

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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ENTERED  
Office of Proceedings  
February 19, 2021  
Part of  
Public Record

**STB Docket No. FD 36332**

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

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**AMTRAK'S SUPPLEMENTAL REPLY BRIEF**

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## **I. INTRODUCTION**

Amtrak submits the following supplemental reply brief in response to Metra's supplemental initial brief, consistent with the Board's December 11, 2020 procedural schedule. In its opening supplemental brief, Amtrak anticipated and addressed most of the issues Metra has raised. Amtrak explained why the Board should determine the appropriate material terms raised by Amtrak. In contrast, Metra suggests that after nearly two years of stalemate (including scores of hours of mediation in this proceeding), the best course is to order the parties to talk some more. At best, that is the triumph of hope over experience; more realistically, it is a tactic for delay.

Metra also asks the Board to articulate some general "principles" for further negotiations. Section 24903 is not a mechanism under which parties can request advisory opinions to influence contract negotiations. Instead, Section 24903 is where parties must turn when negotiations fail, as the negotiations have here. What the parties need now are the material contractual terms to go with the Board's determination of compensation.

As a fallback, Metra also proposes some contract terms of its own. Metra's proposals go far beyond what would be necessary merely to continue transportation. If imposed, Metra's proposals would wrest from Amtrak control over its own property, Chicago Union Station, and assign to Metra what amount to property rights. What Metra requests is something it certainly has not proposed to pay for in the briefing regarding compensation, and moreover it is well beyond what Section 24903 contemplates. Section 24903 says that the Board shall order the transportation to "continue"—not give a commuter rail authority virtually unilateral discretion to increase its service, one of Metra's requests.

This reply brief addresses eight of the 16 supplemental issues identified by the parties in the list of unresolved issues filed December 15, 2020. Seven of the 16 supplemental issues were addressed by both parties in their supplemental initial briefs:

1. **Supp. Issue 1: *Dwell Time and Storage Time*** – The standards governing the presence of Metra equipment at CUS other than during boarding or detraining. (Section 2.1.4.1).
2. **Supp. Issue 3: *Schedules*** – The procedure and standards governing changes to Metra’s train schedules. (Section 3).
3. **Supp. Issue 4: *Service Levels*** – The procedure and standards under which Metra may request the right to increase the number of trains it operates to and from Chicago Union Station beyond what the parties have agreed to as the “Standard Schedule.” (Section 4.2).
4. **Supp. Issue 8: *Dispatching Feed*** – The features of any Dispatching Feed provided to Metra, the terms under which the Dispatching Feed is provided, and the compensation for the Dispatching Feed. (Sections 6.3 and 12.6).
5. **Supp. Issue 14: *Dispute Resolution*** – The procedure for resolving disputes regarding Metra’s use of CUS. (Section 18).
6. **Supp. Issue 15: *Audit*** – The procedure for, and scope of, any financial audit conducted by Metra of Amtrak CUS operations and services. (Section 23.1).
7. **Supp. Issue 16: *Assignability*** – The extent to which either Party may assign the agreement. (Section 25).

One supplemental issue was addressed in Metra’s supplemental initial brief but not in Amtrak’s, and is therefore addressed in this reply brief:

8. **Supp. Issue 10: *Service Disruption Plan*** – The credits or charges available for material delays of passenger service relating to invocation of the Service Disruption Plan. (Section 8.3).

The remaining eight supplemental issues were either not addressed by Metra,<sup>1</sup> and the Board should therefore adopt the contractual language proposed by Amtrak in its supplemental initial brief, or they were not addressed by either party,<sup>2</sup> and the Board should therefore impose terms consistent with the June 2019 Proposed Agreement.

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<sup>1</sup> **Supp. Issue 1: *Policing*** – Terms governing the policing services Amtrak provides at CUS. (Section 6.2). Interestingly, Metra does not object to Amtrak’s proposed language even though in its initial briefing regarding costs Metra claimed that many of the services provided by Amtrak police were unnecessary to Metra. Amtrak’s proposal accurately captures the services provided by Amtrak police and the only dispute relating to policing appears to be whether Metra should pay its fair share of policing costs.

