, 2009, and (2) to Amtrak’s Notice of Intent to File Application Under 49 U.S.C. §24311(c) To Condemn Certain Rail Carrier Property and Request for Establishment of Procedural Schedule (the “*Amtrak Notice of Intent*”) ¹ ADA and ABI oppose the request for an extension of the Stay in the *NS Abandonment*, and submit that the procedural

¹ Although these two proceedings have not been consolidated, the two Amtrak pleadings both relate to the same property, and the comments of ADA and ABI expressed herein relate to both. As a result, ADA and ABI are submitting this Response in both dockets simultaneously.

schedule proposed in the *Amtrak Notice of Intent*, if one is adopted at all, should be abbreviated substantially

As a preliminary matter, ADA and ABI have reviewed the Reply of Norfolk Southern Railway Company to the *Amtrak Motion* filed on January 23, 2009 in the *NS Abandonment* proceeding. ADA and ABI subscribe to and support the arguments submitted by NS in that Reply, and to avoid burdening the record will not duplicate those arguments here. ADA and ABI would make several additional points, however.

First, Amtrak offers no justification for its late request to pause indefinitely the all-but-completed *NS Abandonment* proceeding. The proposed abandonment of this corridor has been public knowledge in Atlanta where the acquisition by NE Corridor Partners, LLC² and ADA has been much in the news since the transaction occurred.³ Similarly, Amtrak has been on notice of the proceedings at this Board since NS began filing the required notices and environmental documentation of the proposed abandonment and serving those notices on Amtrak, as required. *E.g., Norfolk Southern Railway Company, Notice of Exemption – Abandonment In Atlanta, Fulton County, Georgia*, STB Docket No. AB-290 (Sub-No. 210X) (Filed December 3, 2008) (including Exhibit 4, notice of intent to file Notice of Exemption, dated November 17, 2008). The Federal Register notice of the abandonment appeared at 73 Fed. Reg. 78870 (December 23, 2008). Even if it had no other knowledge of the proposal before then, Amtrak has been on notice since that time. It has not attempted to justify its last minute attempts to enter the proceedings and prevent the implementation of the abandonment. Instead, it attempts to gloss over its belated entry into the proceeding with unfounded assertions that this corridor, which it does not now use

² ABI is the sole Member of NE Corridor Partners, LLC

³ *E.g.,* Donsky, Paul, "City, partner buy Beltline segment for \$66 million", ATLANTA JOURNAL-CONSTITUTION, November 2, 2007

and could only possibly use if a number of contingencies come to pass, is the cornerstone of the operation of the Crescent between Washington, D C and New Orleans

Second, the schedule proposed by the Board in its Decision released on January 21 in the *NS Abandonment* proceeding (the "*January 21 Decision*") should not be extended. If, as Amtrak would have this Board believe, Amtrak has a basis for asserting that the corridor that is at issue in this proceeding is essential to Amtrak's ability to operate its intercity rail passenger service through Atlanta, then Amtrak should be able to produce proof of that in short order. The *January 21 Decision* requires Amtrak to demonstrate that (1) it has made attempts to acquire this corridor, (2) its plans for high speed or intercity rail service can not be implemented without access to this corridor, and (3) that the alternatives to the use of this corridor and of the proposed Multi Modal Passenger Terminal ("MMPT") that have been identified by the regional transportation planners are not sufficient for Amtrak's purposes. *Id.* at 2. If, as Amtrak's filings in these two proceedings imply, Amtrak's plans and its reliance on the MMPT and only the MMPT for its present and future operations are sufficiently well-developed to establish that this corridor and this facility are essential, then it should be able to submit the information the Board has requested in the time frame allowed in the *January 21 Decision*.

Third, for similar reasons, the procedural schedule proposed in the *Amtrak Notice of Intent*, if a proceeding is to be commenced at all, should be abbreviated substantially and bifurcated. Amtrak's late filed participation in the *NS Abandonment* and its submission of the *Amtrak Notice of Intent* together imply that it:

- (a) has tried to negotiate with NS for use of this corridor and been unsuccessful,
- (b) has plans for use of this corridor to reach the proposed MMPT that are sufficiently well-developed that it is certain that this corridor is essential to reach that facility, and

(c) has done the work necessary to confirm that the MMPT and only the MMPT is necessary for continuation of the operation of service that does not use that facility today and for which local and regional planners have confirmed that other facilities would be preferred

