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VIA ELECTRONIC FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: CSXT's Pending Motion to Dismiss in STB Docket No. NOR 42141

Dear Ms. Brown:

CSX Transportation, Inc. ("CSXT") respectfully joins Norfolk Southern and requests that the Board grant CSXT's pending motion to dismiss Amtrak's complaint in Docket No. NOR 42141.*

The Board is without any authority to pursue an investigation under Section 213 of PRIIA, 49 U.S.C. § 24308(f), because there is no valid definition of "on-time performance" under Section 207.

FRA and Amtrak initially promulgated an "on-time performance" definition as part of the metrics and standards in Section 207. The D.C. Circuit struck down these standards as unconstitutional. *See Ass'n of Am. R.R.s v. Dep't of Transp.*, 821 F.3d 19 (D.C. Cir. 2016); *see also* Order, No. 1:11-cv-1499 (D.D.C. Mar. 23, 2017), ECF No. 27 (on remand, declaring Section 207 unconstitutional).

The Board subsequently issued a gap-filling "on-time performance" regulation to establish when it could investigate passenger train performance under Section 213. The Eighth Circuit has now overturned this replacement regulation, concluding that "on-time performance in § 213 means on-time performance as developed by the FRA and Amtrak under § 213(a) under § 207(a)." *Union Pac. R.R. v. STB*, 863 F.3d 816, 826 (8th Cir. 2017). That court's mandate issued on August 29, 2017.

* Norfolk Southern filed its request re-urging the dismissal of the Capitol Limited investigation on September 1, 2017. On September 11, 2017, Amtrak filed a request to extend its deadline to respond to the Norfolk Southern letter until October 23, 2017, which the Board granted on September 18. On October 11, 2017, Amtrak filed a further request to extend its deadline for a response to November 22. Because CSXT is requesting the same relief here, it also consents to that new extension request.

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As a result of these court decisions, there is no valid definition of “on-time performance” in Section 213. Accordingly, the Board is without any authority to pursue a Section 213 investigation, and should dismiss Amtrak’s complaint.

Sincerely,

/s/ Michael K. Murphy

Michael K. Murphy

Counsel for CSX Transportation, Inc.

CERTIFICATE OF SERVICE

I certify that on October 13, 2017, I caused a true and correct copy of CSXT's letter *re: CSXT's Pending Motion to Dismiss in STB Docket No. NOR 42141* to be served upon the parties listed below by electronic mail.

Counsel for National Railroad Passenger Corporation:

Edward Fishman, efishman@nossaman.com

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Champaign County Chamber Of Commerce Board of Directors:

Laure E. Weis, lauraw@champaigncounty.org

/s/ Michael K. Murphy

Michael K. Murphy