

WILLIAM A. CONWAY
125 Prospect Avenue
Hackensack, N. J. 07601
(201) 343 7281

August 20, 1978

Mr. John G. Heimann
Comptroller of the Currency
490 L'Enfant Plaza S.W.
Washington, D. C. 20219

RE: Application for Approval of
Consolidation
Garden State National Bank
Paramus, N.J. (GSNB)
-and-
National State Bank
Elizabeth, N.J. (NSB)
under charter of NSB
and name
Garden State Bank NA, NJ
GSBNANJ

Dear Mr. Heimann:

Thank you for noting and filing my objections to the terms of the captioned application.

On Friday, August 18 I inspected the file on this matter in your New York Regional Office, in an effort to ascertain, in the absence of management advice, the present status of this long pending application.

The file contained a copy of a letter by Steven Ross, Chairman of Warner Communications (copy, indexed and marked is attached and referenced in this letter) to which I am constrained to enter a rebuttle. Mr. Ross speaking for Warner, a company primarily engaged in communications and entertainment, strikes the tone of a scenario writer landing the "good guys" (Warner) who give their all defending the "pilgrims" (non Warner shares) from all peril danger and loss.

The following is offered in rebuttal to Mr. Ross' letter. The references are to numbered paragraphs and lines.

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Paragraph 3, 7 "but have encountered many difficulties in finding a sensible deal"

The sensible deal that Mr. Ross seeks is one that puts \$51,292,000. of cash and/or cash equivalent securities into the Warner treasury

Paragraph 4(1), 3 This section of New Jersey banking law may well have been on the books in 1968 and have been in force when Kinney National Services (now Warner by name change) offered 618054 shares of Kinney in exchange for 231770 shares of Hackensack Trust Company (now Garden State National Bank by name change) as well as on the purchases for cash of additional shares of Garden State Class A stock.

30,000 shs.	February 1971 by tender offer, part of consolidation with North Jersey National Bank	\$1,020,000.
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136,000 shs.	Summer 1971 purchase at auction of dissenters shares in North Jersey	3,808,000.
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35,000 shs.	purchased in open market 1973 to 75	<u>1,050,000.</u>
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201,000 shs.	(approximate)	\$5,878,000.
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Paragraph 4(2), 3 "could finance the acquisition"

Mr. Ross in using "acquisition" clearly identifies the Warner position as being a seller of Garden State shares, not a partner with the NON Warner shares in a consolidation.

Paragraph 4(3), 3 "we wish to be careful about the kind of people we turn the bank over to"

Mr. Ross holds to the scenario the "good guys" protect the pilgrims and are "careful" not to forget to scoop up \$51,292,000. when they ride away leaving the pilgrims to gnaw on the dried bones that remain, \$17,580,000.

Paragraph 4(3), 4 "individual buyers have almost invariably been interested only in our shares and have not been willing to buy out the public"

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I have no fear of such a sale, and in fact would welcome it, for 12 CFR 15
12 CFR 11-62
administered by your office protects me and provides close scrutiny of sellers and buyers.

Warner may have found that potential buyers of the Garden State shares lost interest when they found that there were two distinctly different classes of Garden State stock in the Warner holdings:

Class A	251,624 shares	29.96% of class outstanding
B	774,235 shares	99.58% of class outstanding
Total	1,025,859 shares	63.43% of all outstanding.

Paragraph 4(4), 6 "We would not have achieved one of the basic objectives of the entire exercise"

Mr. Ross raises the question which your office and the NON Warner shares will ask. What are the OTHER "basic objectives of the entire exercise". A full disclosure will no doubt be informative.

Paragraph 5, 1 "We thought we had found the answer to our dilemma"

Mr. Ross recognizes as I have contended that he has a "dilema". It would be to the decided advantage of the NON Warner shares if Warner solved its dilemma without involving the NON Warner shares in its problem.

A normal consolidation would have no taxable consequences, but the Warner plan as press releases have stated would be taxable to Garden State shareholders.

A nationally recognized accounting firm, citing Section 356(a)(2) of the Internal Revenue Code recently held a similar plan to be taxable as ORDINARY INCOME.

A scenario which allows the good guys to ride away with the cash is bad enough, but when the pilgrims find they still have to fight off a tribe of tax collectors who may want ordinary income scalps, its as bad as spoiling the spring.

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Paragraph 6, 2 "Financing the acquisition of a bank as large as itself has not been easy for National State."

