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April 20, 2021

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W., Room 1034
Washington, DC 20423-0001

Re: **FD 36332**
National Railroad Passenger Corporation —
Petition for Proceedings under 49 U.S.C. § 24903(c)(2)

Metra Response to Amtrak January 29, 2021 Surreply

Dear Ms. Brown:

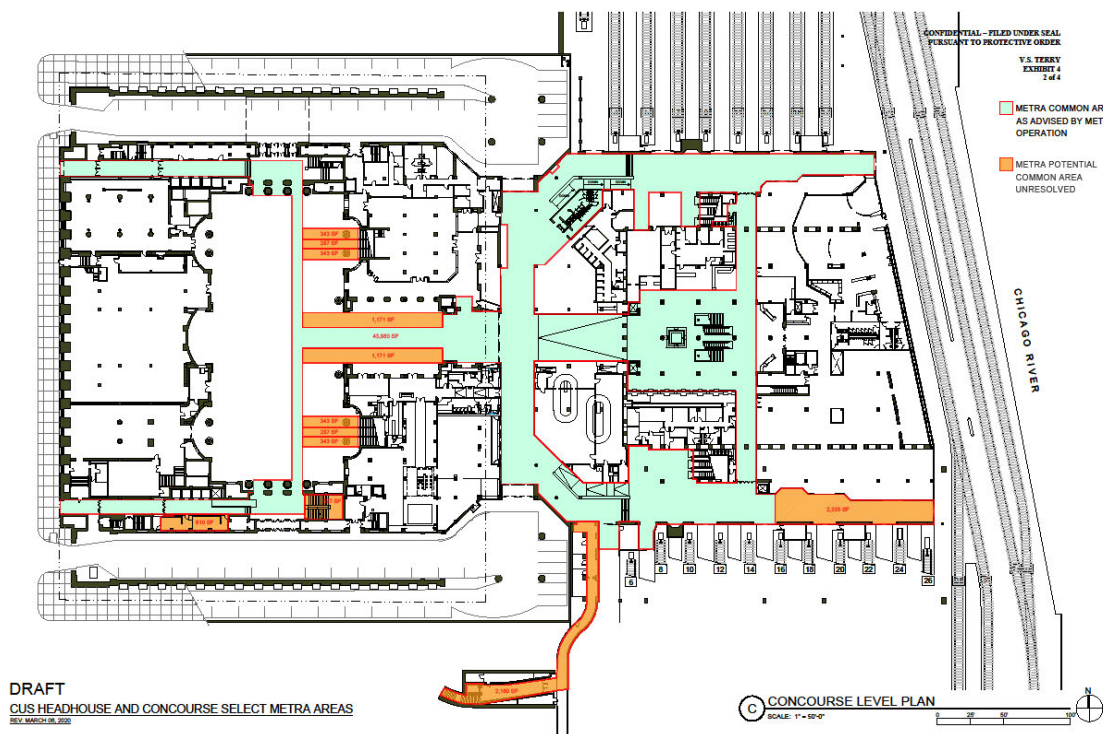
Pursuant to the Board's decision served April 13, 2021, the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority (collectively, "Metra") hereby respond to the January 29, 2021 Surreply of the National Railroad Passenger Corporation ("Amtrak") in this proceeding.

Amtrak's Surreply claims Metra has unfairly assailed Amtrak's position that Metra is the majority user of the Great Hall Concourse at Chicago Union Station ("CUS"), and the circumstances of when and how Amtrak staked its position on the issue. Specifically, Amtrak denies that it (1) ignored its own evidence and (2) changed its mind on how the Great Hall (however defined) should be allocated.

But that is exactly what happened:

- In June 2019, Amtrak gave Metra a draft agreement for the use of CUS. Metra Opening Statement, V.S. Byrd, Exhibit 5 (the "Proposed Agreement").
- The Proposed Agreement provided: "Fifteen (15%) of the common costs associated with the Great Hall are allocated to Metra." Proposed Agreement, Ex. D, § A(1)(e). The Great Hall was not defined.

