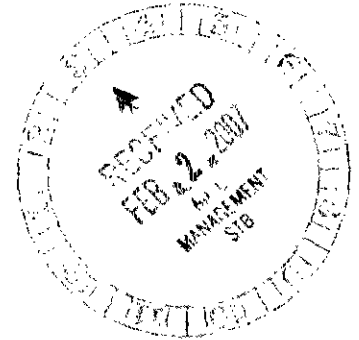




KAPLAN KIRSCH ROCKWELL

218568

February 2, 2007



Honorable Vernon A. Williams
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423

**Re: *James Riffin d/b/a The Northern Central Railroad –
Acquisition and Operation – In Baltimore City, MD
Finance Docket No. 34982***

Dear Sir:

I am enclosing an original and ten copies of each of the following documents:

1. Petition of the Maryland Transit Administration to Revoke the Exemption; and
2. Petition of the Maryland Transit Administration for a Stay

in the above referenced proceeding. Please date stamp the extra copies provided and return to our messenger. Please note that a 3.5 inch diskette is enclosed with these documents.

I am enclosing a check for the filing fee in the amount of \$200 for the Petition to Revoke. However, pursuant to 49 C.F.R. §1002.2(e), MTA is requesting a waiver of the filing fee because this Petition to Revoke is being filed on behalf of a state governmental entity. MTA is not a "quasi governmental corporation or government subsidized transportation company."

Sincerely,

Charles A. Spitalnik

Enclosure

cc: James Riffin
Louis Gitomer, Esquire

119991

Attorneys at Law
Denver • New York • Washington, DC

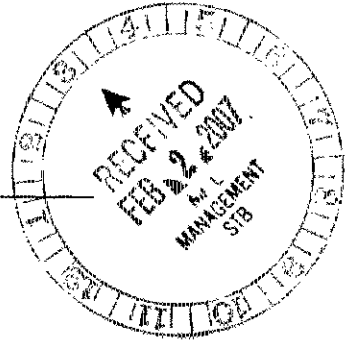
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218568

Before the
Surface Transportation Board
Washington, D.C.

Finance Docket No. 34982



James Riffin d/b/a The Northern Central Railroad –
Acquisition and Operation – In Baltimore City, MD

PETITION OF
THE MARYLAND TRANSIT ADMINISTRATION
FOR A STAY

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Communications with respect to this
document should be addressed to:

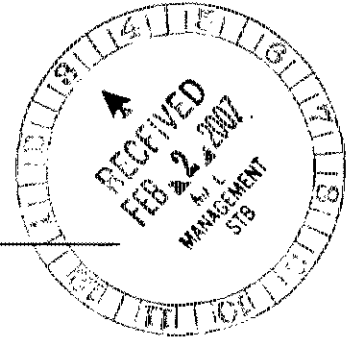
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Counsel for the Maryland Transit
Administration

Dated: February 2, 2007

**Before the
Surface Transportation Board
Washington, D.C.**

Finance Docket No. 34982



**James Riffin d/b/a The Northern Central Railroad –
Acquisition and Operation – In Baltimore City, MD**

**PETITION OF
THE MARYLAND TRANSIT ADMINISTRATION
FOR A STAY**

The Maryland Transit Administration (“MTA”), by counsel, hereby petitions this Board for a Stay of the Exemption filed by James Riffin, d/b/a the Northern Central Railroad (hereinafter, “Riffin”) in this proceeding. The Notice of Exemption (“NOE”) was filed on January 12, 2007 and was published by this Board on January 26, 2007. The NOE contains false or misleading information, and does not comply with the information requirements of the Board’s regulations set forth in 49 C.F.R. §1150. As a result, MTA has sought revocation of the exemption. Because seeking revocation does not automatically stay the effective date of the Exemption, and in order to prevent Riffin from taking any action under color of authority purportedly created by the filing of the NOE, MTA is filing as well this Petition for Stay.

