American Public Transportation Association

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Surface Transportation Board
395 E Street NW
Washington, DC 20423-0001

Re: Docket No. FD 36873, Union Pacific Corporation and Union Pacific Railroad Company, Control, Norfolk Southern Corporation and Norfolk Southern Railway Company

Dear Chairman Fuchs and Board Members Schultz, Hedlund and Kloster,

The American Public Transportation Association (APTA) represents the $102 billion public transportation industry, which directly employs more than 450,000 people and supports millions of private-sector jobs. We appreciate this opportunity to comment on the Amended Railroad Control Application filed on April 30, 2026, and the subsequent supplemental filings (dated July 7 and July 27, 2026) submitted by the Union Pacific Corporation/Union Pacific Railroad Company (UP) and Norfolk Southern Corporation/Norfolk Southern Railway Company (NS), collectively "the Applicants."

The United States' railroad network has long carried passengers and freight over shared tracks and through common junctions and terminals. Many commuter and intercity passenger rail services depend on access to freight-owned infrastructure and on shared dispatching arrangements. The proposed merger of UP and NS therefore has significant implications beyond freight operations: changes in how the combined railroad uses and dispatches shared tracks could affect the reliability of service for millions of Americans who depend on passenger rail transportation. APTA has significant concerns about the proposed transaction. The Application does not adequately assess the Transaction's potential effects on existing and planned passenger rail service or demonstrate how the Applicants would prevent or mitigate adverse impacts. APTA offers the following comments to address these gaps.

Preservation of Existing & Future Passenger Rail Services

Many APTA members, including Amtrak and multiple transit agencies providing commuter rail service, rely on access rights and agreements (many longstanding) to operate passenger trains over freight owned right-of-way affected by the proposed Transaction. Those arrangements are essential to maintaining track access and reliable on-time operations and ensuring that passenger trains can reach the stations, terminals and communities they serve. APTA is concerned that the Applicants' commitments to preserve existing passenger rail services do not adequately address the potential effects of the proposed transaction on the adequacy, reliability, and future development of passenger rail transportation. Under 49 U.S.C. § 11324(b)(1), the Surface Transportation Board must consider "the effect of the proposed transaction on the adequacy of transportation to the public."

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Broad statements claiming that many existing services will be unaffected and declaring existing agreements, which the Applicants are already legally bound to abide by, will be honored should not be treated as satisfying that statutory consideration.

Federal law establishes a specific process for Amtrak to obtain access to rail lines, facilities, and services needed for passenger operations. Under 49 U.S.C. § 24308(a), Amtrak may negotiate agreements with rail carriers or regional transportation authorities for such access and services. If the parties cannot reach agreement and the Surface Transportation Board finds that the facilities and services are necessary to carry out the statute, the Board must order them made available to Amtrak and prescribe reasonable terms and compensation.

Before ruling on the Application, the Board should require the Applicants to explain how the combined railroad will honor existing Amtrak access agreements and accommodate requests for new or expanded intercity rail service consistent with § 24308. Any approval should include enforceable conditions to ensure that changes in freight routing, dispatching, or infrastructure do not undermine those agreements or limit Amtrak's ability to seek access under federal law.

On Time Performance

Existing commuter and intercity passenger operations already depend upon finite railroad infrastructure. As a result, the ability of passenger and freight trains to operate reliably over shared corridors is an extremely delicate balance. Too often, when problems arise, it is the reliability of passenger service that suffers. A transaction that increases the volume, complexity, or geographic reach of freight operations without enforceable commitments to additional infrastructure or operating capacity will place additional demands on that same network and, at minimum, merely preserve an inadequate baseline for on time passenger service.

In a 2024 Host Railroad Report Card released by Amtrak, 14 of 14 Amtrak long-distance passenger train routes failed to meet the on-time performance threshold of 80% as mandated by the Federal Railroad Administration in 49 CFR 273.5(a)(2). Across state supported regional services, only four of the nine state supported services that surpassed the 80% on-time performance threshold involved operations on UP and/or NS trackage. By contrast, eight of the 16 state supported trains that failed to achieve 80% on-time performance operate over UP and/or NS trackage.[1] Appropriately, in 2024 Amtrak awarded B- and B+ scores to UP and NS, respectively, for their treatment of passenger trains operating on their networks, with UP being the lowest scoring of the six North American class one railroads.[2]

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[1] Amtrak Host Railroad Report Card CY 2024: https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/HostRailroadReports/Amtrak-2024-Host-Railroad-Report-Card.pdf

[2] https://www.amtrak.com/on-time-performance

The Applicants have stated that "the UP/NS merger will not result in any adverse impact to passenger operations. UP/NS will facilitate passenger operations hosted on UP/NS lines…Where Applicants project that a route on which they host passenger operations will experience a merger-related increase in train counts, they have planned to ensure the route will have sufficient capacity to fulfill any contractual commitments to passenger carriers."[3] Planning sufficient capacity for existing passenger service does not address whether those services can continue to operate with adequate reliability, capacity, and opportunity for future growth of passenger services, especially in consideration of increased train length and frequency which the Applicants have made clear they intend to utilize. Additionally, it is worth noting that a Transaction of this nature does not create capacity- the proposed Transaction is an end-to-end expansion of the Applicant's network, not the building of additional track or infrastructure.