Warner's plan drained \$68,522,000. (of which Warner gets \$51,292,000.) from the shareholders equity \$86,102,000. and seeks to fill the void with:

Debentures	\$30,000,000.
Preferred Stock	10,000,000.
Write up of	
Bank Premises	13,500,000.
Others (Net)	1,048,000.
and finally	
"Good Will"	<u>27,525,000.</u>
	\$82,073,000.

Paragraph 6, 8 "With National State trading at a little above \$10. a share, the revised terms continued to indicate a substantial premium to the public shareholders."

Mr. Ross assumes that the future market value of shares of the resulting bank will be at the same price as National State shares.

A leading New Jersey bank stock dealer, John J. Ryan & Co. in his booklet, "New Jersey Bank Stock Annual 1977" on page 20 "per share data" "price to book value" shows the average for the ten largest banks to be 69.1%

Book Value (Net of Notes)		69.1%
National State 6/30/78	11.52	7.96

Book Value resulting bank -
per application to
consolidate 3/31/78

Net of Preferred stock		
before adjustments	3.68	2.54
after adjustments		
without good will	6.73	4.64

Projecting the best possible values it would be most difficult to produce "a substantial premium to the public shareholders". (Paragraph 6, 10)

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Paragraph 6, 11 "Garden State was trading at about \$33. when the original transaction was announced."

Mr. Ross is perhaps unaware that on June 29, 1977 Garden State was quoted 28 - 29½ and on August 15, 1977 at 1:55 P.M. (just before the disclosure of the original plan) at 34½ - 36. Also that in the month and a half before August 15th, 15,000 to 18,000 shares of Garden State traded. Somehow someone knew that a \$50. price would be announced.

Mr. Ross, of course, knows of the Warner purchases in the open market and that the Garden State market price (unique to other New Jersey large banks) has held to the levels of book value or slightly above for almost five years.

Paragraph 9, 2 "Two principal points of OCC concern seem to have emerged."

On point one, Mr. Ross seeks to convince your office that "our dilemma" (Paragraph 5, 2) should be equated to the "compelling circumstances" (Paragraph 9, 9) which in OCC policy provides the basis for exceptions granted to problem banks. Surely Mr. Ross is not claiming that Garden State is a "problem bank".

Mr. Ross contents that "a solid record of earnings performance and capital accumulation" (Paragraph 9, 11) will overcome any inadequacy of capital. Servicing \$30,000,000. debentures
\$10,000,000. preferred stock
will in the uncertain economic future put a strain on the projected solid record of the resulting bank and impare its ability to both accumulate capital and pay the proposed dividends of over \$3,600,000.

Paragraph 10 Mr. Ross disclaims criticism of the OCC staff. He however overlooks the fact that Garden State and its consolidation partner have presented to your office the problem of approving the Warner solution to its dilemma. A solution which burdens the NON Warner shares as well as the resulting bank.

Paragraph 11 Mr. Ross acknowledges "WCI must soon sell its stock in Garden State".

He is attempting to sell it now in the disguise of a "consolidation". He should soon come to the realistic conclusion:

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- (1) That he is overpricing his offer to sell
- (2) That Warner has consistently erred in its actions with respect to Garden State:
 - a) in acquiring in 1968/69 a totally unrelated enterprise;
 - b) compound that in the face of amendments to the Bank Holding Company Act by consolidation with North Jersey National 1970/1971;
 - c) investing almost \$6,000,000. in additional Garden State Class A shares;
 - d) not recognizing that Garden State management was failing to accomplish dilution of Warner's position by consolidation with other New Jersey banks. Efforts made with

New Jersey Bank	West Paterson
First National Bank of New Jersey	Totowa
1st Merchants National Bank	Neptune
New Jersey National	Trenton
Prospect Park National Bank	Prospect Park

and others fizzled because of a variety of reasons non-relating to Garden State;

- e) Mr. Ross could work out a consolidation without tax consequences if he was willing to continue an interest in the resulting bank of less than 24.9% (as is C.I.T. in its divestment of National Bank of North America). Warner's continued interest would assure retention of the services of Mr. Agemian (Paragraph 4(3), 7) as president and chief administrative officer whose record of profitable operation of banks may well lead to future profitable sale of any interest retained by Warner.

Paragraph 13, 1 "If there is anything I can do on my end please let me know".

