

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 36910

DENVER TRANSIT OPERATORS, LLC

– PETITION FOR DECLARATORY ORDER –

DENVER TRANSIT DISPATCH DEPARTMENT

ENTERED  
Office of Chief Counsel  
September 28, 2026  
Part of  
Public Record

**ATDA’S REPLY IN OPPOSITION TO DENVER TRANSIT  
OPERATORS, LLC’S OPENING STATEMENT AND ASLRRA’S COMMENTS**

American Train Dispatchers Association (“ATDA”) respectfully submits the following as its Reply in Opposition to Denver Transit Operators, LLC’s (“DTO”) Opening Statement and the Comments of the American Short Line and Regional Railroad Association (“ASLRRA”).

As demonstrated below, the Surface Transportation Board (“STB” or “the Board”) should find that DTO, through its Dispatching Department, is a rail carrier under 49 U.S.C. § 10102(5) with respect to the dispatching activity at issue, and is subject to the Board’s jurisdiction under 49 U.S.C. § 10501. The Board should also decline DTO and ASLRRA’s invitation to overturn or substantially narrow *Rail-Term Corp. – Petition for Declaratory Order*, FD 35582 (STB served Nov. 19, 2013) (“*Rail-Term I*”), reconsideration denied, FD 35582 (STB served Dec. 30, 2014) (“*Rail-Term II*”).

**I. INTRODUCTION**

Following the Railroad Retirement Board’s (“RRB”) determination that DTO’s Dispatching Department is a covered employer under the Railroad Retirement Act (“RRA”) and Railroad Unemployment Insurance Act (“RUIA”), DTO now asks this Board to declare that its

dispatching function at the Denver Union Station (“DUS”) does not render it a “rail carrier” subject to this Board’s jurisdiction under 49 U.S.C. § 10102(5). DTO also asks the Board to revisit *Rail-Term*, while ASLRRRA goes further, urging the Board to overturn that decision or materially narrow its application. The Board need not disturb *Rail-Term* to resolve the question presented here.

ATDA is a national labor organization whose membership is comprised of individuals employed by rail carriers to dispatch and control the movement of trains over most of the nation’s interstate rail system. Although ATDA does not represent DTO’s dispatchers, it represents the dispatchers employed by the vast majority of railroads in this country, including BNSF Railway Company and National Railroad Passenger Corp. d/b/a Amtrak. ATDA therefore has a substantial interest in ensuring that employees performing train dispatching services integral to the interstate transportation of passengers and freight are subject to the same statutory framework. ATDA participated in the *Rail-Term* proceedings for substantially the same reason.

The record supports a finding that DTO, through its Dispatching Department, is a rail carrier with respect to the dispatching activity at issue. DTO is contractually required to dispatch all “Heavy Rail Movements” at DUS and is compensated by RTD for performing that function. DTO’s Verified Statement (“V.S.”) Salama at 3-4, Ex. A at 56; § 3.18, 73-75, § 5.2; V.S. Jimenez at 2-4.<sup>1</sup> DTO’s contrary arguments do not alter that analysis. There is no numerical *de minimis* standard governing rail-carrier status for dispatching activity, and DTO’s repeated assertion that outside passenger movements constitute less than 0.1 percent of its dispatching activity is calculated solely by train miles, which do not measure the nature or extent of dispatching

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<sup>1</sup> Amtrak likely provides compensation as well.

responsibility. (Dowell Decl. ¶ 4). . Nor does the *State of Maine* line of cases establish a categorical exemption applicable here.

Finally, based on the record here, the Board need not determine that *Rail-Term* controls DTO's status. Moreover, DTO and ASLRRA have provided no basis to overturn or materially narrow *Rail-Term*. Accordingly, the Board should find that DTO's Dispatching Department is a rail carrier with respect to the dispatching activity at issue and deny DTO's requested relief.