If all of this is the case, then Amtrak should be able to submit the evidence required to support its application pursuant to §24311(c) in a time frame shorter than the 45 day period it suggests

Moreover, Amtrak states in the *Amtrak Notice of Intent* that it requires discovery to determine the appropriate compensation to NS for acquisition of NS's property interest. To reach the point where Amtrak requires information about appropriate compensation, Amtrak must first demonstrate that it has tried and been unable to agree with NS on the sale of NS's interest, and that its ". . . obligations . . . to provide modern, efficient, and economical rail passenger transportation" can not be met "adequately by acquiring an interest in other property, either by sale or by exercising its right of eminent domain." 49 U.S.C. §24311(c). To date, Amtrak has shown neither. Until it has proved those essential elements of its case, neither NS nor anyone else should be required to spend any time or resources developing and providing to Amtrak any information respecting potential compensation. As a result, ADA and ABI request this Board, if it elects to institute a proceeding at all after Amtrak has satisfied the mandate of the *January 21 Decision in NS Abandonment*, to establish a bifurcated procedural schedule that (a) expedites the resolution of the question whether Amtrak has demonstrated its need for this corridor; and (b) addresses the issue of compensation if and only if Amtrak has satisfied that threshold question.

CONCLUSION

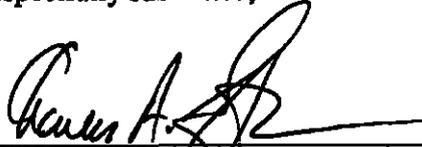
Amtrak's belated requests to participate in and delay the *NS Abandonment* proceeding lack merit. Transportation planners in the Atlanta region have developed and received local support for locations for Amtrak's intercity passenger station that allow for connectivity to the regional transit network, while at the same time preserving Amtrak's operation on the corridor it currently uses. Those plans enjoy the added benefit of being consistent with the regional transportation plans that include use of the corridor that is the subject of the *NS Abandonment* proceeding for development of the BeltLine project. Amtrak, now, at this late date professes to need that corridor and asks this Board to delay implementation of an abandonment that has been the subject of public discussion, required public notice and is all but completed, apparently in order to create time to create a rationale for its use of the corridor that has so far been missing from the extensive public debate about this corridor.

By requiring Amtrak to respond quickly to the information requests included in the *January 21 Decision*, this Board has appropriately required Amtrak to prove that there is some actual foundation for the claims it makes and to do so quickly to avoid further interruption of the long-established plans whose implementation is already underway for this corridor. The stay in the *NS Abandonment* proceeding should not be extended unless and until Amtrak can provide the Board with the information requested in the *January 21 Decision* justifying such further delay.

Moreover, the procedural schedule proposed in the *Amtrak Notice of Intent*, if adopted at all, should be expedited to require Amtrak to make its opening case quickly so as to avoid further delay in the progress of the BeltLine's planning and governmental approvals for the project. In addition, the proceeding should be bifurcated to permit the Board to make findings on Amtrak's

need for this corridor before requiring NS to respond to discovery and pleadings relating to the valuation of NS's interest in the corridor

Respectfully submitted,



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Dated January 26, 2009

Certificate of Service

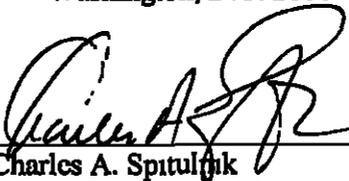
I hereby certify that on this 26th day of January, 2009, I caused to be served a copy of the foregoing **REPLY OF THE ATLANTA DEVELOPMENT AUTHORITY AND ATLANTA BELTLINE, INC.**, to be served by first class mail, postage prepaid, upon

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January 26, 2009

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Re *Norfolk Southern Railway Company – Abandonment – In Atlanta, Fulton County, Georgia – Notice of Exemption; Docket No. AB-290 (Sub-No 210X)*

National Railroad Passenger Corporation – Application Under 49 U.S.C. §24311(c) to Condemn Certain Rail Carrier Property in Atlanta, Fulton County, Georgia – Norfolk Southern Railway Company, Finance Docket No 35215

Dear Ms. Quinlan:

I am enclosing the Reply of the Atlanta Development Authority and Atlanta BeltLine, Inc. in the above-referenced proceedings.

Thank you for your attention to this matter.

Sincerely,


Charles A. Spitulnik

Enclosure

208164

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