

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC
-AUTHORITY TO CONSTRUCT AND OPERATE-
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV -
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

**PETITIONERS' RESPONSE TO THE SURFACE
TRANSPORTATION BOARD'S REQUEST
FOR ADDITIONAL INFORMATION**

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Texas Central Railroad and Infrastructure, Inc. (“TCRI”) and Texas Central Railroad, LLC (“TCRR”) (collectively, “Texas Central”) respectfully submit this Response to the Surface Transportation Board’s request for additional information in its Decision issued June 20, 2019.¹

INTRODUCTION

The Board’s jurisdiction over rail transportation extends to intrastate passenger rail service that is conducted as part of the interstate rail network. According to Amtrak, 18,300 to 20,500 passengers will transfer from its interstate trains to Texas Central’s trains during the tenth year of Texas Central operations. Texas Central will facilitate their transfer by accepting through tickets purchased

¹ *Tex. Cent. R.R. & Infrastructure, Inc. & Tex. Cent. R.R., LLC—Auth. to Construct and Operate—Petition for Exemption from 49 U.S.C. § 10901 and Subtitle IV—Passenger Rail Line Between Dallas, Tex. and Houston, Tex.*, STB Docket No. FD 36025 (served June 20, 2019) (“2019 Decision”).

from Amtrak and providing a convenient, timely, climate-controlled transfer service between terminals. Because these passenger movements will be part of a continuous interstate journey, the Texas Central Line is part of the interstate rail network.

BACKGROUND

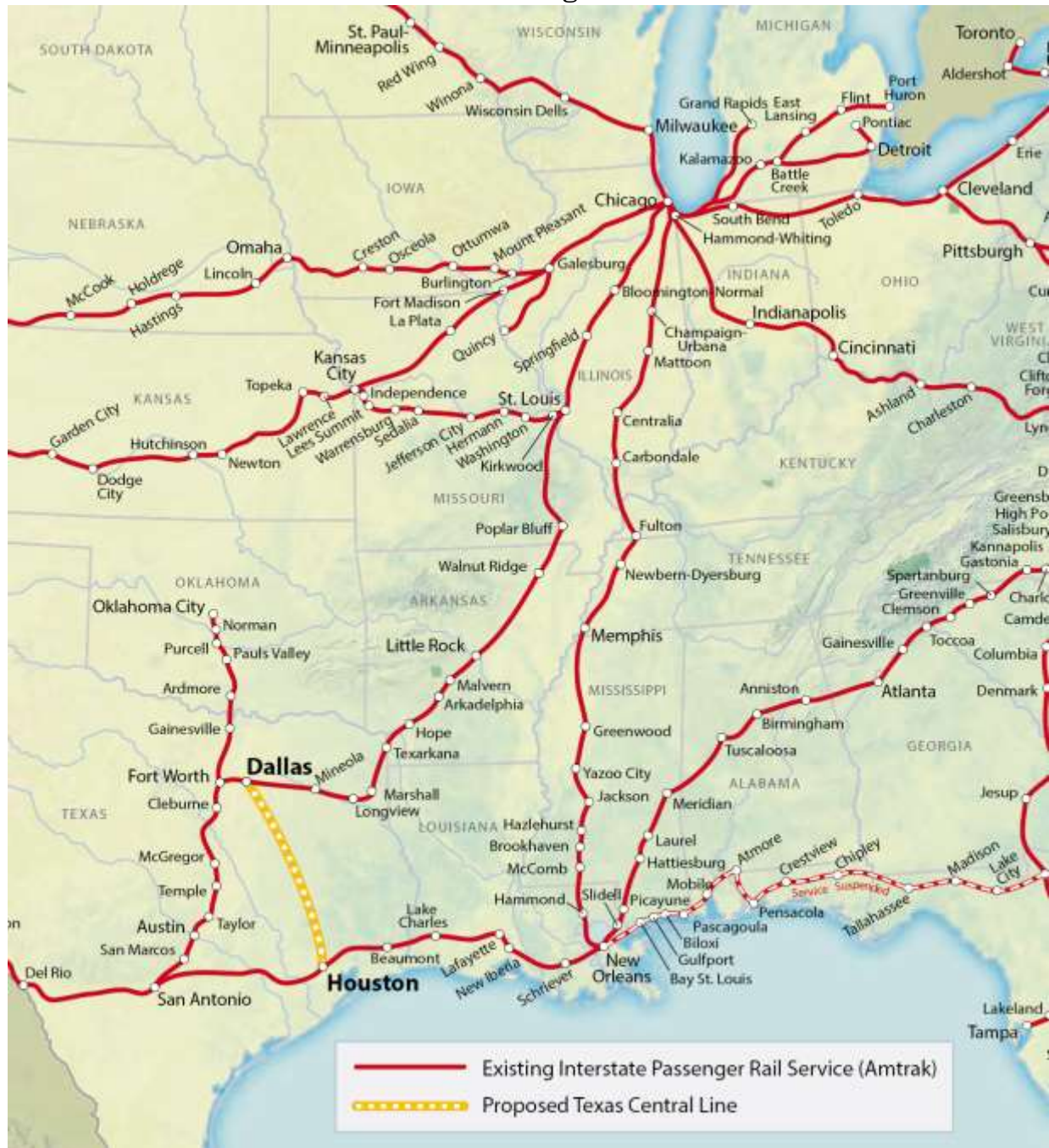
As shown in Figure 1 below, Texas Central plans to construct and operate an approximately 240-mile high-speed passenger rail line between Dallas and Houston, Texas.² Recognizing the Board’s jurisdiction over intrastate rail lines that are part of the interstate rail network, Texas Central petitioned for exemption from the prior approval requirements of 49 U.S.C. § 10901 in April 2016.³ The Exemption Petition indicated that Texas Central intends to hold itself out to serve both intrastate and interstate rail passengers by coordinating with Amtrak.⁴

² Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC Petition for Exemption, STB Docket No. 36025 at 1 (filed April 19, 2016) (“Exemption Petition”).

³ *Id.*

⁴ *Id.* at 6–10.

FIGURE 1:
The Interstate Passenger Rail Network



Given the record before it in 2016, the Board concluded that the proposed construction and operation of the Texas Central Line was not subject to the Board’s jurisdiction.⁵ At that time, Amtrak and Texas Central had expressed interest in coordinating rail service for interstate passengers, but had not entered into any formal agreement to do so. The Board concluded that the Texas Central Line would not be part of the interstate rail network—and thus outside the Board’s jurisdiction—because it “would have no direct connection with Amtrak, such as a shared station or a clearly defined arrangement to connect passengers using through ticketing.”⁶ The Board further indicated that “[s]hould Texas Central develop concrete plans that would make the [Texas Central] Line part of the interstate rail network, such as an actual through ticketing arrangement with Amtrak . . . Texas Central could seek Board authority at that time.”⁷

Texas Central continued to move forward with its plans, including by negotiating a direct connection with Amtrak. Several months after the Board’s initial decision, Texas Central and Amtrak entered into a Voluntary Coordination Agreement that provided for a variety of joint initiatives to promote and enhance

⁵ *Tex. Cent. R.R. & Infrastructure, Inc. & Tex. Cent. R.R., LLC—Auth. to Construct and Operate—Petition for Exemption from 49 U.S.C. § 10901 and Subtitle IV—Passenger Rail Line Between Dallas, Tex. and Houston, Tex.*, STB Docket No. FD 36025 at 6 (served July 18, 2016).

⁶ *Id.* at 5.

⁷ *Id.* at 6.

through passenger travel on their respective lines.⁸ Building on that foundation, Texas Central and Amtrak later executed a Reservation and Ticketing Agreement that gives interstate passengers the ability to travel on both Texas Central and Amtrak trains, and to transfer between Amtrak and Texas Central terminals, on a single through ticket.⁹ Based on these substantially changed circumstances, Texas Central filed a Petition to Reopen these proceedings.