Impacts of Freight Consolidation

The Applicants have repeatedly stated that they intend to run more freight trains on corridors that carry commuter and intercity passenger service, operate longer trains, and reconfigure major hubs across the combined network. The Application leaves unresolved whether existing tracks, sidings, junctions, and terminals can safely and reliably accommodate these changes and where substantial infrastructure improvements may be needed. In several instances, the Applicants characterize capacity as "sufficient" without providing enough corridor or terminal analysis to show how the proposed freight operations would coexist with passenger service.

The consequences for passenger rail could be substantial. Changes in freight operations could further reduce service reliability, make it harder for passenger operators to use allocated train slots and exercise the operating rights secured under existing agreements, and limit access to critical infrastructure. These changes could also delay capital projects needed to improve or expand passenger service, making it harder for public agencies to meet growing regional transportation needs.

Before approving the transaction, the Board should require the Applicants to consult with affected passenger rail operators and conduct timetable-based modeling on a geographically diverse sample of shared corridors where passenger service expansions are planned. The analysis should test whether existing passenger schedules can be maintained and planned service can be accommodated under projected freight volumes, longer freight trains, and proposed changes to terminal operations. The Applicants should identify where and when conflicts are likely to arise and specify the operating measures or infrastructure improvements needed to address them. Any approval should require those measures to be in place before the freight operating changes that depend on them take effect.

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[3] Application, page 1044, Union Pacific Corporation and Union Pacific Railroad Company, Control, Norfolk Southern Corporation and Norfolk Southern Railway Company, STB Docket 36873, April 30, 2026

Preserve Corridors Before Sale or Abandonment

As a condition of approval, the Board should require the combined railroad to notify affected states, public transportation agencies, and passenger rail operators before selling or seeking to abandon an affected right-of-way. The condition should give eligible public entities and passenger rail operators a reasonable first opportunity to acquire or otherwise preserve the corridor for existing or future passenger service. For a proposed sale, that opportunity should include a right of first refusal on the material terms of any bona fide third-party offer. This condition should apply alongside existing abandonment and other applicable regulatory procedures.

Concerns Regarding Comments of Mr. V. James Vena, CEO – Union Pacific Railroad Company

APTA is aware of comments made by Mr. V. James Vena, Chief Executive Officer of Union Pacific Corporation, at the Southwest Association of Rail Shippers conference in March 2026. APTA is concerned about the potential implications of those remarks to our members and the integrity of the foregoing proceeding. To the extent those remarks ultimately bear upon matters relevant to APTA's members or the Board's consideration of the proposed Transaction, APTA reserves the right to address them, and any related developments, through supplemental comments following the Board's initial determination.

If the Transaction is Approved

If the Board approves this Transaction, we respectfully request that, as a condition of approval, the Board designate an Administrative Law Judge ("ALJ") or other appropriate adjudicatory official to address disputes and compliance matters arising from implementation of the Transaction during any monitoring and/or review period. Given the size and complexity of the proposed Transaction, and the volume and variety of issues that may reasonably be expected to arise if the Transaction is approved, a dedicated adjudicatory mechanism is necessary to ensure that matters brought before the Board are addressed consistently and in a timely manner that protects passenger rail services.

A designated Administrative Law Judge shall be empowered, to the fullest extent permitted by federal law, to review and manage any proceedings in regards to topics including, but not limited to, disputes affecting existing passenger rail operations (both regional and long distance intercity,) unreasonable delays or impediments to proposed and pending passenger rail projects, access, capacity, dispatching, infrastructure, and general operational disputes and other matters affecting the preservation or development of passenger rail service. We encourage the Board to establish expedited procedural timelines for such matters and ensure that recommendations or decisions requiring action by the Board are presented by the Administrative Law Judge for consideration without unreasonable delay. Finally, we encourage the Board to make explicitly clear to the Applicant that as an additional term of approval, all negotiations, whether for existing passenger rail services or future, are to be conducted in good faith, in

a timely fashion and with due consideration and attention to Amtrak and/or any transit agency seeking to resolve an issue with or operate trains on the combined railroad.

Summary

In closing, APTA respectfully urges the Surface Transportation Board to deny this Application. Congress has directed that the Board consider approval of such a transaction under 49 U.S.C. § 11324 only when the Board "finds the transaction is consistent with the public interest." For the reasons set forth within, it is the position of APTA that this Transaction is currently without question contrary to the public interest. We maintain that the Applicants have not demonstrated that the Transaction, as proposed in the April 30, 2026 filing and supplemented July 7 and 27, 2026, satisfies the standard as outlined in 49 U.S.C. § 11324. The Transaction presents substantial risks to the preservation, reliability, and future development of railroad-based public transportation services relied upon by millions of Americans.

Accordingly, APTA respectfully urges the Board to deny the Application as proposed. If the Board determines that the Transaction should be approved, APTA requests that approval be expressly conditioned upon the protections outlined herein to safeguard the mobility of millions of Americans, preserve existing passenger rail service, and ensure that current and future passenger rail operations receive fair, meaningful, and good-faith consideration. If you have questions regarding topics discussed in this letter, please contact Bryan Sooter, Senior Director – Standards and Rail Engineering at (202) 496-4851 or bsooter@apta.com. Thank you for your consideration.

Sincerely,

Paul P. Skoutelas

Paul P. Skoutelas
President and CEO

cc: All Parties of Record