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April 30, 2021

Via E-Filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20006

Re: FD 36496
Application Of The National Railroad Passenger Corp. Under 49 U.S.C. §
24308(e) – CSX Transportation, Inc. And Norfolk Southern

Dear Ms. Brown:

Norfolk Southern Railway Company (NSR) submits this letter in response to the National Railway Passenger Corporation's (Amtrak) response in opposition to the motion to dismiss filed by NSR and CSX Transportation, Inc. (CSXT), which was filed with the Surface Transportation Board (STB) in the above referenced docket on April 26, 2021 (Amtrak Response). NSR believes this letter is necessary to clarify a glaring and misleading statement contained in Amtrak's response pleading.¹

In particular, Amtrak asserts that the Rail Traffic Controller (RTC) modeling study was funded by a grant from the FRA, and that NSR and CSXT failed to provide information required by the FRA as a condition of this grant. Amtrak Response at 10. The RTC agreement (including the Data Sharing Agreement) was signed by all the parties to this proceeding in January 2020, and data handling protocols and confidentiality were agreed to at that time. However, NSR

¹ The Board will grant leave to file replies to replies when it is in the interest of having a more complete record. Atlas Land And Building Corporation And Atlas Materials Recycling Corporation – Petition for Declaratory Order – Industry Spur Track In Pittsburgh, PA, FD 36380, 2020 STB LEXIS 379, *3, n. 4 (STB served Aug. 17, 2020). NSR therefore respectfully seeks leave to file this letter to correct the record.

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believes that sometime after January 2020, Amtrak, on its own initiative, obtained a grant from the Federal Railroad Administration (FRA) to finance this study. Without consulting with NSR, Amtrak apparently made certain assurances to the FRA and implied that NSR would provide the FRA with data. None of that is in conformance with the terms of the RTC Agreement or the Data Sharing Agreement, and FRA is not a party to either. Amtrak entered into its agreement with the FRA—*without the consent or approval of either NSR or CSXT*. And despite numerous requests for a copy of the Amtrak-FRA agreement and grant documents, Amtrak has never provided any to NSR. The implications by Amtrak that NSR has violated an agreement to which it was not a party is simply unfounded.

NSR respectfully submits that this obfuscation of the facts cannot go without comment and appreciates the willingness of the Board to consider this important clarification.

Sincerely,

/s/ William Mullins

William A. Mullins
Attorney for Norfolk Southern Railway Company

cc: Parties of Record