BACKGROUND

Riffin previously has appeared twice before this Board in attempts to secure authority to acquire rail lines, and has both times seen his efforts rejected because the validity of the information provided could not be confirmed. F.D. No. 34484, *James Riffin D/B/A The Northern Central R. – Acquisition and Operation Exemption – In York Co., PA, and Baltimore Co., MD, slip op.* (Service Date April 20, 2004) (“*Riffin I*”); F.D. No. 34501, *James Riffin D/B/A The*

Northern Central Railroad – Acquisition and Operation Exemption – In York Co., PA, slip op.
(Service Date February 23, 2005) (“*Riffin II*”).

Riffin filed the NOE in this proceeding on January 12, 2007, describing a putative transaction involving approximately 2.2 miles of line somewhere near Baltimore’s Pennsylvania Station, and involving property formerly owned by the Maryland and Pennsylvania Railroad and the former Pennsylvania Railroad Company. It appears from the limited information that Riffin provided that the property covered by the NOE might be near MTA’s light rail line that operates between BWI Airport and Hunt Valley via downtown Baltimore. The property, apparently, is also near Pennsylvania Station, which MTA uses for its MARC commuter rail service that operates on Amtrak’s Northeast Corridor between Perryville, MD and Washington, DC.

However, the purported transaction that is incompletely described in the NOE is far from ready for implementation. As MTA notes in the Petition to Revoke, Riffin does not identify the seller or sellers of the line segments he hopes to acquire, and has apparently not begun negotiation with them. The documentation that is not included in the NOE confirms that no transaction is imminent or ready to close as soon as the NOE becomes effective. The NOE states that the transaction(s) described there will close when agreements are completed, which are “expected to be executed sometime after the date this Notice of Exemption has been filed.” NOE at 1. The NOE describes no operations to be conducted on the property and provides no explanation as to how Riffin will interact with the lines of railroad to which it hopes to connect.

In view of the lack of certainty over what property is actually involved, and of the lack of certainty over the likelihood of having a transaction to complete, issuing a stay will not work any prejudice to Riffin. On the other hand, staying the effective date pending the outcome of the Petition to Revoke will be consistent with the public interest because it will give this Board

sufficient time to determine whether the NOE is sufficient, or whether it instead constitutes yet another example of Riffin's disregard for the Board's legitimate processes.

ARGUMENT

THE STAY SHOULD BE GRANTED

MTA has asked this Board to revoke the exemption in this proceeding, and is now asking this Board to stay the effective date of the NOE pending resolution of the Petition to Revoke. This request for a stay satisfies all of the criteria articulated in long-standing precedent governing the issuance of a stay. Because of the deficiencies in the NOE, MTA has a substantial likelihood of success on the merits of its Petition to Revoke. No harm will come to Riffin from the stay because no real transaction has been described in the NOE, and the delay will not prejudice his interests. The public interest supports issuance of the stay because it will avoid yet another abuse of this Board's processes. MTA's interests will be served by avoiding the possibility that Riffin could take some action on this property, which appears to be near property MTA uses for its light rail operation (though this can not be determined with certainty because of the insufficiency of the information provided in the NOE) and commuter rail operation. Were any such impact to occur, the injury to MTA's operations and to the passengers they serve would not be reparable by payment of money damages

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest. F.D. 33887, *Illinois Central R. Co. -- Construction and Operation Exemption -- In East Baton Rouge Parish, LA, slip op.* (Service Date February 20, 2002), citing *Washington Metro. Area Transit Comm'n. v. Holiday Tours,*

Inc., 559 F.2d 841 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Assoc. v. FPC*, 259 F.2d 921 (D.C. Cir. 1958). The party seeking a stay carries the burden of persuasion on all of the elements required for a stay. *Id.*

MTA satisfies those requirements. First, MTA is likely to prevail on the merits of its Petition to Revoke. For reasons described in that Petition, this Board is likely to revoke the NOE. It is submitted under the incorrect provisions of the regulations, and in any event does not include the information that is required by either the regulations Riffin cites or by the regulations under which it should have been filed. Because the NOE as a result includes false or misleading information, and is incomplete, the NOE will likely be revoked pursuant to 49 U.S.C. 10502(d).

