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Via E-Filing

Mr. Patrick J. Fuchs, Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

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RE: Docket No NOR 42175, *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*

Dear Chairman Fuchs:

The *Rail Passengers Association*, also known as the National Association of Railroad Passengers, is the nation’s oldest and largest organization speaking for the nearly 40 million Americans who rely on passenger rail of all kinds every year.

The *Association* welcomes the opportunity to submit this non-party reply to the above-referenced docket based on the significant interest of our 127,000 members, donors, and supporters who travel on Amtrak and the millions of people who travel by rail every year in the United States.

Respectfully submitted,

Jim Mathews
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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42175

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

NON-PARTY REPLY OF THE RAIL PASSENGERS’ ASSOCIATION

January 22, 2025

I. INTRODUCTION

The *Rail Passengers' Association* submits this non-party reply to the above-referenced docket based on the significant interest of our 127,000 members, donors, and supporters who travel on Amtrak, as well as the fare-paying public which we represent. Recognizing that the Surface Transportation Board (“the Board”) is not required to invite such replies during this proceeding, our Association would like to express its appreciation to the Board for doing so in its August 19, 2024, Order and Decision. It is our belief that we are the only entity filing here as direct representatives of the thousands of people whose lives and work are routinely disrupted by the chronic delays described in the evidentiary record of this proceeding.

II. AMTRAK’S LONG-STANDING, EXPLICITLY CODIFIED RIGHT TO PREFERENCE OVER FREIGHT REFLECTS DECADES OF SUSTAINED CONGRESSIONAL INTENT

When it comes to ensuring the survival of U.S. passenger rail service, for many decades Congress has been neither silent nor vague. Congress sought assurances in 1971 from host railroad executives that the then-newly created Amtrak would enjoy the same preference that private railroads’ own passenger trains had expected previously.¹ Two years later, Congress explicitly created the preference right.² In 2008, Congress demanded detailed metrics and performance standards for passenger rail and gave the Board the statutory authority to assess compliance and impose remedies³, and in that same measure created and funded new grant programs to expand and improve passenger service. In 2015, Congress went even further, creating three major grant

¹ *Review and Refunding of Rail Passenger Service Act: Before the Subcomm. On Transp. and Aeronautics of the H. Comm. on Interstate and Foreign Commerce (“Hearings on H.R. 709 et al.”)*, 92d Cong. 1, H.R. Rep. 92-54, at 670 (Dec. 7, 1971) (Statement of John S. Reed, President, Santa Fe Railway)

² *Amtrak Improvement Act of 1973*, Pub. L. No. 93-146, § 10(2), 87 Stat. 548, 552

³ *Passenger Rail Investment and Improvement Act of 2008*, Pub. L. No. 110-432 (Oct. 16, 2008)

programs to expand and improve rail.⁴ And of course, in 2021 the *Infrastructure Investment and Jobs Act* provided historic investment in passenger rail, with support from Republicans and Democrats alike.⁵

The overriding principle at play is Amtrak’s long-standing and codified explicit right to preference over freight when operating its passenger trains on territory controlled by host railroads. Preference is a *quid pro quo* in exchange for the U.S. taxpayers’ 1970 rescue of the private railroads through absorbing the liabilities of common-carrier passenger service – an arrangement which continues to benefit host railroads financially today and every year that Amtrak operates. Despite Amtrak’s chronically poor on-time performance over many decades, mostly at the hands of host railroads, only a cynic would declare that Amtrak passengers buy their tickets fully expecting or even preferring to arrive many hours late. Our members, and the travelling public at large, pay their fares based upon a reasonable expectation that they will arrive at or close to their scheduled arrival time. Congress set out that expectation in the *Amtrak Improvement Act of 1973*, Pub. L. No. 93-146, § 10(2), 87 Stat. 548, 552. Significantly, during the past 50 years since passage, 25 successive Congresses have maintained that provision, reaffirming again and again that the travelling public should expect best efforts at on-time performance through Amtrak’s legal right to “preference over freight transportation in using a rail line, junction, or crossing” 49 U.S.C. § 24308(c).

In 2008, frustrated in its repeated attempts over many years to see its legislative intent realized, Congress wrote and passed the *Passenger Rail Investment and Improvement Act*, or PRIIA, “to promote the expansion and improvement of intercity passenger rail service,” S. Rep. No. 110-67, at 7 (2007), and to address concerns about “poor service, unreliability, and delays

⁴ *Fixing America’s Surface Transportation Act*, Pub. L. No. 114-94 (Dec. 4, 2015), §§ 11301-11303

⁵ *Infrastructure Investment and Jobs Act of 2021*, Pub. L. No. 117-58, Div. B

resulting from freight traffic congestion.” *Ass’n of American Railroads*, 575 U.S. at 47. In PRIIA, Congress directed that new regulations be put in place to address that problem, explicitly granting the Board the authority to investigate whether preference violations occurred, whether those violations could be avoided or corrected by the host railroad, and how to remedy those violations if they’re found.