- In July 2019, Amtrak told the Board it will “present its Proposed Agreement to the Board, and ask the Board to adopt the terms of that Proposal” Amtrak Petition at 6-7.
- Now, however, Amtrak claims that the statement in its Petition incorporating the Proposed Agreement terms was only a “pre-suit” offer. Amtrak Surreply at 3.
- In February 2020, Amtrak responded to a Metra interrogatory on space allocation by referring to a January 2020 joint walkthrough with Metra, and stating that an “agreement was reached as to specific areas of Chicago Union Station.” Metra Opening Statement, V.S. Terry, Exhibit 5 (Verified Interrogatory Answer No. 99).
- In March 2020, Amtrak sent Metra floor plans representing the specific areas of agreement referenced in Verified Interrogatory Answer No. 99. V.S. Terry, Exhibit 3, at 1 (“Attached are the updated floor plans based on your discussions with [Amtrak personnel]”).
- The floor plans (the “Consensus Floor Plans”) had (1) green-shaded areas indicating specific areas the Parties agreed were common usage through the entirety of the Great Hall Concourse and (2) orange-shaded areas marking specific areas the Parties agreed remained the subject of dispute. V.S. Terry, Exhibit 4.



CONSENSUS FLOOR PLAN – CONCOURSE LEVEL

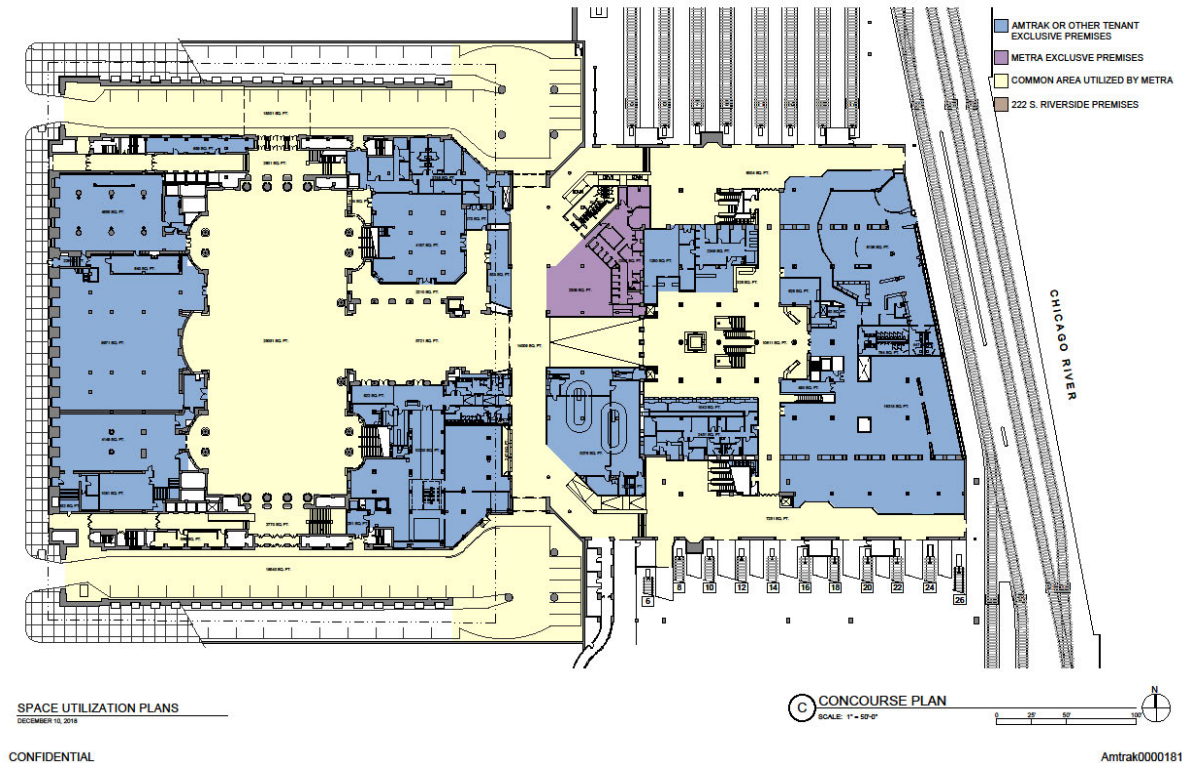
- The green-shaded areas of agreement in the Great Hall Concourse total 11,092 square feet. Metra Reply at 25. The orange-shaded areas remaining in dispute in the Great Hall Concourse total 5,425 square feet. V.S. Terry at 6-8 (total of Items 1-5) and Exhibit 4, at 2.
- No area in the Great Hall Concourse was designated as Metra-exclusive. Thus, *according to Amtrak*, the parties had reached agreement that the Great Hall Concourse common area was between 11,092 and 16,517 of the Great Hall Concourse's 120,040 total square footage.
- Multiplied by the agreed-to usage factor of 83%, the Parties agreed-allocation of the Great Hall Concourse results in a Metra share of between 7.7% and 11.4% of expenses for that space.¹
- Amtrak had determined in April 2019 that Metra passengers used the Great Hall Concourse level at a rate of [REDACTED] based on its own study of passenger movements through the building. V.S. Terry, Exhibit 1, at 3 ("Amtrak Dwell Time Study")
[REDACTED]
- Notwithstanding all of this, Amtrak argued in its Opening Statement that the Great Hall Concourse area should be allocated in a manner that rendered Metra responsible for 54% of expenses for that space.² See Amtrak Opening Statement, V.S. Miller, Exhibit 16, Document 181 (reprinted on following page).
- Amtrak made this divergent assertion in a single sentence in a footnote³ and purported to support it with a verified statement from the same person who sponsored the Consensus Floor Plans.⁴