## **II. BACKGROUND**

Train dispatching is a highly safety-sensitive function directly related to the safe and efficient movement of trains, and the protection of railroad employees throughout the national interstate rail network. *Herzog Transit Services, Inc. v. Railroad Retirement Board*, 624 F.3d 467, 476 (7th Cir. 2010); *see also* 49 C.F.R. § 241.5 (defining "dispatch"). As the Federal Railroad Administration recently explained:

Railroad dispatchers play an integral role in railroad safety and operations. They are responsible for allocating and assigning track use, ensuring that trains are routed safely and efficiently, and ensuring the safety of personnel working on and around railroad track.

*Certification of Dispatchers*, 89 Fed. Reg. 44,766, 44,769 (May 21, 2024). FRA has long described the function similarly, explaining that dispatchers control train movements through signals and movement authorities, determine whether and under what conditions and speeds trains may proceed, and protect track gangs and other workers by establishing working limits. *U.S. Locational Requirement for Dispatching of U.S. Rail Operations*, 67 Fed. Reg. 75,938-39 (Dec. 10, 2002). FRA further recognized in its 2024 rulemaking that dispatchers must integrate information concerning train schedules, track conditions, communications with operating personnel, anticipated train movements, and competing demands for track occupancy. 89 Fed.

Reg. at 44,769.<sup>2</sup> Thus, dispatching is not merely the act of lining a signal or communicating information to a train crew, but the operational control of train movements and track occupancy. (Dowell Decl. ¶¶ 3-5). Dispatchers must continuously plan, protect, and coordinate potentially conflicting uses of railroad track and determine whether and under what conditions a particular movement or occupancy may proceed. (*Id.* ¶ 4).

Typically, railroads perform this function through their own employees, but at times, may contract it out to another entity. In such circumstances, the RRB has recognized that a contractor's dispatching operation may constitute a covered railroad employer under the RRA and RUIA, while this Board has recognized that contracted dispatching may constitute rail transportation giving rise to rail-carrier status under 49 U.S.C. § 10102(5). For example, in *Herzog Transit Services, Inc. v. Railroad Retirement Board*, a private contractor dispatched trains over a publicly owned corridor used for commuter and interstate freight operations. 624 F.3d 467 (7th Cir. 2010). The RRB determined that Herzog's dispatching unit was a covered employer under the RRA and RUIA, and the Seventh Circuit affirmed, observing that dispatching is "a necessary part of the operation of any train, including interstate trains." *Id.* at 476. Likewise, in *Rail-Term*, a private company provided dispatching services to several short-line railroads. The RRB determined Rail-Term was a covered employer because dispatching was integral to its carrier clients' operations. *Rail-Term Corp.*, B.C.D. 10-33, at 6 (Apr. 6, 2010) ("Because no railroad can fulfill its common carrier obligation unless its trains move, the work of the dispatcher is an integral part of the operation of a common carrier."). After the D.C. Circuit

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<sup>2</sup> Although FRA has since proposed rescinding the dispatcher-certification requirements based on its alleged reassessment of the costs and benefits of that regulatory regime, it continues to recognize the safety-related nature of the dispatcher duties. See *Certification of Dispatchers*, 91 Fed. Reg. 27,901 (May 15, 2026).

stayed judicial review to permit a determination by this Board, the Board held that Rail-Term was a rail carrier under 49 U.S.C. § 10102(5), stating:

We find here that, by performing an essential rail function on behalf of several short line railroads, Rail-Term has become a rail carrier under § 10102(5). Although Rail-Term does not directly hold itself out to the public as providing interstate rail transportation services, the dispatching services that it provides under contract with carriers are an essential part of the total rail common carrier services offered by its clients to the public. The overall scheme of regulation under ICCTA indicates that Congress intended for the regulation of these kinds of contracted dispatching services to rest within our jurisdiction and, consequently, for the railroad labor laws to apply to those employees who are performing these essential rail transportation services.