The Board was unable to fully vindicate these rights until the Federal Railroad Administration could develop and implement the “metrics and standards” for passenger rail that Congress asked the agency to develop – and that didn’t happen until the end of 2020⁶. This is because the freight rail industry fought ferociously all the way to the Supreme Court to block regulators from measuring whether and how well host railroads were following congressional direction and intent. The freight railroads’ 2019 loss at the Supreme Court set the stage after 11 years for FRA to draft those rules, which took effect in 2020. It was under those rules that Amtrak filed its 2022 complaint.

It is abundantly clear through legislative history that the people of the United States, speaking through their elected representatives, have continuously supported both appropriations and policy designed to strengthen Amtrak as a provider of vital transportation to places and in circumstances where private industry cannot profitably provide it; that Amtrak’s preference over freight transportation is a crucial part of ensuring that Amtrak remains a viable alternative for travel, and; that any weakening or diminishing of that codified and continuously reaffirmed legal right would go directly against Congress’ expressed intent.

⁶ *Metrics and Minimum Standards for Intercity Passenger Rail Service* (“Final Rule”). 85 Fed. Reg. 72971 (Nov. 16, 2020); 49 CFR § 273 (2023)

III. THE EXISTING RULE BALANCES AMTRAK'S PREFERENCE RIGHTS APPROPRIATELY TO ENSURE THAT PREFERENCE DOES NOT MATERIALLY LESSEN THE QUALITY OF FREIGHT TRANSPORTATION

The Association is well aware that “preference over freight transportation” can be affected by events beyond anyone’s control – severe weather, mechanical incidents involving other trains, crew-scheduling mishaps, and the like. So, too, however, were the regulators who developed those metrics and standards at Congress’ request⁷. As a result, the rule-writers not only accounted for any kind of truly unforeseen and sudden emergency but responded to host railroads’ concerns about a maximalist, absolutist interpretation of “preference” by requiring two full quarters – six full months – of sustained failure to meet the Customer On-Time Performance standard before triggering a cause of action or an independent investigation by the Board using its congressionally granted authorities under 49 U.S.C. § 24308(f)(1). While most of us would prefer that not even weather, crew-scheduling, and temporary capacity reductions due to maintenance lead to any particular dispatch decision having to favor a freight train over a passenger train, nonetheless that can be expected from time to time; however, those kinds of factors cannot explain six straight months of dispatching that favors freight trains over passenger trains.

In the view of this Association, that six-month period is more than sufficient to absorb any short-term contingencies a host railroad may encounter, providing the breathing room a host railroad operating in good-faith needs to meet the requirement most of the time. On the other hand, we also believe that sustained failure to prioritize passenger traffic over a six-month period amply demonstrates either a structural inability to comply with a well-known legal requirement that has been on the books for a half a century, or a willful disregard for that requirement.

⁷ *Metrics and Minimum Standards for Intercity Passenger Rail Service* (“Final Rule”). 85 Fed. Reg. 72971 (Nov. 16, 2020); 49 CFR § 273 (2023)

IV. CHRONIC DELAYS AFFECT TENS OF THOUSANDS OF PEOPLE ANNUALLY, DISRUPTING BUSINESS, IMPOSING ADDITIONAL COSTS ON PASSENGERS, AND CREATING INHUMANE CONDITIONS FOR PASSENGERS WITH SERIOUS HEALTH CONDITIONS

In a 2016 letter to the Board, our Association highlighted examples of some of the 1,300-plus personal stories of passenger delays we supplied to the Board during its 2014 deliberations on passenger on-time performance.⁸ The accounts we highlighted in our letter reflect effects felt by Amtrak passengers systemwide and were not specific to the Sunset Limited. Nonetheless, the kinds of consequences we identified are typical of those experienced by many delayed Amtrak passengers and reflect the emotional, financial, and physical burdens chronic delays pose to the fare-paying and tax-paying public.

The simple reality is that passengers rely on – and pay for – timely and regular service on routes delayed by freight interference. Many irreplaceable personal moments have been disrupted by these delays, with crucial medical transports affected, business meetings abandoned, weddings and funerals missed, and rare home visits by deployed service-members cut short or even cancelled altogether. Each of these hundreds of stories – and we supplied more than 1,300 such stories to the Board in October of 2014 – add up to more than mere temporary inconvenience and in many cases impose real dollar costs on vulnerable travelers.

Older Americans often find air travel difficult and driving long distances impossible, so train travel is a true lifeline for these citizens, who deserve better. Those with serious health conditions and the disabled are disproportionate users of the long-distance network, because of the difficulties they have managing air travel and driving. Delays cause inhumane problems for

⁸ NARP Letter via e-filing, Feb. 22, 2016, Ex Parte 728: Policy Statement on Implementing Passenger Rail OTP and Preference Provisions of 49 U.S.C. § 24308(C) and (F)

patients and impose additional suffering on people who are already ill. “In December of 2013 my wife and I rode the *Empire Builder* from Chicago to Winona, Minn., for an appointment at Mayo Clinic,” Gary Lutes of Chicago, Ill., told us. “Unfortunately, the train was so late that we missed our shuttle to Rochester. We were fortunate that another shuttle service happened to arrive to take us to Rochester. We checked into our hotel at 3:00 a.m. with an 8:00 a.m. appointment at Mayo.”

