B.C.D. 03-23 MAR 03 2003

EMPLOYER STATUS DETERMINATION
Massachusetts Bay Commuter Railroad Company, LLC

This is the determination of the Railroad Retirement Board concerning the status of Massachusetts Bay Commuter Railroad Company, LLC (MBCR) as an employer under the Railroad Retirement Act (45 U.S.C. § 231 et seq.) and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.).

Information regarding MBCR was provided by James E. Howard, counsel for MBCR. According to Mr. Howard, MBCR has been selected by the Massachusetts Bay Transportation Authority to operate the Authority's commuter rail system in the Boston area. MBCR will replace Amtrak as the contractor. Amtrak has operated the Boston area commuter rail system since 1987. MBCR is scheduled to begin operations of the Boston regional commuter rail system as of July 1, 2003. An agreement was entered into effective January 10, 2003, between the Authority and MBCR. MBCR is offering employment to all the Amtrak employees currently operating the system (a total of approximately 1700) and an additional approximately 50 employees. The Boston area commuter rail system is comprised of 13 lines of railroad and approximately 350 route miles. The commuter rail system includes a line that is used to provide regular commuter service between Boston, Massachusetts, and Providence, Rhode Island.

Before deciding whether MBCR will be an employer under the Acts administered by the Board, we must address the issue of whether the Board should at this time issue a ruling or delay until MBCR begins operations. The Board has in two other recent cases provided a coverage opinion with regard to future operations[1]. As in those two

[1] See Keokuk Electric Railway, Inc., B.C.D. 01-83 (December 3, 2001) and Southern California Regional Rail Authority, B.C.D. 02-12 (February 12, 2002).

other cases, there is no doubt that MBCR will begin operation July 1, 2003. In order to provide for as smooth a transition as possible, a decision by the Board regarding the coverage status of MBCR will facilitate rail operations in the United States. Therefore, the Board will issue a decision regarding MBCR at this time.

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

> (i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially the same definition, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

The Surface Transportation Board has jurisdiction over rail transportation in the United States between a place in a State and a place in the same or another State as part of the interstate rail network. See 49 U.S.C. 10501(a)(2)(A). The Boston area commuter rail system is comprised of 13 lines of railroad, all of which Mr. Howard states, are part of the interstate rail network. In support of this statement, Mr. Howard noted that freight operations are conducted by Springfield Terminal Railway Company (BA No. 2112) on some of the lines and by CSX (BA No.1524) on certain other of the lines. Moreover, one of the commuter lines runs from Boston to Providence, Rhode Island. In addition to the commuter service provided between Providence and Boston, Amtrak provides intercity rail passenger service over that same line.

In light of the evidence as summarized above, the Board finds that MBCR will become a carrier operating in interstate commerce when it begins operation of the Boston area commuter rail system. Accordingly, it is determined that MBCR will be an employer within the meaning of section 1(a)(1)(i) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)(i)) and the corresponding provision of the Railroad Unemployment Insurance Act as of July 1, 2003, the date as of which it is scheduled to begin operations.

Mr. Howard has also requested that the Board rule that no affiliate of MBCR is an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts. MBCR is a Delaware limited liability company that was formed in 2002 to provide commuter rail services for the Authority. None of the three companies which own MBCR, Connex North America, Inc., Bombadier Transit Corporation, and Alternate Concepts, Inc., provide any services in connection with railroad transportation[2]. Accordingly, none of these companies is an employer under the Acts.

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[2] It should also be noted that Bombadier and Alternate Concepts each have only a 20 percent interest in MBCR and not a controlling interest; further, Mr. Howard contends that Connex, which has a 60 percent interest in MBCR, does not control MBCR because the rules regarding decisions to be made pertaining to MBCR requires agreement by a number of directors greater than those appointed by Connex. The Board does not need to address this contention.