**Supp. Issue 13: *Termination for Default*** – Whether the agreement should include a provision governing termination for material default, and if so, the procedure for such a termination. (Sections 17.2 and 17.3).

**Supp. Issue 11: *Recalculation of Base Costs*** – The procedure for any periodic recalculation of the base costs incurred by Amtrak at CUS that must be allocated in part to Metra. (Section 12.10.3).

<sup>2</sup>**Supp. Issue 2: *Modification of ingress, egress, and square footage used by Metra and its customers at CUS.*** (Section 2.3).

## II. ARGUMENT

### A. The Board Should Decide Material Terms

The contract governing Metra's use of Chicago Union Station expired in May 2019. Since well before then, Amtrak and Metra have negotiated the terms and compensation of an agreement to govern Metra's future access and use of Chicago Union Station. Those efforts failed—otherwise this matter would not be pending. Even after the parties came to the Board for relief (Metra filed first, then Amtrak), Amtrak expended significant resources to prepare for and participate in nine days of mediation with Metra from September to December 2020. In Amtrak's view, the parties resolved the issues that can be resolved. But several issues remain outstanding and cannot be resolved by the parties alone. Metra's purported willingness to compromise is belied by the history of the negotiations and this proceeding. Amtrak does not favor further negotiation or mediation at this juncture because it will likely be futile and the parties are now two years past the time when they should have had a new agreement.<sup>3</sup> Amtrak respectfully requests that the Board decide the material contractual terms as outlined in Amtrak's supplemental initial brief.

Amtrak's status as the owner of Chicago Union Station obligates it to operate the Station in a safe, efficient, and cost-effective manner. Indeed, "[t]he purpose of Amtrak is to provide modern and efficient intercity and commuter rail passenger service." *Nat'l R.R. Passenger Corp.*

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**Supp. Issue 5:** The standard under which Amtrak must provide janitorial and maintenance services at CUS. (Section 4.2).

**Supp. Issue 6:** Funding for extraordinary maintenance and capital improvements for any areas of Chicago Union Station used by Metra alone, to the extent the extraordinary maintenance or capital improvement is necessary to address state-of-good-repair. (Section 2.4).

**Supp. Issue 9:** Whether Metra may assert control over emergency responses at Chicago Union Station under certain circumstances, and if so, the procedures governing that control. (Section 8.2).

**Supp. Issue 14:** Whether Metra is entitled to any parking at CUS. (Section 14).

<sup>3</sup> Amtrak notes again (*see* Petition at 7 n.3; Amtrak Reply at 18 n.13), that with respect to compensation, the parties have contractually agreed that any agreement between them or any payment amounts ordered by the Board will be retroactive to May 1, 2019.

*v. Bos. & Maine Corp.*, 503 U.S. 407, 410 (1992). “Public convenience and necessity require that Amtrak, to the extent its budget allows, provide modern, cost-efficient, and energy-efficient intercity rail passenger transportation between crowded urban areas and in other areas of the United States.” 49 U.S.C. § 24101(a). Entrusted with this Congressional mandate to provide intercity and commuter passenger rail service across the United States, and as the lawful owner of Chicago Union Station, Amtrak must have the ability to manage, oversee, and coordinate service and operations at its Station. To that end, Amtrak seeks clear rights and responsibilities to be delineated in the future access agreement (the “New Agreement”).

**B. The Board Should Reject Metra’s Proposed Terms in Favor of Amtrak’s.**

**1. Dwell Time and Storage Time**

On the standards governing the presence of Metra equipment at Chicago Union Station other than during boarding or detraining. Metra has proposed the following language:

Metra shall not store any equipment in CUS during overnight hours except for one “protect” locomotive and one consist. **Metra may request in writing a temporary right for additional equipment overnight at CUS which will be evaluated by Amtrak and permitted unless it materially interferes with Amtrak intercity service. Metra trains shall not dwell at CUS in such a manner as to interfere with Amtrak service.**<sup>4</sup>

Metra Initial Supplemental Brief (“Metra Supp. Br.”) at 8 (emphasis added).