Coming at a time when Amtrak ridership is finally recovering to pre-pandemic record levels, delays on freight railroads nationwide may well permanently discourage new and first-time riders from exercising their choice to travel by rail, a choice more Americans each year say that they want. Chronic delays not only hurt our members and the rail-riding public but diminish Amtrak’s ability to generate annual revenue improvements and the service gains Congress has clearly contemplated through five decades of appropriations and policy measures.

V. CONCLUSION

The Board has the opportunity in this proceeding to fulfill Congressional intent thwarted for half a century. Since 1970, Congress has held dozens of hearings, passed at least fourteen laws⁹, appropriated many billions of dollars, all expressing a consistent theme: that passenger rail is a critical part of maintaining a balanced transportation ecosystem in the United States and ensuring prosperity for long-neglected communities in America’s heartland. Unlike many other controversies involving regulators and the regulated, in this instance what Congress wants and what the statute calls for are both exquisitely clear.

⁹ *Amtrak Improvement Act of 1973*, Pub. L. No. 93-146, 87 Stat. 548; *Amtrak Improvement Act of 1974*, Pub. L. No. 93- 496, 88 Stat. 1526; *Amtrak Improvement Act of 1975*, Pub. L. No. 94-25, 89 Stat. 90; *Amtrak Improvement Act of 1976*, Pub. L. No. 94-555, Tit. I, 90 Stat. 2613; *Amtrak Improvement Act of 1978*, Pub. L. No. 95-421, 92 Stat. 923; *Amtrak Reorganization Act of 1979*, Pub. L. No. 96-73, Tit. I, 93 Stat. 537; *Amtrak Improvement Act of 1981*, Pub. L. No. 97-35, Tit. XI, Subtit. F, 95 Stat. 687; *Amtrak Reauthorization Act of 1985*, Pub. L. No. 99-272, Tit. IV, Subtit. A, 100 Stat. 106; *Amtrak Reauthorization and Improvement Act of 1990*, Pub. L. No. 101-322, 104 Stat. 295; *Amtrak Authorization and Development Act*, Pub. L. No. 102-533, 106 Stat. 3515 (1992); *Amtrak Reform and Accountability Act of 1997*, Pub. L. No. 105-134, 111 Stat. 2570 (1997); *Passenger Rail Investment and Improvement Act of 2008*, Pub. L. No. 110-432 (2008); *Fixing America's Surface Transportation Act*, Pub. L. No. 114-94 (2015); *Infrastructure Investment and Jobs Act of 2021*, Pub. L. No. 117-58, Div. B (2021)

Congress has determined, and reaffirmed 25 times, that railroads hosting Amtrak service must – if there is a choice – prefer passenger trains over freight trains anywhere in the system, whether it’s a rail line, a junction, or a crossing. While sweeping, that right is not so absolute as to risk materially lessening the quality of freight transportation because there are mechanisms to seek waivers, and because enforcement actions cannot be taken until at least six months of sustained poor performance. Congress was unambiguous and detailed in describing preference, and also very clear that the Board was empowered to hear applications by host railroads for relief, to investigate how preference is operating in a particular instance and whether a host is complying with the law or the implementing regulations¹⁰, and to rule on remedies if appropriate. To weaken this in any way would be to reject many decades of expressed congressional intent.

Congress made a policy choice to ensure viable, affordable, and safe passenger rail options in our nation’s transportation system. But that choice also reflects a commitment to the people who have consistently voted over the past fifty years for members of Congress to reflect those priorities. Delays are about more than spreadsheets and dispatching decisions. Real lives are disrupted, real people face unexpected extra costs, disabled and elderly travelers can face physical danger or discomfort, and once-in-a-lifetime moments are missed forever. The people of the United States, want, need, and voted for a regulatory regime that protects freight operations while also ensuring that passenger trains have the best opportunity possible to get where they need to go quickly, safely, and on time. If the Board finds that the evidence accumulated during this proceeding leads to the conclusion that the host railroad violated its preference obligations in ways that were foreseeable and avoidable, an appropriate remedy aimed at ensuring that all Amtrak trains get the priority Congress demands would benefit not just Amtrak but the travelling public as well.

¹⁰ 49 CFR § 273 (2023)

Respectfully submitted,

Dated: January 22, 2025

/s/ Jim Mathews

Jim Mathews

President & CEO

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d/b/a Rail Passengers Association

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CERTIFICATE OF SERVICE

I, Jim Mathews, certify that copies of this document are simultaneously being provided by email to all parties identified on the service list for this proceeding, Docket Number NOR 42175.

January 22, 2025

/s/ Jim Mathews
Jim Mathews