*Rail-Term I* at 2. The Board denied reconsideration in *Rail-Term II*, and the D.C. Circuit subsequently summarily affirmed the RRB’s coverage determination. *Rail-Term Corp. v. R.R. Ret. Bd.*, 666 F. App’x 1 (D.C. Cir. 2016).

This proceeding arises from a challenge to the RRB’s determination concerning DTO’s dispatching activity. In 2020, the RRB appropriately determined, based upon the particular facts and circumstances, that DTO’s dispatching unit was a covered employer under the Railroad Retirement Act (“RRA”) and Railroad Unemployment Insurance Act (“RUIA”), based on its dispatching of Amtrak trains at Denver Union Station (“DUS”). *Denver Transit Operators, LLC*, B.C.D. 2020-23 (July 13, 2020). Relying on *Herzog* and *Rail-Term*, the RRB rejected DTO’s arguments, and concluded that DTO was performing the function of a common carrier in interstate commerce with respect to that dispatching. DTO then sought reconsideration. On June 23, 2025, a majority of the RRB affirmed that DTO’s dispatching unit is a covered railroad employer, with RRA coverage effective April 22, 2016, when DTO began dispatching Amtrak trains within DUS, and with RUIA coverage effective the date of the reconsideration decision. *Denver Transit Operators, LLC*, B.C.D. 2025-34 (June 23, 2025).

DTO thereafter sought judicial review and requested referral of the underlying rail-carrier jurisdictional question to this Board. The D.C. Circuit granted an abeyance on January 23, 2026, and DTO filed its Petition for Declaratory Order with the Board on February 23, 2026. Opening Statement at 8–9. DTO now asks the Board to determine that its Dispatching Department is not a “rail carrier” under 49 U.S.C. § 10102(5), and, together with ASLRRRA, asks the Board either to overturn or materially narrow *Rail-Term*. Neither is warranted here.

### III. ARGUMENT

#### A. The Record Supports a Finding That DTO Is a Rail Carrier With Respect to Its Dispatching Function.

Under the ICC Termination Act of 1995 (“ICCTA”), the Board has jurisdiction over “transportation by rail carrier” conducted over any “part of the interstate rail network.” 49 U.S.C. § 10501(a)(1), (a)(2)(A). A “rail carrier” is a “person providing common carrier railroad transportation for compensation,” *id.* § 10102(5), and “transportation” expressly includes “services related to” the movement of passengers or property, *id.* § 10102(9). Train dispatching falls within that definition because it directly governs whether and under what conditions trains may occupy and move over railroad track. Dowell Decl. ¶¶ 3, 5-8; *see also Rail-Term I* at 8-9; *Herzog*, 624 F.3d at 476.

DTO’s own evidence appears to establish that it is contractually required to dispatch all “Heavy Rail Movements” at DUS and is compensated by RTD through a monthly fee covering that function. V.S. Salama at 3-4, Ex. A at 56, § 3.18, 73-75, § 5.2. According to DTO, although RTD is the contracting party with Amtrak and the other outside railroads, those agreements are incorporated into DTO’s operations and maintenance agreement, and DTO is bound to observe them. V.S. Salama at 2–3; Ex. A at 33. DTO further explains that it is obligated to dispatch the outside railroads to the extent RTD has undertaken that obligation. *Id.* The incorporated Amtrak

agreement further provides that RTD has “the sole right to direct the movement of Amtrak Trains while on the Rail Lines,” with Amtrak operating in accordance with RTD dispatcher instructions. V.S. Salama Ex. B at 12, § 3.7. According to DTO, outside passenger trains stop for DTO signal clearance and dispatch authorization before entering DUS, after which DTO lines the signals and switches and routes the trains to the passenger platforms. V.S. Jimenez at 2-3.