On June 20, 2019, the Board issued a Decision directing Texas Central to provide additional information that would “assist the Board in considering Texas Central’s petition to reopen.”¹⁰ Specifically, the Board requested additional factual information relating to projected passenger transfers between Amtrak and Texas Central and the mechanisms for facilitating such transfers, “legal support for finding jurisdiction over transportation by a rail carrier . . . that involves a complete break or gap in physical rail assets,” and a “[d]iscussion” of similarities between Texas Central’s proposed passenger transfer service and transfer and transload activities in the freight context.¹¹

⁸ Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC Petition to Reopen, STB Docket No. FD 36025 at 6–7 (filed May 4, 2018) (“Petition to Reopen”); *id.* at Exhibit 2 (Amtrak-Texas Central Voluntary Coordination Agreement).

⁹ *Id.* at 5–6, Exhibit 1 (Amtrak-Texas Central Through Ticketing Agreement).

¹⁰ 2019 Decision at 3–4.

¹¹ *Id.*

RESPONSE TO INFORMATION REQUESTS

As Texas Central's Exemption Petition explains, Amtrak does not presently operate passenger rail service between Houston and Dallas. It does, however, offer trains that take passengers through Houston or Dallas, as well as to neighboring Fort Worth:

- The Texas Eagle provides one westbound train and one eastbound train daily between Chicago and Los Angeles, with a stop at Dallas Union Station;
- The Sunset Limited, which runs between New Orleans and Los Angeles, provides one westbound service stopping at Amtrak Houston Station on Monday, Wednesday, and Saturday and one eastbound service stopping at Amtrak Houston Station on Tuesday, Friday, and Sunday; and
- The Heartland Flyer provides one round trip train daily between Fort Worth and Oklahoma City.

For passengers who want to travel between Houston and points on the Texas Eagle, Amtrak offers its Thruway connecting bus service—a 4.5-hour trip on a bus carrying only Amtrak passengers.¹² Other bus connection options for rail passengers traveling between Houston and Dallas are even more circuitous.¹³ The Texas Central

¹² See Reply of the National Railroad Passenger Corporation (Amtrak) to Texas Central's Petition to Reopen, STB Docket No. FD 36025 at 5 (filed May 31, 2018) ("Amtrak Reply").

¹³ *Id.* at 5–6.

Line solves these problems by filling what Amtrak has described as “a major missing link in Amtrak’s national network.”¹⁴

I. The Texas Central Line ultimately will carry tens of thousands of through-ticketed interstate rail passengers every year.

The Board’s first request for supplemental information seeks “[p]rojections relating to annual passenger transfers in the first, fifth, and tenth full year of operation” of the Texas Central Line.”¹⁵

As explained in Section IV.C. below, the Board’s jurisdiction is not dependent on the volume of interstate traffic. In any case, in response to the Board’s request, Texas Central and Amtrak have developed projections of the number of passengers that can be expected to transfer between the two rail carriers. As detailed below, Amtrak and Texas Central expect the Texas Central Line to carry tens of thousands of interstate passengers every year after a three-year ramp up period.

Using conservative analytical assumptions, Amtrak estimates that between 5,100 and 5,700 passengers will transfer between Texas Central and Amtrak’s Texas Eagle and Sunset Limited trains in the first full year of operation.¹⁶ These estimates grow substantially to as many as 19,600 in year five of operations and 20,500 in year ten of operations.¹⁷ A breakdown of these numbers between the Texas Eagle rail

¹⁴ *Id.* at 6.

¹⁵ 2019 Decision at 3.

¹⁶ Exhibit 1, Verified Statement of Bruce T. Williams in Support of Petitioners’ Response to the Surface Transportation Board’s Request for Additional Information (“Williams V.S.”) ¶ 12.

¹⁷ *Id.*

service in Dallas and the Sunset Limited rail service in Houston is shown in the chart below:¹⁸

Amtrak Route	Connection Details	2026 Ridership (Year 1)	2030 Ridership (Year 5)	2035 Ridership (Year 10)
Texas Eagle	Dallas: Connecting shuttle or walk	4,000 - 4,500	13,700 - 15,400	14,400 - 16,100
Sunset Limited	Houston: Connecting shuttle	1,100 - 1,200	3,700 - 4,200	3,900 - 4,400
TOTAL		5,100 - 5,700	17,400 - 19,600	18,300 - 20,500

These projections assume that it will take three years of operations for passenger transfers to reach full projected ridership.¹⁹ This is because it takes time for potential passengers to become aware of new services and build their travel plans around them, new services do not immediately realize their full ridership potential.²⁰ Thus, Amtrak's connecting passenger forecasts assume that ridership in year one (2026) will be 30% of projected demand; that ridership in year two (2027) will be 70% of projected demand; and that full ramp up to 100% will occur in year three (2028).²¹ This means that of the years for which the Board requested ridership projections, year five (2030) is the first year to reflect full ramp up.²²

¹⁸ *Id.*

¹⁹ *See id.* ¶ 19.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

These projections represent an important commercial relationship for Texas Central.²³ While accounting for less than 1% of Texas Central’s total expected annual ridership, the forecast of connecting Amtrak passengers represents the equivalent of signing a commercial contract with a company of 1,000 employees that sends every employee on 20 trips per year.²⁴

Amtrak estimates that 27%–30% of Texas Eagle passengers at Dallas and 16–18% of Sunset Limited passengers at Houston will be connecting passengers.²⁵ A majority of these transferring passengers will be making interstate trips. Amtrak data shows that 92% of current riders on the Texas Eagle Thruway bus were traveling to or from places outside of Texas.²⁶ Passengers transferring to or from the Sunset Limited are similarly likely to be making interstate trips.²⁷

To develop these projections in compliance with the Board’s 2019 Decision, Amtrak performed a ridership study of the Texas Central – Amtrak service, utilizing the same Long Distance Train Demand Forecasting Model (“Long Distance Model”) that Amtrak employs in the normal course of business to estimate future ridership levels.²⁸ Attached as Exhibit 1 is a Verified Statement explaining in detail its “underlying methodologies, assumptions and data sources, together with the data on

²³ *Id.* ¶ 5.

²⁴ *Id.*

²⁵ *Id.* ¶ 18.

²⁶ Amtrak Reply at 5.

²⁷ *Id.* at 7.

²⁸ Williams V.S. ¶ 11.

which they are based.”²⁹ In brief, the Long Distance Model uses a direct demand approach to forecast Amtrak ridership by geographic market and class of service, based upon customer travel surveys and actual ridership and revenue data.³⁰ Key inputs to the Long Distance Model include:

- Socio-economic data and forecasts of population, employment, and income;
- Timetables for each train and connection; the time of day the train departs from the origin and arrives at the destination; and the number of nights required for the trip;
- Class(es) of service provided (coach, business, sleeper);
- Frequency of service (daily, tri-weekly, etc.);
- Whether the service is direct or requires connections, and the mode of the connections (bus, rail, etc.); and
- Fares (for connections, based upon the total of the average fares for each segment).³¹

Using this model, the forecast of connecting passengers between Amtrak and Texas Central trains is based upon:

- Current Amtrak services and schedules, including arrival and departure times, service frequency, and classes of service offered;
- Current on-time performance of the Amtrak trains;

²⁹ 2019 Decision at 3; *see* Williams V.S. ¶¶ 11–17.

³⁰ Williams V.S. ¶ 14.

³¹ *Id.* ¶ 15.

- Current average fares paid by passengers in city pairs between which Connecting Passengers will travel by Amtrak, which are assumed to increase only to match inflation;
- Proposed schedules provided by Texas Central that show departure and arrival times at Dallas and Houston and at Brazos Valley, an intermediate stop that Amtrak does not presently serve;
- The transfer service and schedules described in Section III below; and
- The connection via Texas Central replacing the Thruway bus service Amtrak operates between Houston and Longview, Texas to connect with the Texas Eagle.³²

In addition to the connections Texas Central will provide to Amtrak's Texas Eagle and Sunset Limited rail service in Houston and Dallas, Texas Central believes there are additional opportunities that will increase the number of interstate passenger transfers.³³ For example, Texas Central will coordinate final scheduling details to provide bus transfer service to and from Amtrak's Heartland Flyer rail line in Fort Worth.³⁴ Based on Amtrak's modeling, the projected number of connecting passengers that would utilize this service are 800–1,000 in year 2026, 2,900–3,300 in

³² *Id.* ¶ 16.