May I suggest that you let him know that Warner's dilemma is solely Warners and that only they can

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August 20, 1978

solve it -- and not be raiding the equity account of Garden State of which they are careful. (Paragraph 4(3), 3).

If he has deluded the Warner shareholders to believe that \$50. will be derived from Garden State shares that have a book value of less than 29, let him disillusion them.

Warner can sell its Garden State shares.

Warner can spin off its Garden State shares.

Warner can issue rights to Warner shareholders to buy Garden State shares,

But Warner cannot under guise of "consolidation" raid the equity capital account of two sound national banks.

Sincerely,

Margaret A. Conway

MARGARET H. CONWAY

William A. Conway
WILLIAM A. CONWAY

Copies to:

Senator William Proxmier
Senator Harrison Williams
Representative Henry S. Reuss
Mr. Charles Van Horn
Mr. John Burt

WARNER COMMUNICATIONS INC.

STEVEN J. ROSS
CHAIRMAN OF THE BOARD

August 2, 1978

Hon. John Heimann
Comptroller of the Currency
470 L'Enfant Plaza
Washington, D.C.

The National State Bank, Elizabeth, N.J.
and Garden State National Bank

Dear John:

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1 line.
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Thank you for calling me back last week--and my apologies for intruding on your vacation. It was, as always, a real pleasure to speak with you. I thought I would write you explaining my interests in the National State-Garden State consolidation and why I think this consolidation benefits all participants and the banking system.

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It is easier for me to write this letter from WCI's perspective. I hope that will be a helpful approach for you in considering the situation.

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WCI owns about 63% of the outstanding shares of Garden State and is required by the One-Bank Holding Company Amendments of 1970 to divest itself of control of Garden State by December 31, 1980. WCI has filed an irrevocable declaration to do that. Because of this legislation and solely for that reason, we have actively sought buyers--and have been actively sought out by potential buyers--but have encountered many difficulties in finding a sensible deal. Those difficulties have not related to Garden State. Charlie Agemian who runs Garden State has built it into a growing, increasingly prosperous, superbly managed and efficient institution, so potential investors find it most attractive.

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The principal difficulties we have encountered in trying to sell our Garden State shares may be summarized as follows:

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(1)

1 1. No domestic banking institution outside New
2 Jersey can acquire a substantial equity position in Garden
3 State because of the restrictions of New Jersey banking laws.

(2)

1 2. Garden State is a fairly significantly sized
2 bank by New Jersey standards so there are few New Jersey banks
3 or New Jersey based bank holding companies that could finance
4 the acquisition of Garden State. The largest New Jersey in-
5 stitutions could, but they tend to be active in areas where
6 Garden State does business so we could anticipate antitrust
7 complications in dealing with them.

(3)

1 3. Potential buyers from outside the banking field
2 have sometimes seemed to have limited banking experience and
3 we wish to be careful about the kind of people we turn the
4 bank over to--especially since these individual buyers have
5 almost invariably been interested only in our shares and have
6 not been willing to buy out the public which owns the remain-
7 ing 37% of Garden State. As you would expect of such a strong-
8 minded executive, Charlie Agemian has made it clear that he
9 would not stay on to run the bank for a new group in which he,
10 did not have full confidence.

(4)

1 4. The non-banking people with whom we have talked
2 about our Garden State shares would need to give us their paper
3 for a substantial part of the purchase price. And here we run
4 into Federal Reserve policies saying that any substantial amount
5 of such paper--whether stock or debt--would cause WCI to be con-
6 sidered still a bank holding company. We would not have achieved
7 one of the basic objectives of the entire exercise!

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1 Last August, we thought we had found the answer to
2 our dilemma. The National State Bank, Elizabeth, N.J., a long
3 established and soundly managed institution, wished to acquire
4 all the shares of Garden State. A better natural fit for a
5 transaction could hardly be imagined. Garden State is the
6 ninth largest New Jersey bank, and National State the tenth
7 largest, in deposits. Combined, the resulting bank would be
8 the fifth largest commercial banking organization in New Jersey
9 with deposits of approximately \$1.3 billion. That would put it
10 in the league where it could begin effectively to compete with
11 the largest New Jersey banks--and with New York and Philadelphia
12 banks--for some of the best New Jersey business. Even though

13 Garden State has 36 offices and National State has 40, not
14 one of the Garden State offices is in even the same county
15 as any of the National State offices. There would be no loss
16 in local competition but an increase in regional competition.
17 The management of both banks enthusiastically supported the
18 consolidation, which offers fine opportunities to Garden State's
19 executives, to whom we feel great loyalty. The terms of the
20 transaction--\$50 a share in cash to all Garden State share-
21 holders except WCI which would take a 6% Preferred Stock at
22 par for 200,000 of our Garden State shares--were good for
23 WCI and for all of the public shareholders of Garden State.
24 We were delighted.