¹ [11,092/120,040][.83] or [16,517/120,040][.83].

² Amtrak allocated nearly 77,653 square feet as "common" to itself and Metra. Compare V.S. Miller, Exhibit 16, Document 181 (subtracting the values of blue shaded areas in Great Hall Concourse, west of Canal Street (located above the vertical area where the figure 14,009 sits)) with V.S. Miller, Exhibit 14, Document 8176 (identifying 120,040 total square footage in what Amtrak refers to as the "Headhouse Concourse"). 77,653/120,040 multiplied by the agreed-to usage factor of 83% yields [REDACTED].

³ Amtrak Opening Statement at 26, n.12.

⁴ Amtrak Opening Statement, V.S. Suchy, ¶ 19.



AMTRAK FLOOR PLAN – CONCOURSE LEVEL

Based on Amtrak's: (1) Proposed Agreement; (2) Petition; (3) Verified Interrogatory Answer No. 99; (4) Consensus Floor Plans; (5) Dwell Time Study; (6) spreadsheet identified as Document 5990; (7) verified statement contradicting #4; and (8) rote exclusion of the basement from spatial allocation, Metra's Reply urged the Board to reject Amtrak's calculations for their lack of credibility.

Faced with this, Amtrak spends several pages in its Surreply attempting to address what it had glossed over in a single sentence in a single footnote in its case-in-chief. Amtrak now explicitly concedes that the effect of its abrupt about-face was to summarily shift at least [REDACTED] in expenses to Metra. Amtrak Surreply at 3 ("Thus, the actual shift in costs is about [REDACTED]). Amtrak goes on to argue that Metra's Reply and Errata rely on miscalculations, and mischaracterizes 1 of 8 pieces of evidence (Document 5990) in a feeble effort to rebut Metra's critique.⁵

⁵ Amtrak suggests that Document 5990 is the principal basis for Metra's criticism of Amtrak's spatial allocation. But what Metra actually said is that Document 5990 "reveals the emerging recognition that the Great Hall is of limited utility and benefit to Metra, and predominantly serves Amtrak users." Metra Reply at 27 (emphasis supplied). Metra never relied on the

But Metra's correction of an arithmetic error does not repair Amtrak's credibility, nor does it do any violence to Metra's own case. Rather, the Errata sought to correct an arithmetic error Amtrak pointed out in Metra's portrayal of the *relative* value of Amtrak's change in positions on the Great Hall Concourse. The Errata resulted in an approximate \$800,000 reduction⁶ to the still multi-million dollar footnotes. Whatever the amount, Amtrak's designation of Metra as the majority user of the Great Hall Concourse remains contrary to Amtrak's own internal calculations and what Amtrak acknowledged as the Parties' agreement.