³³ *See* Exhibit 2, Verified Statement of Timothy B. Keith in Support of Petitioners' Response to the Surface Transportation Board's Request for Additional Information ("Keith V.S.") ¶ 21.

³⁴ *Id.*

year 2030, and 3,000–3,400 in 2035.³⁵ Nearly all of these passengers also are expected to be traveling interstate.³⁶

High-Speed Rail also will provide an attractive new mode of travel between Dallas and Houston, as well as serving the intermediate station at Brazos Valley, an area in which Amtrak currently has no direct or connecting services.³⁷ By making it easier for people to travel, this new service will significantly grow the size of the overall market in the corridor, supported by Texas Central's marketing initiatives.³⁸ Texas Central expects this induced demand to increase the number of through rail journeys between Texas Central and Amtrak.³⁹ Thus, the connecting passenger projections calculated by Amtrak provide just a baseline of passenger transfers between Texas Central and Amtrak.

II. While most passengers would likely use its transfer service, Texas Central plans upgrades for those who choose to walk between Dallas terminals.

The Board's second request seeks "[d]etails on the physical connection for any transferring passengers who may choose to walk between the Texas Central and Amtrak terminals in Dallas."⁴⁰

³⁵ Williams V.S. ¶ 13.

³⁶ Amtrak Reply at 7.

³⁷ Keith V.S. ¶ 21.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ 2019 Decision at 3.

As the Board notes, the Amtrak and Texas Central terminals in Dallas will be approximately one-half mile apart, as measured in a straight line. Walking between those terminals will require passengers to use public sidewalks covering approximately 0.8 miles.⁴¹ Given that distance, the convenience of the climate-controlled transfer service that Texas Central will provide (discussed below), and the usual Dallas weather conditions, Texas Central considers it unlikely that many transferring passengers will choose to carry their luggage and walk between stations.⁴²

But for those passengers who do decide to walk, Texas Central is planning some changes to make that trip even easier.⁴³ As part of current terminal designs, Texas Central will work with the City of Dallas to install a dedicated pedestrian walkway and improve sidewalk access from the Texas Central terminal to the Convention Center DART station.⁴⁴ This dedicated pedestrian walkway would facilitate safe foot traffic not only to the DART line but also to Dallas Union Station, which is located blocks further on.⁴⁵

⁴¹ Keith V.S. ¶ 18.

⁴² *Id.* ¶ 19. Passengers would also have the option to transfer between terminals via the Dallas Area Rapid Transit (DART) metro system, which has a stop at Dallas Union Station. The DART Convention Center station is located approximately 0.3 miles (1700 feet) from the Texas Central Terminal. *Id.* ¶ 20.

⁴³ *Id.* ¶ 19.

⁴⁴ *Id.*

⁴⁵ *Id.*

III. Texas Central will provide a convenient, climate-controlled, and timely connecting service between its terminals and Amtrak's terminals as part of a passenger's end to end through ticket.

The Board's third information request seeks "[d]etails pertaining to the proposed connecting transfer service between the Texas Central and Amtrak terminals in Dallas (approximately half a mile apart) and Houston (approximately seven miles apart)."⁴⁶

Per Texas Central's agreements with Amtrak, Texas Central will provide a connecting transfer service between the Texas Central and Amtrak terminals in Dallas and Houston.⁴⁷ Texas Central has therefore developed, in cooperation with Amtrak, a specific transportation plan to facilitate passenger transfers between the Texas Central Line and Amtrak's Texas Eagle and Sunset Limited lines.⁴⁸ Under this plan, Texas Central will fund and operate air-conditioned, rubber tire electric buses—sized appropriately for the expected passenger and luggage volume—to connect the Texas Central Terminals in Dallas and Houston with Amtrak's respective services in Dallas and Houston.⁴⁹ While the type and sizes of the vehicles are not set, these vehicles would be similar to the Proterra Catalyst 35 all-electric bus

⁴⁶ 2019 Decision at 3–4. As noted above, the Texas Central and Amtrak terminals in Dallas are approximately half a mile apart when measured as a straight-line. Seven miles is the shortest driving distance between the Texas Central and Amtrak terminal in Houston.

⁴⁷ Keith V.S. ¶ 10. *See also* Petition to Reopen, Exhibit 1 at § 1.1 (Amtrak-Texas Central Through Ticketing Agreement); *id.* Exhibit 2 at ¶ 6 (Amtrak-Texas Central Voluntary Coordination Agreement).

⁴⁸ Keith V.S. ¶ 10; Williams V.S. ¶ 8.

⁴⁹ Keith V.S. ¶ 10.

(currently operating with Dallas DART and capable of a 29 passenger, ADA-compliant configuration), the EMOSS MB16 all-electric mini bus (16 passengers with ADA compliance), or other commercially available electric vehicle.⁵⁰ In order to provide the most efficient transportation option, Texas Central will continue to evaluate updates in technology and changing local road infrastructure conditions before it initiates the transfer service.⁵¹

In Dallas, the transfer service will operate over existing roads between Dallas Union Station and the Texas Central Terminal, a roughly 0.8-mile one-way trip utilizing Young St., South Lamar St., and Cadiz St.⁵² In Houston, this service will operate on a roughly 7.4-mile one-way trip utilizing I-45, I-10, and I-610 between Houston's Amtrak Station and Texas Central's Terminal.⁵³ Maps of these routes are depicted in Figures 2 and 3 below. Texas Central also will coordinate final scheduling details to provide bus transfer service connecting the Dallas Texas Central Terminal to Fort Worth Central Station, which is served by Amtrak's Heartland Flyer.⁵⁴

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* ¶ 11.

⁵³ *Id.*

⁵⁴ *Id.* ¶ 15

FIGURE 2:
Route from Texas Central Houston HSR Terminal to
Amtrak Houston Station