Consistent with these facts, the RRB found in its underlying coverage determination that DTO is responsible for the movement of Amtrak trains within DUS until control is transferred to BNSF and concluded that DTO “is performing the function of a common carrier in interstate commerce with respect to its dispatching function.” *Denver Transit Operators, LLC*, B.C.D. 2020-23, at 3. On reconsideration, the RRB affirmed its determination that DTO’s Dispatching Unit is a covered employer. *Denver Transit Operators, LLC*, B.C.D. 2025-34, at 1, 15. Accordingly, the record supports a finding that DTO is a rail carrier with respect to the dispatching activity at issue.<sup>3</sup>

**B. DTO and ASLRRRA Provide No Basis to Overturn or Materially Narrow *Rail-Term*.**

Contrary to DTO’s characterization, *Rail-Term* was not an unprecedented expansion of the Board’s jurisdiction. In reaching its decision, the Board relied on longstanding Supreme Court and agency precedent recognizing that, in determining carrier status, the Board may consider whether the service performed forms part of the total rail common-carrier service offered to the public. *Rail-Term I* at 7-10 (citing *United States v. Brooklyn E. Dist. Terminal*, 249 U.S. 296, 305 (1919); *United States v. Union Stock Yard & Transit Co.*, 226 U.S. 286, 304–05

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<sup>3</sup> Even if the Board concludes that DTO should be excluded from carrier status based on the particular circumstances presented here, any such determination should be confined to those unique facts. As discussed *infra*, there is no need to overturn or materially narrow *Rail-Term* to resolve this proceeding, and any relief afforded DTO should have no broader application.

(1912); *Ass'n of P&C Dock Longshoremen v. Pittsburgh & Conneaut Dock Co.*, 8 I.C.C.2d 280, 290–95 (1992)).

In any event, there is no need to revisit *Rail-Term* in this proceeding. Indeed, as noted above, DTO's status can be resolved on the particular facts presented here without determining that *Rail-Term* controls. Nor did *Rail-Term* establish an unlimited rule that every contractor performing an "essential" railroad service becomes a rail carrier. The Board expressly stated that it did "not suggest that every outsourced rail service should be found to be covered by [its] jurisdiction and preemptive effect." *Rail-Term I* at 9. At the same time, the Board explained that "the overall scheme of regulation under ICCTA indicates that Congress intended for the regulation of these kinds of contracted dispatching services to rest within our jurisdiction and, consequently, for the railroad labor laws to apply to those employees who are performing these essential rail transportation services." *Rail-Term I* at 2.

DTO's related contention that it does not itself hold out dispatching services to the public and has no direct contractual relationship with Amtrak likewise does not require the Board to revisit *Rail-Term*. Neither circumstance is categorically dispositive where the service performed forms part of common-carrier transportation offered to the public. *Rail-Term I* at 7-9. Here, DTO's own contract requires it to perform the dispatching obligations RTD undertook to Amtrak, and DTO exercises the authority by which Amtrak trains enter and leave DUS.

DTO separately argues that rail-carrier status would impose an inequitable "double obligation" because its dispatchers receive an employer 401(k) match under their collective bargaining agreement. Opening Statement at 25-26. This has no bearing on the carrier-status analysis. The existence of a collectively bargained 401(k) benefit is not unique to DTO's dispatching operation. Indeed, ATDA represents Train Dispatchers employed by rail carriers

whose service is covered under Railroad Retirement and whose collective bargaining agreements additionally provide employer matching contributions to 401(k) plans. (Dowell Decl. ¶ 12).

ASLRRA's claimed policy concerns likewise provide no basis to disturb *Rail-Term*, but instead run counter to the rail transportation policy directive "to encourage fair wages and safe and suitable working conditions in the railroad industry." 49 U.S.C. § 10101(11).

DTO's reliance on 49 U.S.C. § 10501(c)(3)(B) also provides no basis to revisit *Rail-Term*. The absence of a pre-ICCTA case involving precisely the same contractual arrangement does not establish that *Rail-Term* improperly expanded jurisdiction. Congress expressly provided that enactment of ICCTA "shall neither expand nor contract" coverage under the RRA and RUIA. 49 U.S.C. § 10501(c)(3)(B). Accordingly, regardless of whether the Board finds *Rail-Term* controlling as to DTO, DTO and ASLRRA have identified no basis to overturn or materially narrow that decision.