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<sup>4</sup> Amtrak proposed the following language:

**(Metra Equipment) Section 2.1.4.1:** Metra shall have a limited right to store any Unit of Equipment at CUS, and shall not exceed the following limitations:

- Metra shall not store any equipment in CUS during overnight hours except for one protect locomotive. Metra may provide a written request for temporary right for additional overnight storage.
- Metra trains may dwell at platforms for boarding, detraining and other turnaround servicing as described in Section 2.1.4 above, for the following periods:
  - Weekday (Peak Hours): No more than 10 minutes.
  - Weekday (Off-Peak): No more than 1 hour.
  - Weekends/Holidays: No more than 5 hours.

Liberal allowing Metra to dwell and store its equipment overnight at Chicago Union Station would interfere not only with Amtrak's intercity service, but also with Amtrak's operations, maintenance, capital investment, and planned capital projects. While Amtrak would certainly consider any requests by Metra, as the owner of the Station, Amtrak must retain the ability to determine who can dwell at the Station, for how long, and under what circumstances.

The same is true for overnight storage of locomotives and equipment. The proposed phrase "interferes with Amtrak intercity service" is vague and ambiguous and would lead to disputes. It is also far too limited, and to the extent any constraints are placed on Amtrak's ability to control the use of its own property, any language must, at a minimum, account for potential interference with Amtrak operations, maintenance, capital investment, and planned capital projects.

Metra is asking the Board to grant it a right to store equipment on Amtrak's property. But Metra owns and operates its own storage yards in Chicago. Chicago Union Station is not one of them. Metra should not be permitted to store its equipment on Amtrak property absent Amtrak's express agreement.

## 2. Scheduling

On the procedure and standards governing changes to Metra's train schedules, Metra has proposed the following:

To the extent necessary to avoid conflicts with Amtrak's existing or future scheduled rail passenger service, Metra shall revise its operating schedule upon sixty (60) days written notice to [sic] Metra.<sup>5</sup> **However, in no event shall the daily overall number of Metra trains be reduced nor shall the morning and evening peak period operating schedules be revised without Metra consent.**

Metra Supp. Br. at 10 (emphasis added).

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<sup>5</sup> Amtrak presumes "Metra" is a typographical error.

Requiring Metra's consent for scheduling changes would be a departure from the status quo. Amtrak agrees that it will not unnecessarily change the schedule of its operations in a way that requires a change in the schedule of a Metra commuter train without first considering reasonable alternatives to such a change. Amtrak further agrees that it will reasonably and promptly communicate with Metra regarding scheduling changes, as described in its proposed language for this section. However, Metra's novel proposal to require Metra's consent as a prerequisite to reducing the overall number of trains or revising the morning and evening peak period operating schedules is not feasible. As the owner of the Station, Amtrak must have the ability to control and coordinate the train schedules.

### **3. Service Levels**

On the procedure and standards under which Metra may request the right to increase the number of trains it operates to and from Chicago Union Station beyond what the parties have agreed to as the "Standard Schedule," Metra has proposed the following language:

If Metra desires to increase the number of trains it would operate beyond that permitted by the Standard Schedule, Metra will provide Amtrak with a written request of the same, and will include with that request a proposed service schedule accounting for the increase. Metra shall be permitted to increase its daily train movements by 5% over the Standard Schedule. Amtrak shall provide a written response to each Metra request to increase traffic above the Standard Schedule within sixty (60) days. Any request to increase Metra's traffic shall be deemed approved if Amtrak fails to provide such written response. **If Metra requests an increase in train movements over the 5% threshold, then, at Amtrak's request, Metra shall undertake standard RTC traffic modeling based upon existing Amtrak traffic levels and reasonable 5-year forecasts of Amtrak's future CUS traffic levels as set forth in Amtrak's five-year operations plan. Metra shall be responsible for the costs of RTC traffic modeling. Amtrak shall be entitled to review the data, model, and RTC modeling results. Amtrak shall grant requests to increase Metra's traffic if RTC modeling indicates no material interference with Amtrak current and 5-year forecasted traffic.** Requests supported by RTC modeling will be deemed granted within thirty (30) days of Metra's presentation of an RTC modeling report if Amtrak fails to provide a written response.