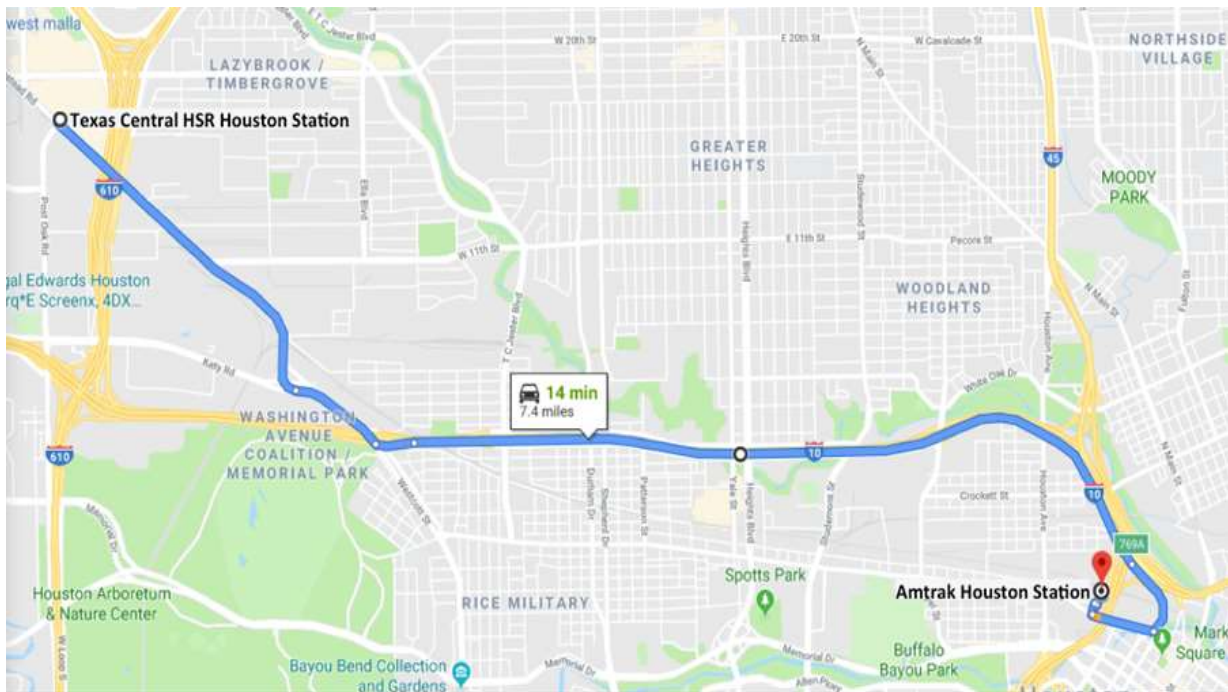
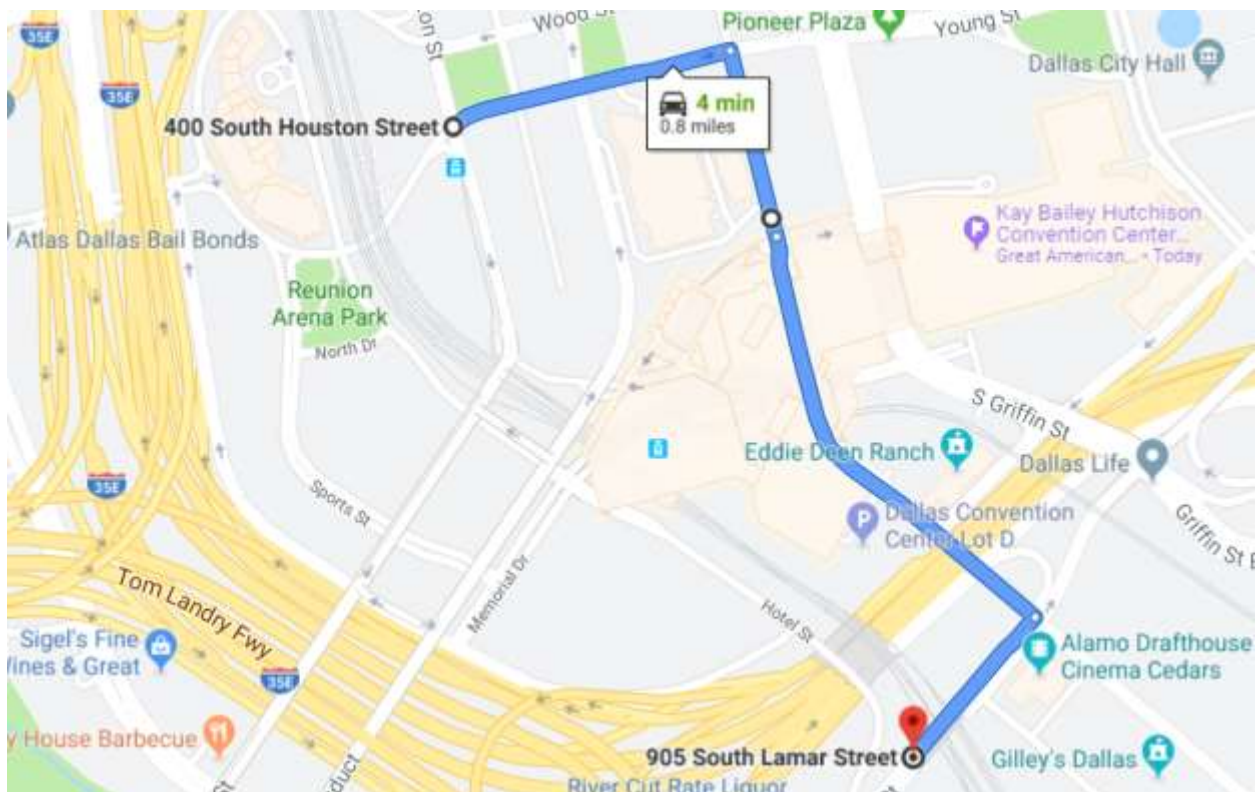


FIGURE 3:
Route from Texas Central Dallas HSR Terminal to Dallas Union Station



Passengers purchasing through tickets on Amtrak would book their connector service at the time of ticketing.⁵⁵ Texas Central anticipates that most passengers will elect a same-day transfer service, in which case the transfer service will be part of the base reserved ticket price.⁵⁶ Texas Central will coordinate with Amtrak to establish dedicated connection signage, way finding, and kiosks at all connecting stations to facilitate passenger connections.⁵⁷

The schedule for these bus transfers will be tied to Texas Central's and Amtrak's respective train schedules.⁵⁸ To ensure passengers make their connections, neither carrier will sell ticket combinations with a transfer window smaller than 90 minutes for transfers between Texas Central's and Amtrak's terminals in Dallas and Houston.⁵⁹ This transfer window allows passengers a comfortable amount of time to detrain and embark on a bus, travel on the bus to the connecting terminal (with an appropriate margin for traffic conditions), and then disembark the bus and board the next train.⁶⁰ This time for transfer is very small when taking into account passengers' total trip time from origin to destination on the Amtrak routes.

⁵⁵ *Id.* ¶ 12.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* ¶ 13.

⁵⁹ *Id.*

⁶⁰ *Id.*

Accounting for these transfer windows, and using the current schedule for Amtrak's Texas Eagle and Sunset Limited trains, Texas Central would provide connecting bus services as follows:⁶¹

Transfers between Dallas HSR Terminal and Dallas Union Station		
DAL HSR Terminal	Connector Shuttle	DAL Union Station
<i>Daily</i>		<i>Texas Eagle (Eastbound)</i>
HSR 10008 ARR 1028		
	DPT DAL HSR Terminal 1100	
	ARR DAL Union Station 1130	
		Amtrak 21 ARR 1130
		Amtrak 21 DPT 1150
	DPT DAL Union Station 1150	
	ARR DAL HSR Terminal 1220	
HSR 10015 DPT 1300		
<i>Daily</i>		<i>Texas Eagle (Westbound)</i>
HSR 10016 ARR 1428		
	DPT DAL HSR Terminal 1455	
	ARR DAL Union Station 1525	
		Amtrak 22 ARR 1520
		Amtrak 22 DPT 1540
	DPT DAL Union Station 1550	
	ARR DAL HSR Terminal 1620	
HSR 10023 DPT 1700		

⁶¹ *Id.* ¶ 14.

Transfers Between Houston HSR Terminal and Houston Amtrak Station		
HOU HSR Terminal	Connector Shuttle	HOU Amtrak Station
<i>Tu, Fr, Su</i>		<i>Sunset Limited (EB)</i>
HSR 10007 ARR 1028		
	DPT HOU HSR Terminal 1100	
	ARR HOU Amtrak Station 1130	
		Amtrak 2 ARR 1110
		Amtrak 2 DPT 1210
	DPT HOU Amtrak Station 1200	
	ARR HOU HSR Terminal 1230	
HSR 10016 DPT 1300		
<i>Mo, We, Sa</i>		<i>Sunset Limited (WB)</i>
HSR 10021 ARR 1728		
	DPT HOU HSR Terminal 1750	
	ARR HOU Amtrak Station 1820	
		Amtrak 1 ARR 1818
		Amtrak 1 DPT 1855
	DPT HOU Amtrak Station 1850	
	ARR HOU HSR Terminal 1920	
HSR 00030 DPT 2000		

The transfer service schedules reflect Amtrak’s recommendations regarding timing of connections and minimum connecting times.⁶² As stated in the Verified Statement of Bruce T. Williams, both the type of transfer service Texas Central plans to provide and the service schedules should meet customer expectations and help to maximize the number of Connecting Passengers.⁶³ Amtrak also concurs that the connecting times should provide reliable connections even if transfer buses are delayed by traffic or trains arrive late.⁶⁴

⁶² Williams V.S. ¶ 8.

⁶³ *Id.*

⁶⁴ *Id.* ¶ 9.