### **C. DTO's Limited Amount of Outside Dispatching Does Not Establish an Exclusion From Rail-Carrier Status.**

DTO repeatedly emphasizes that the *California Zephyr* and *Canyon Spirit* account for less than 0.1 percent of its overall dispatching activity. Opening Statement at 4-5. As an initial matter, DTO's 0.1-percent figure is calculated solely by train miles. V.S. Jimenez at 4-5. Train miles measure distance traveled, not the nature or extent of dispatching responsibility, which involves the real-time operational control of train movements and track occupancy and requires continuing planning, protection, and coordination of potentially conflicting uses of railroad track. (Dowell Decl. ¶¶ 3-5). DTO's own evidence confirms the distinction. The *California Zephyr* and *Canyon Spirit* stop for DTO signal clearance and dispatch authorization before entering DUS, after which DTO lines the signals and switches and routes the trains to the passenger platforms. V.S. Jimenez at 2-4. The 0.1-percent figure thus establishes only that those trains travel

comparatively few miles while under DTO's control; it does not measure the nature or extent of the authority DTO exercises in dispatching them. Moreover, neither § 10102 nor § 10501 establishes a numerical *de minimis* threshold for rail-carrier status.<sup>4</sup> In rejecting DTO's analogous argument under the RRA and RUIA, the RRB likewise explained that the statutory casual-service exception applies to carrier affiliates and that no comparable exclusion exists for rail carriers themselves. *Denver Transit Operators, LLC*, B.C.D. 2025-34, at 4-6.

DTO's reliance on the *State of Maine* line of cases does not compel a different result. Indeed, Congress expressly provided that enactment of ICCTA "shall neither expand nor contract" coverage of employees and employers under the RRA and RUIA, among other statutes. 49 U.S.C. § 10501(c)(3)(B). Accordingly, whatever effect post-ICCTA developments in the *State of Maine* line of cases may have on the Board's exercise of its own regulatory jurisdiction, they do not provide a basis to contract the RRA or RUIA coverage Congress expressly preserved. Nor do they make rail-carrier status with respect to dispatching turn on the percentage of train miles involved. Rather, relevant considerations include the nature of the dispatching function DTO performs and the authority it exercises over the common-carrier movements at issue.

### **CONCLUSION**

For the foregoing reasons, ATDA respectfully requests that the Board deny DTO's Petition for a Declaratory Order, and decline DTO's and ASLRRA's invitation to overturn or materially narrow *Rail-Term*.

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<sup>4</sup> Nothing requires DTO itself to perform the dispatching at issue here. If DTO does not wish to be subject to the RRA and RUIA, it could arrange for that activity to be performed by another entity.

Dated: September 28, 2026

Respectfully submitted,

s/Erika A. Diehl-Gibbons  
Erika A. Diehl-Gibbons  
General Counsel  
ATDA  
4239 W. 150<sup>th</sup> Street  
Cleveland, OH 44135  
[diehl@atda.org](mailto:diehl@atda.org)

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing in the above-captioned docket has been filed with the STB on September 28, 2026, and served on all parties of record via email or U.S. mail.

s/Erika A. Diehl-Gibbons  
Erika A. Diehl-Gibbons

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**DECLARATION OF L. ED DOWELL IN SUPPORT OF**

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I, L. Ed Dowell, pursuant to 28 U.S.C. § 1746, declare that the following facts are true and correct:

1. I have served as the President of the American Train Dispatchers Association (“ATDA”) since 2023. I began my railroad career in 1998 when I was hired as a CSX Train Dispatcher and established seniority as an ATDA-represented Train Dispatcher in January 1999. I began serving as an ATDA representative in 2008, when I was elected First Vice General Chairman of the CSX System Committee. I was subsequently elected ATDA Vice President in 2011 and Secretary-Treasurer in 2015.

