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March 30, 2022

VIA EMAIL

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

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ENTERED
Office of Proceedings
March 30, 2022
Part of
Public Record

Re: Objections to Exhibits Filed by Other Parties, STB Finance Docket No. 36496
*Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(e)—CSX
Transportation, Inc., and Norfolk Southern Railway Co.*

Dear Ms. Brown:

In the Surface Transportation Board's ("the Board's") March 1, 2022 decision in the above-captioned matter, the Board directed the parties, the National Railroad Passenger Corp. ("Amtrak"), CSX Transportation, Inc. ("CSX"), Norfolk Southern Railway Company ("NS"), and the Alabama State Port Authority ("ASPA") and its rail carrier division the Terminal Railway Alabama State Docks ("TASD," and together with ASPA, "the Port"), to submit "Objections to Exhibits/Visual Aids" by March 30, 2022 for the upcoming evidentiary hearing.

On March 28, 2022, the parties exchanged the exhibits and visual aids they intended to submit to the Board. On March 29, 2022, Amtrak sent objections to certain exhibits and visual aids to the other parties and requested an opportunity to meet and confer about the objections. The other parties declined the request to meet and confer.

As a result, Amtrak hereby submits the following objections to certain exhibits and visual aids submitted by CSX, NS, and the Port. These objections are submitted to ensure that the record is clear on Amtrak's position. To facilitate review, Amtrak has organized its objections categorically and (to the best of its ability) identified the exhibits that fall within each category.

- Drone Footage (CSXNS Exs. 1-60, 171, 288-291, 295). At the pre-hearing conference conducted on February 16, 2022, Chairman Oberman observed that drone footage of the Gulf Coast Line would assist the Board in its review and encouraged the parties to consider preparing a single neutral video. CSX and NS subsequently prepared their own drone footage, which was provided to Amtrak. After reviewing the footage, Amtrak indicated that it would not oppose admission of the footage, provided that the parties stipulate that (i) it was being offered at the request of the Board to allow Members of the Board to see the corridor; (ii) it was not offered to demonstrate the typical amount of traffic or capacity on the corridor; and (iii) it was not offered as a random or representative sample of

conditions on the corridor. That stipulation was rejected. Because Amtrak had no input in determining when or how the newly disclosed footage was prepared, and does not know whether any witness will be prepared to lay an appropriate foundation for the footage at the upcoming hearing, Amtrak requests that the Board admit the drone footage only for the limited purpose the Board requested.

- Photographs (CSXNS Exs. 151-155, 169, 268, 287, 292-94, 296-97; Port Exs. 2-9). For similar reasons, including a lack of adequate foundation, Amtrak objects to a series of newly disclosed photographs that appear to be derived from drone footage. Amtrak respectfully requests that the Board reserve judgment on the admissibility of those exhibits, which depends at least in part on the record developed at the hearing.
- Letters (CSXNS Exs. 172-266). CSX and NS have identified as exhibits a significant number of letters submitted by non-parties. Those letters, which were submitted only after Amtrak submitted its reply evidence in this proceeding, are hearsay. Accordingly, Amtrak respectfully requests the Board admit the letters only with a limiting instruction that the letters cannot be used to prove the truth of the matter asserted therein and only reflect the positions and stated beliefs of the non-party authors.
- Visual Aids (E.g., CSXNS Exs. 150, 156-166, 168-69, 267-283; Port Ex. 1). CSX, NS, and the Port have not clearly identified which of their exhibits are intended solely as visual aids and have ignored Amtrak's request that they do so. Although Amtrak does not object to the use of visual aids or demonstratives during the hearing, or to leaving visual aids that are used during testimony with the Board during its deliberations, Amtrak objects to the admission of any visual aid or demonstrative as evidence in the proceeding and respectfully reserves the right to object to the use of any visual aid that is derived from or depicts information not in the record. To the extent the listed items are offered as evidence, rather than visual aids, Amtrak objects to them because they were not timely disclosed during the earlier phases of this proceeding and such late disclosure prejudices Amtrak's ability to offer a response.

Sincerely,

/s/ Jessica Ring Amunson

Jessica Ring Amunson
Counsel for Amtrak

cc: All Parties of Record