Texas Central will adjust the schedule and frequency of its transfer services as necessary to account for any future changes in Amtrak's or Texas Central's service schedules.⁶⁵

Texas Central will also adjust its transfer service to accommodate train delays on the day of travel.⁶⁶ In the event of an Amtrak service delay, Texas Central will adjust to Amtrak's schedule.⁶⁷ Because Texas Central provides more frequent train services, it can automatically rebook passengers arriving on delayed Amtrak trains onto the next available Texas Central train.⁶⁸ If Texas Central experiences a delay on its line, it will offer passengers on-demand transfer service to the Amtrak terminal so they can make their planned connection.⁶⁹ If the planned Amtrak connection is no longer feasible, Texas Central will assist passengers with alternative arrangements, including rebooking on the next Amtrak train.⁷⁰

IV. Texas Central's through-ticketing and transfer arrangements create Board jurisdiction.

The Board next requested "relevant legal support for finding jurisdiction over transportation by a rail carrier . . . that involves a complete break or gap in physical rail assets," including cases "where a through-ticketing agreement was a factor."⁷¹

⁶⁵ Keith V.S. ¶ 16.

⁶⁶ *Id.* ¶ 17.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ 2019 Decision at 4.

Consistent with the Supreme Court’s longstanding approach to interstate commerce regulation, the Board has “jurisdiction over a railroad lying wholly within one State if it participates in the movement of passengers from one State to another under common arrangements with connecting carriers.” *Cape Cod & Hyannis R.R., Inc.—Exemption from 49 U.S.C. Subtitle IV*, FD No. 31229, 1988 WL 226127, at *1 (I.C.C. Mar. 21, 1988). As discussed above, Texas Central now has a through-ticketing agreement with Amtrak that allows passengers to use Texas Central for one leg of their interstate rail journeys, as well as detailed plans for a passenger transfer service that will make their journeys seamless. That creates jurisdiction. No physical connection to Amtrak’s property is required.

A. The Board has jurisdiction over an intrastate railroad if there is “a practical continuity of movement” across state lines.

The Board has jurisdiction over rail transportation “between a place in . . . a State and a place in the same . . . State as part of the interstate rail network.” 49 U.S.C. § 10501(a)(2)(A). Congress added this language to the statute as part of ICCTA to “clarify[] and expand[] the scope of the agency’s jurisdiction over *intrastate* rail transportation.” *DesertXpress Enterprises, LLC—Petition for Declaratory Order*, No. FD 34914, 2010 WL 1822102, at *7 (S.T.B. May 6, 2010) (emphasis in original).

Congress used the phrase “as part of the interstate rail network” to ensure that “the Board’s newly-explicit jurisdiction over *intrastate* transportation ... would be tied to” Congress’s power to regulate “*interstate* commerce.” *Id.* (emphasis in original). Indeed, even before ICCTA, the ICC’s jurisdiction over “intrastate rail commerce” was linked to the scope of “‘interstate commerce’ within the meaning of

the commerce clause.” *Ill. Commerce Comm’n v. I.C.C.*, 749 F.2d 875, 878 n.4 (D.C. Cir. 1984). ICCTA simply implements Congress’s power to “regulate intrastate rail traffic where that traffic substantially affects interstate commerce by virtue of its being part of an interstate rail network.” *Id.* at 884.

The Board and the courts have construed the Board’s jurisdiction “broadly to include (but not be limited to) facilities that are part of the general system of rail transportation and are *related to* the movement of passengers or freight[] in interstate commerce.” *Or. Coast Scenic R.R. v. Or. Dep’t of State Lands*, 841 F.3d 1069, 1075 (9th Cir. 2016) (quoting *DesertXpress*, 2010 WL 1822102, at *9) (emphasis added). This broad, flexible standard aligns with the Supreme Court’s longstanding approach to interstate commerce regulation, which asks whether there is “a practical continuity of movement” across state lines. *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 569 (1943); *see also United States v. Yellow Cab Co.*, 332 U.S. 218, 229–31 (1947) (“interstate commerce is an intensely practical concept” that reflects the “entire journey”). As a result, “purely intrastate transportation can constitute part of interstate commerce if it is part of a continuous stream of interstate travel.” *Abel v. S. Shuttle Services, Inc.*, 631 F.3d 1210, 1214 (11th Cir. 2011) (per curiam) (citations omitted).

B. An intrastate railroad’s through-rate arrangement with an interstate carrier establishes Board jurisdiction.

The courts, the Board, and the ICC have long held that federal jurisdiction extends to each part of a continuous interstate journey—whether or not the journey includes multiple transportation modes or carriers. Texas Central’s through-ticketing

arrangement with Amtrak, coupled with the passenger transfer service between the two carriers' stations, satisfies this test. Four intersecting lines of precedent confirm this conclusion: (1) longstanding Supreme Court precedent construing the ICC's rail jurisdiction; (2) ICC and court decisions in the same or similar contexts; (3) Supreme Court decisions about transfer services between rail terminals; and (4) cases addressing whether single-state transportation is "interstate commerce" under the federal labor laws.

1. The Supreme Court has upheld ICC jurisdiction over single-state railroads based on through-rate arrangements.

A long line of Supreme Court cases upheld the ICC's jurisdiction over railroads located in a single state based on common arrangements—including through rates—with interstate carriers. For example, *United States v. Union Stock Yard* affirmed the Commission's jurisdiction over rail service "performed wholly in one state" as "part of interstate carriage" where the railroad "transport[ed] [freight] for a substantial distance upon its journey in interstate commerce, *under a through rate*." 226 U.S. 286, 304–05 (1912) (emphasis added). Similarly, the Supreme Court upheld the ICC's jurisdiction over a railroad located entirely in Georgia because the railroad "agree[d] . . . to participate in through rates and charges" with interstate carriers. *Cincinnati, New Orleans & Texas Pac. R.R. Co. v. I.C.C.*, 162 U.S. 184, 191–92 (1896). The Court explained that an intrastate railroad "becomes part of a continuous line . . . by an arrangement for the continuous carriage or shipment from one state to another, and thus becomes amenable to" ICC jurisdiction. *Id.* at 192. And *Norfolk & W. R.R. Co. v. Pennsylvania* held that a railroad was engaged in interstate commerce "[b]y

virtue of its connections and certain traffic contracts with other railroads,” which made it “a link in a through line of [interstate] road.” 136 U.S. 114, 119 (1890).

Under these cases, “[t]he test is, whether the railroad was being operated solely for the purpose of intrastate transportation of persons and property, or was a link in a continuous transportation from one state to another.” *Dearing v. United States*, 167 F.2d 310, 311 (10th Cir. 1948) (collecting cases). Here, as demonstrated above, Texas Central will not operate “solely for the purpose of intrastate transportation of persons.” *Id.* Rather—like the railroads in *Union Stock Yard, Cincinnati*, and *Norfolk*—Texas Central will serve as “a link in a continuous transportation from one state to another,” *id.*, through its “agree[ment] . . . to participate in through rates” with Amtrak. *Cincinnati*, 162 U.S. at 192.

2. The ICC and the courts have similarly held that a “common arrangement” or “through ticketing” creates federal jurisdiction.

Applying the Supreme Court’s precedents, the ICC held that it had “jurisdiction over a railroad lying wholly within one State if it participates in the movement of passengers from one State to another under common arrangements with connecting carriers.” *Cape Cod*, 1988 WL 226127, at *1. In fact, the ICC’s *Cape Cod* decision relied solely on a through-ticketing arrangement with Amtrak to find jurisdiction. “Cape Cod operate[d] a seasonal passenger and tour railroad service between various points in Massachusetts”—presumably meaning that many of its passengers were making *intrastate* trips. *Id.* Yet the railroad also “connect[ed] . . . with Amtrak trains” in one location and had a “through ticket service” with Amtrak. *Id.* “The through ticket arrangement between Cape Cod and Amtrak” was “the only

arrangement between the two carriers.” *Id.* “Cape Cod [did] not use any equipment or other service of Amtrak.” *Id.*

That was enough to establish ICC jurisdiction over Cape Cod: “[T]he Commission has jurisdiction *because of the through ticket arrangements with Amtrak*, a carrier providing interstate service.” *Id.* at *2 (emphasis added). The ICC did not discuss Cape Cod’s physical connection with Amtrak’s property, much less suggest that such a connection was required for jurisdiction. As the Board later summed up *Cape Cod*’s holding, “because of through ticketing from points out of state, rail transportation of passengers within Massachusetts was interstate transportation.” *DesertXpress*, 2010 WL 1822102, at *14.⁷²