Second, MTA and other owners or operators of rail lines in the vicinity of the property that Riffin purports to plan to acquire have no information as to what he plans to do on the property, or how he plans to connect with the existing rail lines, what construction he may decide to undertake (with or without STB authorization), or the extent to which whatever activities may be undertaken will interfere with the operations that currently are operating on or near those lines. MTA operates light rail service on lines near this property, and its MARC trains operate to and from Pennsylvania Station. Because of the dearth of information in the NOE, MTA can not know whether it will or will not be harmed by Riffin's implementation of his plans. MTA has no confirmation that the planned activities will not disrupt MTA's existing light rail or MARC train operations.

Third, Riffin will not be harmed by issuance of a stay. The purported transactions described in the NOE are not close to fruition – no specific date for consummation is provided. Indeed, the NOE provides no description of the other parties to those transactions and indicates

only that the transactions will be implemented pursuant to Maryland law.¹ Given the lack of definition of the likely closing date, or of any statement that the property owners have any interest in even engaging in discussion with him about the transactions, a delay of that closing pending resolution of the Petition to Revoke will not harm him.

Finally, issuance of the stay will be consistent with the public interest. Because the NOE includes erroneous and misleading information, the public interest will be served by delaying implementation and avoiding the consequences of conferring “rail carrier” status on Riffin or the purported railroad. Issuing a stay will prevent Riffin from proceeding with any transactions that will subsequently have to be reversed once the Petition to Revoke is granted. Moreover, imposing a stay will prevent Riffin from taking any action pursuant to putative authority that allegedly springs from being a rail carrier providing transportation subject to this Board’s jurisdiction. The integrity of this Board’s processes will be preserved, and no party will need to waste even more resources than have already been expended in trying to prevent Riffin from taking actions under the color of state laws or of preemption (by virtue of alleged status as a rail carrier subject to this Board’s jurisdiction) of otherwise applicable state and local laws.

The NOE that Riffin submitted in this proceeding presents yet another example of a hoped-for transaction, the aspiration for which appears to be no more than a loosely conceived plan towards which no concrete steps have yet been taken with the owners of the property that the NOE purports to describe. In the face of the uncertainty over the reality of the transaction and of the defects in the NOE, MTA submits that it has a substantial likelihood of prevailing on

¹ In discussions with counsel for MTA at the time of the attempts to implement the transaction described in *Riffin II*, Mr. Riffin advised counsel that he believed that as a railroad, Maryland law permitted him to claim and take ownership of unused railroad property in the state of Maryland. He has not made any such statements to counsel recently, or in the NOE. However, the vague statements that “transferor of the line will be whomever owns the right-of-way” and that “[a]cquisition of the right-of-way will be pursuant to Maryland law” (NOE at 2) give rise to the question of whether Petitioner plans to assert those same purported rights again.

the merits of its request for revocation of that NOE. Delay will not harm Riffin, and MTA will avoid the harm that could be inflicted upon its light rail and/or MARC train operations if the property that Riffin hopes to acquire and his proposed operation have any impact on the lines MTA uses for the services it provides. The public interest clearly supports preventing Riffin from abusing this Board's processes even further and from taking actions that will adversely affect either or both of MTA's rail-based operations. Issuing a stay pending review of MTA's Petition to Revoke is consistent with the law, and a stay should be granted.

WHEREFORE, and in view of the foregoing, the MTA respectfully requests this Board to stay the effective date of the NOE pending action on the Petition to Revoke that MTA has filed in this proceeding.

Respectfully submitted,



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Counsel for the Maryland Transit
Administration

Certificate of Service

I hereby certify that I have this 2nd day of February, 2007, caused to be served a copy of the foregoing Petition of the Maryland Transit Administration to Stay the Exemption upon the following party of record by first class mail, with postage prepaid:

James Riffin d/b/a The Northern Central Railroad
1941 Greenspring Drive
Timonium, MD 21093.



Charles A. Spitulnik

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