All that remains is why Amtrak believes its unexplained reversal "only" cost Metra \$600,000 in additional annual expense, while Metra believes the number is \$1.6 million. The answer is demonstrated by comparing the space shown as common areas in the Great Hall Concourse on the floor plans included on pages 2 and 4 above – in orange and green on the left side of the Consensus Floor Plan on page 2, and in yellow on the left side of the Amtrak floor plan on page 4. After accounting for what Amtrak sometimes designates as the Great Hall (the room in

document for spatial allocation. Only Amtrak – for the first time in its Surreply – contends Document 5990 is based on a spatial allocation (rather than the dollar calculations the Document recites). Document 5990 does not use spatial allocation – or any calculation at all. Metra Opening Statement, V.S. Crowley at 4-5 ("Amtrak document 'Amtrak0005990.xlsx' shows two (2) adjustments to the Amtrak Model amount. In the first adjustment, Amtrak identifies [REDACTED] of the total expenses in its Model allocated to Metra as being 'Common' expenses related to the 'Great Hall.' Amtrak does not show how that [REDACTED] was calculated. The [REDACTED] does not match the SOM expenses associated with the Great Hall included in Amtrak's Model [REDACTED] or the supporting expense item documentation [REDACTED]).

⁶ Amtrak's Surreply (at 2) claims "about 40,000 square feet" in the Great Hall Concourse as "exclusively Amtrak," the balance as "common." (According to Metra's review, the actual Amtrak-exclusive figure is 42,387 square feet; Amtrak does not provide calculations for its number, rendering its complaints about a lack of support in Metra's Errata rather hollow.) Compare V.S. Miller, Exhibit 16, Document 181 (values of blue shaded areas in Great Hall Concourse, west of Canal Street (located above the vertical area where the figure 14,009 sits)) with V.S. Miller, Exhibit 14, Document 8176 (identifying 120,040 total square footage in what Amtrak refers to as "Headhouse Concourse"). Metra's Reply and 2d.V.S. Crowley based its calculation on a mistaken inference that Amtrak had designated 120,040 square feet as common and calculated the difference in the parties' relative assertions as [REDACTED] square feet. Metra Reply, 2d.V.S. Crowley at 11. The value of that adjustment (attributable solely to Amtrak's Great Hall Concourse usage reversal) was originally [REDACTED], as identified throughout Metra's Reply. 2d.V.S. Crowley, Exhibit 6, Line 40 – Line 27. The Errata corrects this oversight making an arithmetic 32% adjustment to the mistaken allocation [REDACTED] multiplied by agreed-to usage factor of .83 = .32) resulting in a recalculated value of [REDACTED].

the middle), the vast majority of the remaining difference are the cab stands⁷ at the top and bottom of the floor plans. Amtrak blithely acknowledges in its Surreply that it has added these spaces to the shared common area. Amtrak Surreply at 2 (“Amtrak also proposed designating other spaces in the Concourse Level of the Headhouse Building totaling about 50,000 square feet – also yellow – as common benefit areas.”).

But look closely at the Consensus Floor Plan on page 2: these were *not* areas that the Parties agreed were common areas – or even spaces that the Parties acknowledged were subject to dispute. Amtrak’s own documents showing CUS space usage by function assign no specific function to these areas, whether public circulation or otherwise. V.S. Miller, Exhibit 15, Document 8172).⁸ Indeed, Amtrak has *blockaded* the southern cab stand from any access by the public – a feature clearly shown in Document 8172 (southwest [lower-left] corner) and, like the northern stand, has no passenger circulation. V.S. Byrd, Exhibit 1, at 62. Metra does not use these spaces, and there is simply no basis to include them as shared common areas allocable to Metra. Unlike the Great Hall (however defined), which was at least acknowledged in a footnote, Amtrak has *never* addressed why the cab stands should suddenly become common areas when the Parties’ Consensus Floor Plans plainly treated them otherwise.

None of this ponderous exercise relates to Metra’s presentation of its own calculations of how expenses at CUS should be allocated between the Parties. But it continues to raise significant questions about the credibility of Amtrak’s evidence.

I certify that a copy of this filing has been served by electronic mail on counsel for Amtrak.

Respectfully submitted,

/s/ *Thomas J. Litwiler*

Thomas J. Litwiler
Attorney for Metra

TJL:bjs

cc: Parties of record

⁷ Not to be confused with the currently-in use “Taxi Stand” referenced in Metra’s Opening Statement. See V.S. Terry at 6.

⁸ As Amtrak notes, V.S. Miller, Exhibit 15 – which recognizes there is no Metra use of the north/south blockaded cab stands – is a litmus test for credibility in that it was prepared “outside of litigation.” Amtrak Reply at 36. So also, of course, with the Consensus Floor Plans.