Cape Cod’s reasoning applies fully here. Like Cape Cod, Texas Central will have a “through ticket service . . . with Amtrak.” 1988 WL 226127, at *1. As in *Cape Cod*, that arrangement will allow passengers using Amtrak’s “interstate service” to continue their journeys on Texas Central. *Id.* In fact, the argument for jurisdiction here is even stronger than in *Cape Cod*. Cape Cod connected to Amtrak at only one

⁷² By contrast, the Board’s decisions declining jurisdiction over intrastate railroads have emphasized that the railroad did *not* show “that it ha[d] entered into interchange agreements with any interstate carrier, offered through ticketing for passengers on any other carrier, or plan[ned] to seek agreements with any other carrier that would make its passenger movements . . . part of the interstate rail network.” *E.g., Denver & Rio Grande Ry. Historical Found.—Petition for Declaratory Order*, No. FD 35496, 2014 WL 4068219, at *7 (S.T.B. Aug. 15, 2014). *See also State of Maine—Petition for Declaratory Order*, No. FD 35440, 2010 WL 5392953, at *4 (S.T.B. Dec. 29, 2010) (declining jurisdiction where the “current passenger rail service plans d[id] not contemplate, for example, the provision of service beyond state lines, either on its own or by through ticketing arrangements with another carrier”); *infra* § IV.E.

location, while Texas Central will board and disembark Amtrak passengers in both Dallas and Houston. Texas Central will thus carry passengers traveling to or from Texas in both directions, and passengers traveling through Texas to other states, again in both directions. And while Cape Cod was a seasonal, tourist-oriented service, *id.* at *1, Texas Central will be a year-round, full-service high-speed passenger railroad. As a result, Texas Central will be even more “part of the interstate rail network” than Cape Cod. 49 U.S.C. § 10501.

Cape Cod’s approach also tracks the ICC’s and the courts’ jurisdictional analysis in similar contexts. For example, the Commission held—and the D.C. Circuit agreed—that “motor transportation between an airport and another point in the same state is ‘interstate movement’” within the ICC’s jurisdiction “where ‘there is an arrangement (referred to as a “common arrangement” or “through ticketing”) between the motor carrier and the air carrier for continuous passage or interchange.” *Penn. Pub. Utility Comm’n v. United States*, 812 F.2d 8, 11 (D.C. Cir. 1987) (quoting *Kimball—Petition for Declaratory Order*, 131 M.C.C. 908, 918 (I.C.C. 1980)). Through-ticketing is not necessary to establish such a “common arrangement,” but where it exists, it is conclusive. *Id.* at 12. Likewise, the Supreme Court affirmed the ICC’s jurisdiction over a District of Columbia bus-and-streetcar service based on its exchange of passengers with Virginia-bound buses, explaining that the service was “part of a continuous stream of interstate transportation” and thus formed “an integral part of an interstate movement.” *United States v. Capital Transit Co.*, 338 U.S. 286, 290 (1949). These decisions further show that Texas Central’s “common

arrangement”—its through-ticketing agreement—with Amtrak creates Board jurisdiction. *See, e.g., IBEW Local Union 465—Petition for Declaratory Order—San Diego Trolley, Inc.*, FD No. 31862, 1992 WL 189043, at *4 (I.C.C. Aug. 4, 1992) (citing *Capital Transit* to “distinguish[] purely local lines from lines that are connected to and part of the national rail system” and emphasizing the importance of “through tickets” or other “common arrangements with [interstate] carriers”).

3. The Supreme Court has upheld the ICC’s jurisdiction over an intra-city transfer service between train stations.

The Supreme Court has also held that the ICC’s jurisdiction extends to a transfer service between train stations, like the service Texas Central will provide, because that service is part of interstate movement. In *Yellow Cab*, the Supreme Court held that a passenger transfer service between rail terminals in Chicago was interstate commerce. *See Yellow Cab Co.*, 332 U.S. at 228. “Chicago [was] the terminus of a large number of railroads engaged in interstate passenger traffic,” and passengers “making interstate railroad trips which carry them through Chicago [often] must disembark from a train at one railroad station, travel from that station to another some two blocks to two miles distant, and board another train.” *Id.* One taxi company held an exclusive contract with the railroads to provide this service, which its competitors alleged was an unlawful restraint of interstate commerce under the Sherman Act. *Id.*

The Supreme Court agreed that the transfer service was part of interstate commerce because it was “an integral step in the interstate movement”: “When persons or goods move from a point of origin in one state to a point of destination in

another, the fact that a part of that journey consists of transportation by an independent agency solely within the boundaries of one state does not make that portion of the trip any less interstate in character.” *Id.* at 228–29. “That portion must be viewed in its relation to the entire journey rather than in isolation.” *Id.* at 229. By contrast, the general taxi business in Chicago was *not* interstate commerce because the regular taxis did not “serve[] only railroad passengers” and had “no contractual or other arrangement with the interstate railroads.” *Id.* at 230–31.

Although *Yellow Cab* was a Sherman Act case, the courts and the ICC have relied on it to construe the Commission’s jurisdiction. *E.g.*, *Penn. Pub. Utility Comm’n*, 812 F.2d at 10–11. Indeed, the ICC described *Yellow Cab* as a “lead case in the area.” *Napa Valley Wine Train—Petition for Declaratory Order*, 7 I.C.C. 2d 954, 970 n.19 (1991). And in a sequel to *Yellow Cab* decided a decade later, the Supreme Court held that the same “interterminal transfer of interstate passengers” in Chicago was “an integral part of interstate railroad transportation authorized and subject to regulation under the Interstate Commerce Act.” *Chicago v. Atchison, T. & S. F. Ry. Co.*, 357 U.S. 77, 87, 89 (1958).

4. Courts and the ICC have relied on federal labor law decisions to confirm that a “practical continuity of movement,” created by through ticketing arrangements, establishes jurisdiction.

“In determining the scope of [the ICC’s] interstate jurisdiction,” the Commission and the courts have relied on “case law dealing with the meaning of interstate commerce under the Fair Labor Standards Act,” *Penn. Pub. Utility Comm’n*, 812 F.2d at 10–11, which exempts employees of motor-carriers engaged in interstate commerce, *see* 49 U.S.C. § 31502. Courts applying this provision ask the

same basic question as when they construe the Board's jurisdiction, and the controlling test mirrors the analysis above: interstate commerce includes "the entire movement of [goods or passengers] until their interstate journey [is] ended." *Walling*, 317 U.S. at 568. "A temporary pause in their transit does not mean that they are no longer 'in commerce.'" *Id.* If "there is a practical continuity of movement of the goods [or passengers]," "a break in their physical continuity of transit is not controlling." *Id.* at 568–69.

Under this test, "[i]f a carrier in a single-State movement is engaged in through ticketing arrangements or other common arrangements with a connecting out-of-State carrier, passengers moving in the single-State operation under those arrangements to or from an out-of-State point are in interstate commerce." *Holland Indus., Inc.—Intrastate Operations—Petition for Declaratory Order*, No. MC C 30036, 1988 WL 226101, at *4 (I.C.C. Mar. 16, 1988). That is, "purely intrastate transportation can constitute part of interstate commerce if it is part of a 'continuous stream of interstate travel.' For this to be the case, there must be a 'practical continuity of movement' between the intrastate segment and the overall interstate flow." *Abel*, 631 F.3d at 1214 (quoting *Walters v. Am. Coach Lines of Miami, Inc.*, 575 F. 3d 1221, 1226 (11th Cir. 2009)). So, for example, an airport shuttle service is interstate commerce if "[t]ravelers buy package deals from . . . internet travel companies that include hotel accommodations and airfare in addition to transportation to and from the airport." *Id.* at 1216–17. Because of this "common

arrangement,” the company’s “local transport of these package-deal travelers has a ‘practical continuity of movement’ with the overall interstate journey.” *Id.* at 1217.

This case law “underscores the principle established in *Yellow Cab*” that a contractual arrangement “between the interstate carrier and the local transportation” triggers federal jurisdiction if it creates a practical continuity of movement. *See Penn. Pub. Utility Comm’n*, 812 F.2d at 11; *see also Reich v. Am. Driver Serv., Inc.*, 33 F.3d 1153, 1155 n.3 (9th Cir. 1994) (“If the wholly intrastate commerce is merely part of a ‘continuing transportation’ in interstate or foreign commerce . . . the motor carrier is subject to the Secretary of Transportation’s jurisdiction.”).