Metra Supp. Br. at 11 (emphasis added).<sup>6</sup>

Metra's proposal suffers from two flaws. First, while Metra's proposal states that Amtrak can respond to any request by Metra to increase traffic above the Standard Schedule, it expressly states that Metra "shall be permitted to increase its daily train movements by 5% over the Standard Schedule." At the Standard Schedule level of traffic, Chicago Union Station is already operating at capacity during peak travel periods. (See First Moritz Verified Statement, ¶¶ 10-11.) Yet Metra demands the right to *unilaterally* increase its number of train movements by up to five percent in a capacity-constrained Station. This is wholly inconsistent with the fact that Amtrak, not Metra, owns Chicago Union Station. It is also inconsistent with 49 U.S.C., § 24903, which says that the Board shall order the transportation to "continue," not to increase.

Second, for increases greater than five percent, Metra seeks to delegate decision-making regarding service levels to algorithmic modeling. This, again, presents a departure from the status quo. While the use of modeling is not objectionable *per se*, a model is only as useful as the data that is put into the model. Modeling cannot take the place of reasoned human judgment, and Metra cannot be the sole party directing such modeling. Indeed, parties may have different interpretations of how RTC modeling is used. See, e.g., *AEP Texas N. Co. v. BNSF Railway Co.*, No. 41191 (SUB 1), 2006 WL 681228, at \*1 (Mar. 15, 2006) ("While both parties have relied upon the Rail Traffic Controller (RTC) model to simulate the operation of the SARR, each has submitted an

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<sup>6</sup> Amtrak proposed the following language:

**(Planning and Service Level Changes) Section 4.2.1:** If Metra desires to expand the number of trains above that permitted in the Standard Schedule, it must provide a written request for such expansion to Amtrak at least 30 days before the proposed introduction of such additional service, and demonstrate that the request is compliant with the service levels included in the most recent joint planning effort. Permanent changes to the Standard Schedule shall require an amendment to this Agreement.

RTC model simulation that reflects different views of how the SARR would provide service for its traffic group.”). Ultimately, Amtrak must have the ability to control and coordinate service levels at Chicago Union Station. Moreover, the parties must engage in long-term planning to address capacity constraints and future growth, and should not be beholden to ad hoc requests that have long-term impacts on Amtrak’s future ability to expand service, as proposed by Metra here.

#### **4. Terms of Dispatching Feed**

On the features of any Dispatching Feed provided to Metra, the terms under which the Dispatching Feed is provided, and the compensation for the Dispatching Feed, Metra has proposed the following language:

Amtrak shall provide to Metra real-time access **with play-back capacity** to view the movement of Metra Commuter Rail Service operations in and out of CUS from the “glass house” locations established at the track level adjacent to tracks 4 and 19. Train data from the Amtrak CUS Dispatching Operations Center shall also be made available to be fed directly to two off-site laptops assigned to Metra authorized personnel (glass house monitors and laptops collectively the “Dispatching Feed”). Metra recognizes that Dispatching Feed system outages may occur due to planned or unplanned work at CUS. Where feasible, Amtrak will endeavor to communicate to Metra in advance of any potential activities that may impact the Dispatching Feed. Section 12.6 compensation includes the Dispatching Feed, Amtrak-provided equipment exclusively used by Metra, repair, replacement, licenses, software upgrades, cabling, and installation.