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1 We have now invested a year in working on this
2 transaction. Financing the acquisition of a bank as large
3 as itself has not been easy for National State. The struc-
4 ture of the deal was changed early in April to reduce the
5 cash requirements by nearly \$20 million by providing that
6 Garden State's public shareholders would receive 3 shares of
7 common stock and \$20 in cash while WCI would still receive
8 its original package. With National State trading at a
9 little above \$10 a share, the revised terms continued to in-
10 dicade a substantial premium to the public shareholders--
11 Garden State was trading at about \$33 when the original
12 transaction was announced.

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1 This change in the transaction was made following
2 a meeting in April 1978 with representatives of your office
3 who indicated their dissatisfaction with the capital structure
4 that would have resulted under the original terms. The banks'
5 chief executive officers were not, to be sure, told that the
6 revised structure would be approved but came away feeling that
7 approval was a distinct possibility. A revised agreement was then
8 executed and new applications for approval of the consolidation
9 and for the related financing and revised proxy materials were
10 filed with your office on April 28, 1978 and May 15, 1978,
11 respectively. The revised terms provided for the financing of
12 the acquisition by the issuance of \$30 million of subordinated
13 notes, \$10 million of 6% preferred stock to WCI and approxi-
14 mately \$23 million from cash of the resulting bank.

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Efforts to arrange the financing went forward. Those efforts were first aimed primarily at the insurance lender market but after a time shifted to major New York banks. At the end of June, favorable terms were negotiated with Chemical Bank and after a loan agreement had been negotiated a revised application for approval of the capital note and the preferred stock was filed on July 20, 1978.

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On July 26, 1978, counsel for the banks met with representatives of your office. Two principal points of OCC concern seem to have emerged at that meeting. One related to an OCC policy limiting interbank indebtedness. The second related to the adequacy of the capital structure of the resulting bank. This letter is probably not the right place to argue the merits of those points. I do wish to say, however, on the first point, that the policy provides for exceptions upon a "finding of compelling circumstances" and I believe we have compelling circumstances and, on the second point, that an examination of the financial statements filed with your office will show a solid record of earnings performance and capital accumulation of the banks as well as the quality of their assets.

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In describing the long time this transaction has taken I do not mean to be critical of the OCC staff. I am told that the staff has been helpful and available throughout and of course I understand that a significant transaction like this requires careful review and that the changes in structure have complicated and delayed the reviewing process.

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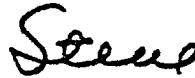
The main points I wish to make now are that WCI must soon sell its stock in Garden State, there is no realistic chance that we can sell those shares to any domestic banking organization except National State, and the transaction we have worked out is a good deal for all the Garden State shareholders whereas another transaction is likely to involve only a sale of our shares. The consummation of the transaction will also be favorable for WCI's shareholders because of our ability to put the sale proceeds to productive use and because it will answer, in a positive way, questions that are regularly raised about our progress on the required disposition of our Garden State shares.

12 1 At this stage the OCC's approval appears to be our
2 main hurdle. The Federal Reserve Board has indicated to us
3 that after the consolidation WCI will no longer be a bank
4 holding company. The Federal Reserve has also completed its
5 antitrust review and concluded that the overall competitive
6 effect of the transaction would be only "slightly adverse".
7 The Internal Revenue Service has issued the tax rulings re-
8 quired by National State. In addition, Mr. Agemian has agreed
9 to remain active in the management of the resulting bank and to
10 be its President and Chief Administrative Officer. As you know,
11 Mr. Agemian is a splendid, dedicated bank executive whose active
12 participation in the resulting bank's management cannot be under-
13 estimated.

13 1 If there is anything I can do on my end, please let
2 me know. A decision soon is most important--the shareholders
3 of both banks and the shareholders of WCI have been waiting
4 nearly a year from the original announcement, all of these
5 shareholders will lose if the transaction does not go through
6 and we are running out of time.

14 1 Thank you for your willingness to consider this
2 problem. I deeply appreciate it. Best regards.

Sincerely,



Steven J. Ross

SJR