C. The Board’s jurisdiction is not dependent on the volume of interstate traffic.

These precedents just discussed establish two principles. One, a “common arrangement” with an interstate carrier for continuous travel—a through rate or through ticket being the most pertinent example—can make an otherwise-intrastate railroad part of the interstate rail network. Two, that principle applies equally where the interstate journey includes a transfer from one rail station to another that is located some distance away. *See Yellow Cab Co.*, 332 U.S. at 228; *Abel*, 631 F.3d at 1214–17. Together, these principles establish the Board’s jurisdiction here. Texas Central’s through-ticketing arrangement with Amtrak, which includes a transfer service between stations, creates a “practical continuity of movement” through the interstate rail network. *Walling*, 317 U.S. at 569. That is, Texas Central now has the “direct connection”—*i.e.*, the “clearly defined arrangement to connect passengers

using through ticketing”—required to create jurisdiction. *Tex. Cent. R.R. & Infrastructure, Inc. & Tex. Cent. R.R., LLC—Petition for Exemption—Passenger Rail Line Between Dallas & Houston, Tex.*, No. FD 36025, 2016 WL 4594246, at *5 (S.T.B. July 18, 2016).

This jurisdictional test is not dependent on the volume of interstate passengers or traffic. The Interstate Commerce Act gives the Board jurisdiction over rail transportation that is part of the general network “without reference to its volume.” *See Nat’l Labor Relations Bd. v. Fainblatt*, 306 U.S. 601, 606 (1939) (discussing the National Labor Relations Act). Rather, the Act “evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce.” *Id.* at 607; see *Ill. Commerce Comm’n*, 749 F. 2d at 878 n.4. In this situation, there is “no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce.” *NLRB*, 306 U.S. at 607. Indeed, *Yellow Cab* emphasized that the Sherman Act applies to “‘any part’ of interstate commerce”—just as the Interstate Commerce Act applies to transportation on any “part of the interstate rail network”—and thus “the amount of interstate trade” at issue “is immaterial.” *Yellow Cab Co.*, 332 U.S. at 225. The same reasoning applies here.

Moreover, neither the Board nor the courts have ever suggested that a through-ticketing arrangement creates jurisdiction only if a certain minimum number of passengers take advantage of it. On the contrary, they hold that the arrangement itself supports jurisdiction. *See e.g., Union Stock Yard*, 226 U.S. at 304–05; *Cincinnati*, 162 U.S. at 192; *Cape Cod*, 1988 WL 226127, at *1. And that approach

makes sense. Imposing a certain volume threshold would mean that a particular rail line could drop in and out of the Board’s jurisdiction each year, depending on how many interstate travelers it carried. That is neither a sound construction of the statutory text nor a sensible policy for federal regulation.

D. The plain language of ICCTA and case law demonstrate that a physical connection to the rest of the interstate rail network is not required.

The Board asked Texas Central to address the jurisdictional implications of “a complete break or gap in physical rail assets.”⁷³ Both the Board and the FRA have explained, with good reason, that a physical connection is not required to create jurisdiction. What matters, as explained above, is a practical continuity of interstate movement.

To start, in *DesertXpress*, the Board rejected a similar physical connection argument. The petitioners there argued that a stand-alone high-speed steel-wheel passenger rail line that crossed from California into Nevada was not “part of” the rail network because it “would not physically connect to existing rail lines” carrying freight traffic. *DesertXpress*, 2010 WL 1822102, at *5. The Board disagreed, explaining that even if the “part of the interstate rail network” requirement applied to a line that crossed state borders, the lack of a physical connection would not matter. A physical connection requirement, the Board said, “is nowhere reflected in the plain language of the ICA” and is unsupported by legislative history or case law. *Id.* at *8–

⁷³ 2019 Decision at 4.

*12. The Board thus had jurisdiction over the line even though it would “not physically connect with any other rail line.” *Id.* at *8.

Likewise, FRA has explained that “an intercity high speed rail system with its own right of way”—like Texas Central—is “part of the general system [of rail transportation] *although not physically connected to it*” because the railroad “exchanges passengers with interstate carriers.” 65 Fed. Reg. 42,529, 42,544 (July 10, 2000) (emphasis added). “[P]ortions of the network may lack a physical connection but still be part of the system by virtue of the nature of operations that take place there.” *Id.* For example, “an intercity high speed rail” is part of the system, while “[t]ourist railroad operations are not inherently part of the general system,” whether or not they are physically connected. *Id.* And FRA noted that “[t]he system may also grow, *as with the establishment of intercity service on a brand new line.*” *Id.* (emphasis added). Thus, requiring a physical connection here would create a stark conflict with the other federal agency charged with overseeing the nation’s railways.

These decisions are consistent with text and precedent. The statutory text requires merely that a railroad be “part of the interstate rail network.” 49 U.S.C. § 10501(a)(2)(A). It neither specifies how a railroad can become “part of” the network nor restricts jurisdiction to physically connected rail assets. Consistent with Congress’s intent, the Board and the courts have construed this language “broadly to include (but not be limited to) facilities that are part of *the general system of rail transportation* and are *related to* the movement of passengers or freight[] in interstate commerce.” *Ore. Coast*, 841 F.3d at 1075 (emphasis added) (quoting

DesertXpress, 2010 WL 1822102, at *9). That broad standard imposes no physical prerequisites.

Nor does any precedent support a physical connection requirement. Not one of the cases discussed above—not *Union Stock Yard, Norfolk, Cincinnati, Dearing*, or *Cape Cod*—suggested that a physical track connection was necessary or even relevant to the jurisdictional analysis. To the contrary, the Supreme Court said in *Walling* that where there exists “a practical continuity of movement,” then “*a break in the[] physical continuity* of transit is not controlling.” 317 U.S. at 568–69 (emphasis added). *Yellow Cab* illustrates the same point, since a transfer service between train stations necessarily involves a physical gap in the rail lines. *See* 332 U.S. at 228–29. Likewise, the ICC held more than once that, where a railroad located in a single state “*sell[s] no through tickets, and ha[s] no common arrangements with connecting interstate carrier*,” “whether [the railroad’s] system is physically connected to and capable of operating in interstate commerce” is “inconsequential.” *Staten Island Rapid Transit Operating Auth.—Petition for Declaratory Order*, FD No. 30879, 1987 WL 99501, at *4 (I.C.C. Sept. 21, 1987) (emphasis added); *see also All Aboard Fla.—Operations LLC & All Aboard Fla.—Stations—Construction & Operation Exemption—in Miami, Fla. & Orlando, Fla.*, No. FD 35680, 2012 WL 6659923, at *2–3 (S.T.B. Dec. 21, 2012). These decisions underscore that through-ticketing, not physical connectivity, is what matters.

There are also strong policy reasons to reject a physical connection requirement. *DesertXpress* explained that this requirement would impede “regulatory

flexibility” in response to new technologies and services. 2010 WL 1822102, at *11. Although Congress focused on “then-prevailing possibilities for passenger-only transport” when it adopted ICCTA, there is “no basis . . . for concluding that Congress also anticipated and carved out—much less eliminated—from the scope of the Board’s jurisdiction any and every other form of interstate passenger operations that might arise in the future as part of the nation’s general system of rail transportation.” *Id.* And the Board specifically noted that “the development of passenger-only high-speed rail lines like that proposed by DesertXpress can occur only as a network separate and independent from the existing freight network.” *Id.* at *13. The Board thus “reject[ed] as unfounded Petitioners’ interpretation that Congress intended to create a federal regulatory gap over the construction of high-speed passenger-only rail lines” and to carve out from the Board’s mission oversight of emerging high-speed rail systems. *Id.*

Finally, both *DesertXpress* and FRA’s policy statement underscore that a physical connection requirement would categorically exclude high-speed rail lines located in a single state from the Board’s jurisdiction, despite the federal policy of fostering newly developed rail technologies. The Board should not construe the ICCTA to categorically preclude federal jurisdiction over new and important rail systems.