Metra Supp. Br. at 13 (emphasis added).<sup>7</sup>

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<sup>7</sup> Amtrak proposed the following language:

**Section 6.3. Dispatching Feed:** Amtrak shall provide to Metra real-time access to view the movement of Metra Commuter Rail Service operations in and out of CUS from the “glass house” locations established at the track level adjacent to tracks 4 and 19. Train data from the Amtrak CUS Dispatch Operations Center shall also be made available to be fed directly to two off-site laptops assigned to Metra authorized personnel (“Dispatching Feed”). Metra recognizes that Dispatching Feed system outages may occur due to planned or unplanned work at CUS. Where feasible, Amtrak will endeavor to communicate to Metra in advance of any potential activities that may impact the Dispatching Feed. Section 12.6 compensation includes the Dispatching Feed, Amtrak-provided equipment exclusively used by Metra, repair, replacement, licenses, software upgrades, cabling, and installation.

The only difference between the parties involves the highlighted language concerning playback capacity. As an initial matter, Amtrak did not “change the dispatching feed arrangement to preclude Metra from using the play back function.” *Id.* at 12. (See Third O’Mara Verified Statement, ¶ 7.) While Metra has been able to access the Amtrak CUS Dispatch Operations Center to view the movement of Metra Commuter Rail Service in real-time, the parties’ existing agreement does not provide Metra with the unfettered ability to *play back* any video footage of the Station at any time. Providing Metra with this additional service would go beyond the status quo and present additional costs and burden to Amtrak. Metra’s contention that paying Amtrak for “access to playback” is duplicative is also incorrect and disingenuous. Rather, as both Amtrak’s and Metra’s proposals state, the fee is for the “Dispatching Feed, Amtrak-provided equipment exclusively used by Metra, repair, replacement, licenses, software upgrades, cabling, and installation.” The \$500 monthly fee proposed by Amtrak does not include access to playback.

## **5. Dispute Resolution**

In its initial supplemental brief, Metra states that it will accept Amtrak’s Section 18 (dispute resolution – Supp. Issue 14) as set forth in the June 2019 Access Agreement. See Metra Supp. Br. at 17. However, Metra only “accepted” Amtrak’s original proposal 20 months after it was originally made, weeks after the nine mediation sessions, and only after the issue was listed as disputed on the Parties’ joint submission to the Board. Amtrak is not bound by a proposal that Metra rejected and that Amtrak determined is insufficient.<sup>8</sup> In particular, Amtrak’s current

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**Section 12.6. Dispatching Feed:** Dispatching Feed. Metra shall pay Amtrak \$500 per month for access to the Dispatching Feed referred to in Section 6.3 above. The amount referred to in this Section 12.6 will be subject to annual indexing as set forth in Section 12.10.1 below.

<sup>8</sup> While the initial dispute resolution proposal was part of Amtrak’s June 2019 Proposal, there was little or no discussion of this term until the mediation. At that point, Amtrak recognized that it needed to change its proposal regarding arbitration, which it did in its Supplemental Initial Brief.

proposed language provides that all disputes arising under or related to the access agreement are subject to mandatory arbitration under Section 18, and adopts the rules of JAMS, rather than the American Arbitration Association. Additionally, the current proposed language assigns questions of compliance with law and preemption to federal courts rather than the arbitrator, providing that “any question or issue regarding whether either Party is in compliance with any applicable federal, state, local or other law or whether any state, local or other law is preempted by federal law shall not be addressed in arbitration or by any arbitrator, but instead is subject to the exclusive jurisdiction of the federal courts.” This carve out is important to ensure uniformity across Amtrak’s nationwide system and to allow federal appellate court review of compliance and preemption decisions, something which is severely limited in arbitration. Accordingly, Amtrak maintains its position as stated in its supplemental initial brief.

## **6. Audit**

On the procedure for, and scope of, any financial audit conducted by Metra of Amtrak Chicago Union Station operations and services, Metra has proposed (in part) the following language:

Metra will have the right, at Metra’s expense, to inspect, examine, and audit all financial books, records, and accounts of Amtrak which support the actual variable and fixed costs billed under this Agreement. **Amtrak will retain all such books, records, and accounts for a period of five (5) years following the end of each Contract Year of this Agreement.**

Metra Supp. Br. at 16 (emphasis added).<sup>9</sup>

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<sup>9</sup> Amtrak proposed the following language:

