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January 22, 2025

VIA ELECTRONIC FILINGMs. 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: *Complaint and Petition of the National Railroad Passenger Corp.
Under 49 U.S.C. § 24308(f)—For Substandard Performance of
Amtrak's Sunset Limited Trains 1 and 2, NOR 42175***

Reply Comments of Massachusetts Bay Transportation Authority

Massachusetts Bay Transportation Authority ("MBTA"), a division of the Massachusetts Department of Transportation and an agency of the Commonwealth of Massachusetts, hereby submits comments on the issue of "preference" nominally accorded to the National Passenger Railroad Corporation ("Amtrak") under 49 U.S.C. § 24308. MBTA's comments are offered in response to the invitation of the Surface Transportation Board (the "Board") in its order served on August 19, 2024 in the above-referenced docket. MBTA appreciates having been afforded this opportunity to share its views.

MBTA understands that 49 U.S.C. § 24308(c) does not address "preference" as between Amtrak trains and the trains of third-party commuter rail service providers such as MBTA. Further, MBTA reads Amtrak's opening statement discussion of "preference" as properly limited to the dynamics of Amtrak service relative to freight rail service to the exclusion of third-party commuter rail service. However, MBTA would remind all of the stakeholders and the Board that third-party commuter rail service providers are also consumers of railroad infrastructure capacity who must be accorded careful consideration in any Board decisions addressing the subject of train preference on railroad routes that, at a minimum, host third-party commuter operations and Amtrak trains.

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As background, MBTA is a railroad common carrier under the Board's Jurisdiction due to MBTA's ownership of certain federally-regulated lines of railroad.¹ As pertinent here, Amtrak dispatches trains over and maintains the MBTA-owned Attleboro Line (better known as the portion of the Northeast Corridor within the Commonwealth of Massachusetts), over which MBTA provides commuter rail service. Conversely, MBTA and CSX Transportation, Inc. are responsible for dispatching freight trains, Amtrak trains and MBTA commuter trains over the Commonwealth's Boston-Worcester and Boston-Haverhill rail corridors. As such, any Board holding on the concept of Amtrak train preference under Section 24308 could potentially affect MBTA's train dispatching practices.

The concept of Amtrak preference that the Board is exploring could, if not handled carefully, affect – indeed could disrupt unnecessarily – MBTA's and Amtrak's respective train dispatching protocols that long have balanced and equitably accommodated commuter and intercity passenger interests and priorities in the Commonwealth. For this reason especially, MBTA is cautious about what it believes would be an over-reading of Amtrak's opening statement as asserting an “absolute” preference for Amtrak trains over *all other* trains, including commuter trains. Amtrak Opening Statement, 68 and 74.

Amtrak's Opening Statement discussion of Section 24308 focuses extensively upon the statutory “preference” to be accorded to Amtrak's “intercity and commuter rail passenger transportation . . . over freight transportation” using the same railroad facilities. Accordingly, MBTA understands that Amtrak has intended to address preference *strictly in the context of Amtrak trains and freight trains* to the exclusion of third-party commuter train services (given Congressional silence on the issue of third-party commuter services in Section 24308). Furthermore, in the five instances where Amtrak's Opening Statement refers to commuter trains, each is merely a quote of Section 24308(c)'s passage about “commuter rail passenger transportation provided by or for Amtrak”. Amtrak nowhere addresses explicitly commuter rail service provided by entities such as MBTA, nor does it appear to MBTA that Amtrak intended *implicitly* to suggest that Section 24308 should be read more broadly than it is worded to accord Amtrak preference over all non-Amtrak trains, and not just freight trains.

¹ See, e.g., *Boston & Me. Corp.—Discontinuance of Service Exemption—In Middlesex Cty., Mass.*, AB-32 (Sub-No. 56X) (STB served Feb. 10, 1994).

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Similarly, MBTA observes that Amtrak's 19 Recommendations at the conclusion of its Opening Statement are specifically offered to address, rectify, and prevent against what Amtrak has alleged are intercity passenger train delays "attributable to UP's failure to provide preference to Amtrak over freight transportation." Amtrak Opening Statement, 114. Thus, if Amtrak is to be taken at face value, then its recommendations must be directed to – and exclusively to – circumstances where persuasive evidence may exist to indicate that a host carrier² may not be extending due "preference" to Amtrak over "freight transportation."

If, despite such proffered context, Amtrak means in its Opening Statement's 19 Recommendations indirectly to persuade the Board to hold host entities to an obligation to accord Amtrak trains priority under *any* circumstance – and not just in situations where dispatching and train operation decision-making pit Amtrak service needs against freight service needs – then Amtrak should be afforded an opportunity to make its expectation explicit, and to clarify how it expects that its recommendations would bear upon third-party commuter rail service. To be clear, MBTA believes that Amtrak has *not* argued that the Board should obligate host entities to according Amtrak trains priority where freight service conflicts do not exist or are not evident in the host's efforts to accommodate all passenger train services using a particular like segment. But if MBTA is mistaken, then Amtrak should so state, so that MBTA may in turn be afforded the opportunity to substantively revise its reply comments (as it would do).

MBTA is pleased to have developed over many years a constructive and largely successful working relationship with Amtrak that facilitates equitable

² On that note, Amtrak's definition of what it believes should constitute a "host railroad" is problematic in and of itself. There is not, for example, any segment of an Amtrak route for which "there could be more than one host railroad" (Amtrak Opening Statement, 15), and there never should be, "generally" (*id.*, 17) or otherwise. In the interest of brevity, MBTA will not further address the merits and issues with Amtrak's approach. Suffice to observe that other stakeholders reasonably have questioned Amtrak's Opening Statement position on the subject, and that Amtrak's position could have been significantly improved upon had Amtrak consulted with and reached reasonable accord on the issue with critical stakeholders such as the Commonwealth of Massachusetts and the various commuter agencies around the U.S. with which Amtrak has established constructive operating partnerships (including MBTA).

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and balanced accommodation of intercity and commuter passenger rail services with the Commonwealth, a relationship that reflects Massachusetts' strong commitment to Amtrak and to MBTA. Because of this longstanding working relationship, MBTA is confident that Amtrak intends *not* to invite any disruption by arguing to extend Section 24308's preference considerations to MBTA's commuter rail service. Nevertheless, it would have been helpful for the fostering of the MBTA-Amtrak relationship had Amtrak clearly and directly addressed whether, or to what extent, its responses to the Board's inquiries are directed to freight carriers and to freight rail service only, and to what extent (if at all) its Opening Statement and its 19 Recommendations are directed to third-party commuter passenger rail service providers such as MBTA and the passenger services that they provide.

Respectfully submitted,

/s/ *R. A. Wimbish*

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