2. Based on my experience as a Train Dispatcher and subsequently as an ATDA officer, I am familiar with the duties and responsibilities of Train Dispatchers and with the collective bargaining agreements governing ATDA-represented Train Dispatchers.

3. A Train Dispatcher performs the real-time operational control of train movements and track occupancy over an assigned railroad territory. Train dispatching is not merely the monitoring of train movements, the communication of information to train crews, or the performance of administrative functions associated with railroad operations. It is the exercise of authority over the movement of trains and on-track equipment, and over the occupancy of railroad track by roadway workers.

4. The distance a train travels while under a dispatcher's control does not, by itself, measure the nature or extent of the dispatcher's operational responsibility for that movement. A movement over a relatively short distance may still require the dispatcher to plan and sequence the movement, establish and protect its route, control signals and switches, account for other train movements and track occupancies, and coordinate with train crews, other Train Dispatchers, roadway workers, and, where necessary, other railroads. Train miles therefore do not, standing alone, measure the dispatching responsibility associated with a particular movement.

5. Train dispatching necessarily requires the dispatcher to coordinate multiple simultaneous and potentially conflicting uses of railroad tracks. The dispatcher must consider train locations and direction of movement, operating priorities, schedules, signal indications, controlled switches, track configuration, temporary and permanent speed restrictions, maintenance activities, roadway-worker authorities, disabled equipment, signal or infrastructure failures, and other operating conditions when determining whether and how a movement may proceed.

6. A Train Dispatcher exercises direct operational authority over the use of railroad track. At any given time, the dispatcher must know or ascertain the location and status of trains and other authorized track occupancies within the territory under the dispatcher's control and must ensure that any new movement or occupancy is compatible with existing movements, authorities, restrictions, and working limits.

7. In the performance of train dispatching service, a Train Dispatcher controls the movement of trains and other on-track equipment through the issuance of authorities, permissions, mandatory directives, and the operation of signal and train-control systems. The dispatcher establishes routes for trains, controls access to main tracks and other controlled tracks, governs conflicting movements, and determines when railroad track may be occupied by trains, maintenance equipment, or roadway workers.

8. In signaled territory, the Train Dispatcher may establish routes through remotely controlled signals and switches and thereby authorize and govern train movements through interlockings, control points, sidings, junctions, and other portions of the railroad. Under other methods of operation, the dispatcher may issue verbal or electronic movement authorities establishing the limits within which a train or other on-track equipment is authorized to operate.

9. The Train Dispatcher also establishes and protects track occupancy for roadway workers and maintenance forces. This requires the dispatcher to determine whether the affected track can safely be occupied, establish protection against conflicting train or equipment movements, maintain that protection for the duration of the authority, and ensure that the authority has been properly released before permitting conflicting movements.

10. The dispatcher also responds to abnormal and emergency operating conditions. When an accident, disabled train, signal failure, broken rail, crossing malfunction, severe weather condition, emergency maintenance requirement, or other unexpected event affects the railroad, the dispatcher may stop or restrict train movements, establish protective limits, issue or modify mandatory directives, coordinate with train crews and maintenance personnel, and protect access to the affected location.

11. Stated most simply, regardless of freight, passenger, or commuter service, a Train Dispatcher is the individual who exercises real-time operational authority over who may occupy the railroad, where that occupancy may occur, the route over which a movement may proceed, and the conditions under which that movement or occupancy is authorized.

12. ATDA represents Train Dispatchers employed by rail carriers whose employment is covered by Railroad Retirement and whose collective bargaining agreements also provide for employer matching contributions to 401(k) retirement plans. Accordingly, Railroad Retirement

coverage and a collectively bargained employer 401(k) match coexist for Train Dispatchers elsewhere in the railroad industry.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 28<sup>th</sup> day of September, 2026.

A handwritten signature in black ink, appearing to read 'LED' followed by a long horizontal line.

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L. Ed Dowell