**Section 23.1. Audit:** Metra will have the right, at Metra’s expense, to inspect, examine, and audit all financial books, records, and accounts of Amtrak which support the actual variable costs billed under this Agreement. Fixed payment amounts are not subject to audit, with the exception of the application of the [Reserved for Board decision] Index as set forth in Section 12.10 to such fixed payment amounts. Amtrak will retain all such books, records, and accounts for a period of three (3) years following the end of each Contract Year of this Agreement. This right to inspect, examine, and audit shall extend to auditors of FTA and any other government agencies requiring access to Amtrak records relating to the services provided by Amtrak in support of Metra’s access

Metra's proposed extension of Amtrak's records retention from three to five years is neither consistent with applicable federal regulations, nor with Amtrak's internal records-retention policy. The Board's regulation, 49 C.F.R. § 1220.6, provides a schedule showing various periods that designated records must be preserved. Pursuant to 49 C.F.R. § 1220.6(C), financial and accounting documents—such as ledgers, journals, and cash books—are required to be retained for three years, or until discontinuance of use plus three years.

Amtrak has tailored its policy to the Board's regulation. Amtrak's records-retention policy for commuter rail services records<sup>10</sup> requires retention of such records for three years. (See Amtrak Record Retention Policy, attached as Exhibit A to Waskom Verified Statement.) In its proposal, Metra requests that Amtrak retain and store certain cost data for *five* years in order for Metra to comply with its FTA audit obligations—requiring a system-wide policy change that benefits only Metra.

There is nothing under the parties' current agreement that binds Amtrak to Metra's preferred records-retention policy. Moreover, there is little reason to write a costly and burdensome extension into a new agreement that would apply to a limited part of Amtrak's business, either creating confusion and difficulty or requiring Amtrak to change its records-retention policy across the board. Amtrak's current records-retention policy is perfectly adequate

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to CUS under this Agreement, when requested by the Administration. Once an audit has been completed by Metra, a letter shall be sent to Amtrak setting forth the results of the audit. Items to which Metra does not take exception will be considered closed for the period unless Amtrak indicates in writing within ninety (90) days of the receipt of Metra's letter that certain cost items may be subject to future retroactive settlement(s) or adjustment(s). In this case, any items identified by Amtrak related to unionized labor agreements to be ratified shall be held open until the actual settlement(s) or adjustment(s) occurs, and such Amtrak claims for retroactive unionized labor agreement settlements or adjustments shall survive termination of this Agreement.

<sup>10</sup> The relevant section of the records-retention policy is Operations Record Code – OP101-3. This policy was adopted Sept. 23, 2010 and updated September 13, 2019.

and appropriate, and Metra provides no reason why the Board should adopt terms that would change the policy.

## **7. Assignability**

In its initial supplemental brief, Metra states that it will accept Amtrak's Section 25 (assignability – Supp. Issue 16) as set forth in the June 2019 Access Agreement. See Metra Supp. Br. at 17. Once again, Metra has waited too long and “accepted” a proposal that no longer existed.<sup>11</sup> Amtrak's current proposed language does not restrict Amtrak from assigning its rights and interests in the agreement. Metra seeks the right to prohibit Amtrak from selling its own property. A contractual requirement to that effect would be neither fair nor reasonable. The decision whether to sell or transfer its property must be *Amtrak's* (subject to any regulatory requirements), however remote this possibility might be.

## **8. Service Disruption Plan**

On the ways in which the parties handle service disruptions, Metra has proposed the following language:

Where the negligent act or omission of a party results in the implementation of the Service Disruption Plan, the other party may recover as liquidated damages for (i) delayed trains, one-half of; and (ii) cancelled trains, the whole of; each Pro Rata Fare effected by the Service Disruption. The Pro Rata Fare is calculated as the proportion of air-line miles to be travelled within the Chicago Metropolitan Region

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<sup>11</sup> The prior proposed language stated: “This Agreement may not be assigned by Amtrak or Metra without the express written consent of the other Party.” Amtrak's current proposed language is: “**Section 25. Assignment:** Metra may not assign or transfer this Agreement in whole or in part without the prior written consent of Amtrak, which may not be unreasonably withheld or conditioned. Notwithstanding the preceding sentence, any action by a governmental entity having authority over Metra to assign Metra's rights and interests in this Agreement to another public transportation agency is permitted provided that Metra notifies Amtrak in writing at least 60 days in advance of any such proposed assignment. No authorized assignment of Metra's interests shall amend this Agreement unless Amtrak expressly agrees to such amendment in writing. Any authorized assignee shall have the same rights and obligations of the party assigning its interests under this Agreement.”

