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Office of Proceedings
September 30, 2024
Part of
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September 30, 2024

VIA E-FILINGCynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001Re: Norfolk Southern Railway Company – Trackage Rights Exemption – CSXT
Transportation, Inc., FD 36790 (Sub-No. 1)

Dear Ms. Brown:

Pursuant to 49 U.S.C. 10502(d) and 49 C.F.R. Part 1121, Norfolk Southern Railway Company (“NSR”), hereby files in the above-captioned proceeding a Petition for Partial Revocation of Trackage Rights Class Exemption related to a concurrently filed Notice of Exemption (“Notice”) to amend trackage rights NSR has over an approximately 95-mile rail line owned by CSXT Transportation, Inc. between Falls, PA at or near CP River, CSXT Milepost QA 2, and Baltimore, MD, including all necessary trackage within CSXT’s Bayview Yard and between the western end of CSXT’s Bayview Yard (MP BAL 0.0 ±) and a connection at MP BAL 0.5 ±.

If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by email: wmullins@mullinslawgroup.net.

Sincerely,

/s/ **William A. Mullins**William A. Mullins
Attorney for Norfolk Southern Railway CompanyFILED
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36790 (Sub-No. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY
– TRackage RIGHTS EXEMPTION –
CSXT TRANSPORTATION, INC.**

**PETITION FOR PARTIAL REVOCATION
OF TRackage RIGHTS CLASS EXEMPTION**

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***Counsel for Norfolk Southern
Railway Company***

Dated: September 30, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36790 (Sub-No. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY
– TRACKAGE RIGHTS EXEMPTION –
CSXT TRANSPORTATION, INC.**

**PETITION FOR PARTIAL REVOCATION
OF TRACKAGE RIGHTS CLASS EXEMPTION**

Pursuant to the requirements of 49 U.S.C. § 10502(d) and 49 C.F.R. Part 1121, Norfolk Southern Railway Company (“NSR”) petitions the Surface Transportation Board (the “Board”) for the partial revocation of the Board’s trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), as necessary to permit the trackage rights arrangement exempted in Docket No. FD 36790 to expire at the time agreed to by NSR and CSXT Transportation, Inc. (“CSXT”).

As described in the Notice of Exemption filed concurrently in Docket No. FD 36790. NSR and CSXT have agreed that NSR could re-route traffic over certain CSXT lines while CSXT’s Howard Street Tunnel in Baltimore, MD (the “HST”) is closed during the HST rebuild project (the “HST Project”). NSR will have overhead trackage rights over an approximately 95-mile CSXT rail line between Falls, PA at or near CP River, CSXT Milepost QA 2, and Baltimore, MD, including all necessary trackage within CSXT’s Bayview Yard and between the western end of CSXT’s Bayview Yard (MP BAL 0.0 ±) and a connection at MP BAL 0.5 ± (the “B&O Route”).

CSXT has agreed to grant NSR overhead trackage rights over the Lines for the duration of the HST Project, which NSR understands from CSXT is expected to take approximately two

years or more to complete. The overhead trackage rights will commence after the effective date of an exemption and upon completion of certain infrastructure improvements and qualification of crews, CSXT estimates this date to be approximately October __, 2024. Upon completion of the HST Project and the HST reopened, CSXT will again route traffic through the HST and NSR will no longer need to operate over the B&O Route to alleviate potential congestion. CSXT has agreed with NSR to terminate the overhead trackage rights on the Lines when the HST Project is complete and the HST is reopened.

To assure CSXT that NSR will be authorized to terminate use of the overhead trackage rights over the Lines once the HST Project is complete and the HST is reopened. NSR is filing this Petition well in advance of the completion of the HST Project.

While NSR and CSXT have expressly agreed that the overhead trackage rights will expire at that time, trackage rights authorized under the class exemption at 49 CFR 1180.2(d)(7), remain effective indefinitely, regardless of the duration agreed to by the parties.¹ Therefore, absent the partial revocation requested by this Petition, NSR would need to file separately for discontinuance authority in order to uphold the terms of the Agreement.

Under 49 U.S.C. § 10502(d), “[t]he Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of Section 10101 of this title.” By eliminating the need to file a second pleading seeking discontinuance when the arrangement expires by its terms, granting this Petition would promote the following

¹ See Wis. Dep’t of Transp.—Pet. for Declaratory Order—Rail Lines in Janesville, Rock Cnty., Wis., FD 36790 35301, slip op. at 4 n.7 (STB served Dec. 11, 2009); Union Pac. R.R. Co.—Trackage Rights Exemption—The Burlington N. & Santa Fe Ry. Co., FD 36790 33712 (Sub-No. 1) (STB served March 12, 1999).

rail transportation policy goals: minimizing the need for Federal regulatory control (49 U.S.C. § 10101(2)); ensuring the continuation of a sound rail transportation system to meet the public need (§ 10101(4)); ensuring coordination between rail carriers (§ 10101(5)); reducing regulatory barriers to entry into and exit from the industry (§ 10101(7)); and providing for the expeditious handling and resolution of this proceeding (§ 10101(15)). This approach has been accepted by the Board in recent proceedings. See, e.g., *Grainbelt Corp.--Trackage Rts. Exemption--BNSF Ry.*, FD 36790 36486 (Sub-No. 3) (STB served Apr. 6, 2022) (granting a petition to partially revoke a trackage rights exemption involving the Line at issue in this case); *BNSF Ry.--Trackage Rts. Exemption--Union Pac. R.R.*, FD 36790 36377 (Sub-No. 7) (STB served Mar. 2, 2023); *New Orleans Pub. Belt R.R.--Trackage Rts. Exemption--Ill. Cent. R.R.*, FD 36790 36198 (Sub-No. 1) (STB served June 20, 2018).

Furthermore, limiting the term of these trackage rights is consistent with the limited scope of the transaction in Finance Docket No. 37690. The partial revocation will have no adverse impact on shippers since NSR will reroute the overhead rail traffic from the B&O Route to routes using the HST. Finally, the Board and its predecessor have granted similar petitions for partial revocation to permit temporary trackage rights to expire.

The applicable labor protective conditions for the discontinuance of the trackage rights pursuant to this petition are those imposed in *Oregon Short Line Railroad Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

In conclusion, NSR respectfully requests the Board to partially revoke the trackage rights class exemption to the extent necessary to permit the trackage rights authorized in Docket No. FD 36790 to expire upon completion of the HST Project and reopening the HST tunnel.

NSR agrees to notify the Board once it has terminated the trackage rights.

Respectfully submitted,

/s/ William A. Mullins

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