(as defined under 70 ILCS 3615/1.03) relative to the air-line miles between the origin and destination for the relevant fare.

Metra Supp. Br. at 15. Metra's proposal is incomprehensible—Amtrak does not understand Metra's proposed "Pro Rata Fare," including its inputs and how it is calculated. Metra does not explain its seemingly novel concept of calculating a "Pro Rata Fare" based upon the proportion of "air-line miles" to be travelled within the Chicago Metropolitan Region relative to the "air-line miles" between the origin and destination for the relevant fare.

The Board should not adopt and impose a novel provision that has no cognate in the 1984 Agreement—or any other contract Amtrak has. Metra never proposed this language in discovery, so Amtrak never had an opportunity to inquire as to what it means.

Moreover, the provision is unnecessary. Metra complains of a specific incident at Chicago Union Station, and claims that incident is justification for this provision. But Metra never actually says that this provision would have applied to that incident. Nor does Metra inform the Board or Amtrak what its liquidated damages would have been if the provision had applied to that incident, or how those liquidated damages compare to Metra's *actual* purported damages caused by that incident. For an extraordinary provision, Metra has not provided even an ordinary amount of information. Metra's proposal should be rejected.

### **III. CONCLUSION**

For the foregoing reasons, the Board should adopt Amtrak's proposed contractual language on the above supplemental issues.

Dated: February 19, 2021

Respectfully submitted,

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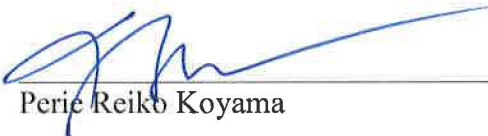
*Counsel for the National Railroad Passenger  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, February 19, 2021, caused copies of the foregoing to  
be served by electronic mail on:

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**THIRD VERIFIED STATEMENT OF PAUL O'MARA**

Date: February 19, 2021

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**VERIFIED STATEMENT OF PAUL O'MARA**

I, Paul O'Mara, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the State of Illinois, over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation ("Amtrak"). I have been an employee of Amtrak since 1986. My current job title is Assistant Vice President, Transportation – Central Northwest Division.

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. The purpose of this verified statement is to provide facts and analysis in support of Amtrak's supplemental reply brief regarding proposed terms for a new agreement between Amtrak and Metra (the "New Agreement").

5. Amtrak is responsible for providing dispatching services at Chicago Union Station.

6. Amtrak performs its dispatching function from the CUS Dispatch Operations Center. Within the Dispatch Operations Center, Amtrak personnel analyze current track states via computer feed (the "Dispatching Feed").

7. Contrary to Metra's assertions in its initial supplemental brief, Amtrak did not "change the dispatching feed arrangement to preclude Metra from using the play back function." Metra has never been able to access or use the playback capability of the Dispatching Feed at Chicago Union Station.

**VERIFICATION**

I, Paul O'Mara, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on February 19, 2021 in Chicago, Illinois.

  
\_\_\_\_\_  
Paul O'Mara

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, February 19, 2021, caused a copy of the foregoing to be served by electronic mail on:

Thomas J. Litwiler  
Robert A. Wimbish  
Thomas J. Healey  
Bradon J. Smith  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
tlitwiler@fletcher-sippel.com  
rwimbish@fletcher-sippel.com  
thealey@fletcher-sippel.com  
bsmith@fletcher-sippel.com

*Counsel for Metra*

  
\_\_\_\_\_  
Perie Reiko Koyama

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**STB Docket No. FD 36332**

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

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**VERIFIED STATEMENT OF THOMAS R. WASKOM**

Date: February 19, 2021

Thomas R. Waskom  
Hunton Andrews Kurth LLP  
951 East Byrd Street  
Richmond, Virginia 23219

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**STB Docket No. FD 36332**

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

---

**VERIFIED STATEMENT OF THOMAS R. WASKOM**

I, Thomas R. Waskom, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the Commonwealth of Virginia, over the age of 18, and competent to make this verified statement.

2. I am a partner in the law firm Hunton Andrews Kurth LLP and counsel of record for Petitioner National Railroad Passenger Corporation (“Amtrak”) in this matter.

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. Attached as **Exhibit A** is a true and correct copy of excerpts of Amtrak’s Records Retention Policy.

**VERIFICATION**

I, Thomas R. Waskom, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on 19th of February, 2021 in Richmond, Virginia.



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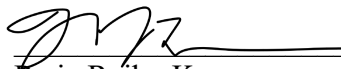
Thomas R. Waskom

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, February 19, 2021, caused a copy of the foregoing to  
be served by electronic mail on:

Thomas J. Litwiler  
Robert A. Wimbish  
Thomas J. Healey  
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Fletcher & Sippel LLC  
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thealey@fletcher-sippel.com  
bsmith@fletcher-sippel.com

*Counsel for Metra*

  
\_\_\_\_\_  
Perie Reiko Koyama

# **Exhibit A**

## Operations

| Record Code | Description                                                                                                   | Retention Period              | Event                                                         | Crosswalk                                                                                                                          | Statutory Reference |
|-------------|---------------------------------------------------------------------------------------------------------------|-------------------------------|---------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| OP100-3     | Motor Vehicle Records<br>- Routine Records re Daily Use                                                       | 3 Years                       | Date of Report                                                | CN127(a)                                                                                                                           |                     |
| OP100-7     | Motor Vehicle Records<br>- Automotive & Work Equipment Data Files                                             | 7 Years                       |                                                               | CN127(b)                                                                                                                           |                     |
| OP101-3     | Commuter Rail Services                                                                                        | 3 Years                       | Expiration of Operating Agmt and<br>Final Payment of Invoices | CS104                                                                                                                              | 49 CFR 1220.6       |
| OP102-3     | Food and Beverage (Other than sales) <sup>1</sup>                                                             | 3 Years                       |                                                               | CS114, CS113,<br>CS111(1)                                                                                                          |                     |
| OP103-7     | Crew Management <sup>1</sup>                                                                                  | 7 Years                       |                                                               | CS120(5), CS122(5),<br>CS123(5), CS126(5),<br>CS117(3), CS115(2),<br>CS129(2), CS124(1),<br>RSC107(5), TRN108(3),<br>CS119(6 mos.) |                     |
| OP104-7     | Project Files<br>- Labor Reports                                                                              | 7 Years                       |                                                               | FIN202                                                                                                                             |                     |
| OP104-10    | Project Files (including project-related photographs and labor clearances)                                    | 10 Years                      | Project Completion or Final<br>Payment to Contractor          | ENG100, ENG145(b),<br>ENG150(c)(5),<br>FIN186(7), FIN205(7),<br>MEC122(6), ENG105(e),<br>FIN200(3), FIN204(3),<br>ENG157, ENG169   |                     |
| OP104-65    | Project Files<br>- Historic Structures (National Register of Historic Places)                                 | 65 Years                      |                                                               | ENG151                                                                                                                             |                     |
| OP105-3     | Reports<br>- Track Inspections <sup>2</sup><br>- Labor Productivity<br>- Test/Inspection Reports <sup>2</sup> | 3 Years<br>3 Years<br>3 Years | Inspection/Remedial Action                                    | ENG103(2)<br>TRN107<br>ENG115(b)                                                                                                   |                     |

<sup>1</sup>Refer to Policy No. 8.10.1 for instructions regarding retention of credit card numbers

<sup>2</sup>Refer to Record Code COM101-65 for records relating to possible environmental risks