E. Cases declining jurisdiction over intrastate railroads are distinguishable on the basis that the rail lines did not have bona fide end-to-end interstate through ticketing arrangements in place.

Finally, this case is distinguishable from the Board's decisions declining jurisdiction over intrastate railroads—in particular, *All Aboard Florida*, *Napa Valley Wine Train*, and *Fun Trains*. Two of these cases involved passenger excursion railroads, not inter-city high-speed service, and none of them involved a bona fide through-ticketing arrangement. Indeed, consistent with the decisions discussed above, the Board's decisions declining jurisdiction have consistently emphasized the lack of a through-ticketing arrangement. No such concerns exist here.

First, in *All Aboard Florida*, the Board granted an unopposed motion to dismiss a request for authority to construct and operate a proposed intercity passenger line in Florida. The line “would not connect with Amtrak or any other interstate passenger rail service provider” and had “*no plans to provide through ticketing* with Amtrak or any other interstate rail passenger operator for transportation beyond Florida.” *All Aboard Fla.*, 2012 WL 6659923, at *2 (emphasis added); *see also State of Maine—Petition for Declaratory Order*, No. FD 35440, 2010 WL 5392953, at *4 (S.T.B. Dec. 29, 2010) (no jurisdiction where railroad did not contemplate “through ticketing arrangements with another carrier”); *IBEW*, 1992 WL 189043, at *4 (same, where trolley line “does not accept transfer tickets from other railway systems nor issue tickets enabling its passengers to continue to travel beyond [its] lines”). Here, by contrast, Texas Central has a firm through-ticketing agreement in place with Amtrak lines that extend beyond Texas' borders.

Second, Napa Valley Wine Train held that the ICC lacked jurisdiction over a round-trip “tourist excursion” railroad located entirely in California. *Napa Valley Wine Train*, 7 I.C.C.2d at 970 n.23. Crucially, the Wine Train lacked a *bona fide*, end-to-end through-ticketing arrangement. Although the railroad claimed to have a through-ticketing arrangement with Amtrak, “through passengers ha[d] to use [an] intervening bus service,” which “require[d] a separate ticket” that was “not encompassed within the so-called through ticket.” *Id.* at 964. And “the actual operations and marketing of Wine Train are more a local tourist excursion than a conveyance for the through movement of passengers.” *Id.* at 965.

None of that is true here. In particular, the “closest Amtrak connection [was] over 30 miles from Wine Train’s station at Napa” and passengers needed “a separate bus ticket” to get from one to the other. *Id.* at 962. Here, though, Texas Central’s terminals are located in the same cities as Amtrak’s terminals, and Texas Central will provide a connecting transfer service as part of the through-ticket arrangement. In other words, Texas Central (and Amtrak) will provide a through ticket for the *entire* interstate movement, which Wine Train did not. And Texas Central’s transfer service resembles the routine service at issue in *Yellow Cab*. See *Yellow Cab Co.*, 332 U.S. at 228 (noting that interstate rail passengers commonly “must disembark from a train at one railroad station, travel from that station to another some two blocks to two miles distant, and board another train”). Indeed, the ICC noted in *Napa Valley Wine Train* that “bona fide through ticketing or other arrangements may be sufficient” to support jurisdiction. *Napa Valley Wine Train*, 7 I.C.C.2d at 964. Texas

Central now has just such an arrangement in place. And Texas Central is not, and does not hold itself out as, a “local tourist excursion”; it is a dedicated, high-speed service “for the through movement of passengers.” *Id.* at 965.

Third, in *Fun Trains*, the Board declined jurisdiction over another “entertainment oriented” intrastate tourist excursion line. *Fun Trains, Inc.—Operation Exemption—Lines of CSX Transp., Inc. and Fla. Dep’t of Transp.*, FD No. 33472, 1998 WL 92052, at *1 (S.T.B. Feb. 24, 1998). “[A]lthough many of [Fun Train’s] potential riders will be tourists traveling in interstate commerce, their journeys [would] not be continuous,” and the railroad would “not participate in through passenger operations or common carrier arrangements with Amtrak.” *Id.* at *2. The Board specifically noted that a through-ticketing arrangement with Amtrak would change the analysis, explaining that (as *Cape Cod* had held) the agency “had jurisdiction over a railroad lying wholly within one state if the railroad participates in the movement of passengers from one state to another under common arrangements with connecting carriers, *i.e.*, by means of through ticketing.” *Id.*; see also *Denver & Rio Grande*, 2014 WL 4068219, at *7 (no jurisdiction over “wholly intrastate passenger excursion operations” where the railroad did not “offer[] through ticketing for passengers on any other carrier”). Again, this case is different. Texas Central has the through-ticketing agreement that was lacking in *Fun Trains*; it is not an “entertainment oriented” service for tourists; and its passengers’ interstate journeys *will* be continuous.

* * *

In sum, the Board’s expanded jurisdiction under § 10501(a)(2)(A) embodies a broad, practical standard that reflects Congress’s expansive power to regulate interstate commerce. Under that standard, what ultimately matters is a “practical continuity” of interstate movement. *Walling*, 317 U.S. at 569. And a through-ticketing arrangement between carriers is a common, longstanding way to establish that continuity. Precedent from the Supreme Court, the lower courts, and the Board all support that conclusion. By contrast, there is no support in text or precedent for a physical connection requirement. As a matter of policy, federal jurisdiction should reach every railroad that “participates in the movement of passengers from one state to another,” *Fun Trains*, 1998 WL 92052, at *2, including new-technology high-speed lines that *cannot* physically connect to the rest of the network, *see DesertXpress*, 2010 WL 1822102, at *8–9; 65 Fed. Reg. at 42,544. Because Texas Central will provide through-ticketing with Amtrak and a transfer service between terminals for continuous interstate journeys, it is as much a part of the interstate network as the Amtrak lines with which it will interchange passengers. And as the following map shows, Texas Central will plug a long-time gap in that network, providing new opportunities for efficient interstate travel.

V. Texas Central’s transfer service is comparable to jurisdictional transfer, transload, or similar activities in the freight context.

The Board also asked Texas Central to address “whether the proposed transfer service is similar to transfer, transload, or similar activities in the freight context that are, in some circumstances, subject to the Board’s jurisdiction.” 2019 Decision at 4. It is indeed similar, which further supports jurisdiction here.

As explained above, the Supreme Court has long recognized that passenger transfers between rail terminals in the same city are “an integral step in the interstate movement.” *Yellow Cab Co.*, 332 U.S. at 228–29; *see also New York, New Haven & Hartford R.R. Co., Trustees, Discontinuance of All Interstate Passenger Trains*, 327 I.C.C. 151, 168 (1966) (passengers often must “transfer between stations at the terminal city”). There is no material difference between the transfer service in *Yellow Cab* and Texas Central’s planned service. In *Yellow Cab*, the railroads “contract[ed] with the passengers to supply between-station transportation,” and the taxi company held “exclusive” contracts “to provide this transportation.” *Yellow Cab Co.*, 332 U.S. at 228. In other words, the transfer service was part of a “package deal[]” with the interstate travel. *See Abel*, 631 F.3d at 1216–17. The same will be true here. And courts have uniformly held that such service is part of interstate commerce and subject to federal jurisdiction.

Texas Central’s transfer service is also analogous to freight transfer or transloading services. In *Central Transfer Co. v. Terminal Railroad Association*, the Supreme Court held that the ICC had jurisdiction over freight transfer services located entirely in Missouri. 288 U.S. 469, 470 (1933). There, the respondents received freight for interstate rail shipment at “off track” stations and used transfer companies to drive the cargo on trucks to “on track” stations. *Id.* at 470–71. The Court said that “the ‘off track’ stations” and “the transportation service rendered in connection with them and between the ‘on track’ stations, through the exclusive agency of a single transfer company . . . are all within the jurisdiction of the

Commission,” which barred a private antitrust suit against the carriers. *Id.* at 473–76. Put differently, the ICC’s jurisdiction did not stop at the end of the rail line. It included the transfer of cargo between “off track” and “on track” stations because that transfer was part of the interstate rail movement. By the same token, the Board’s jurisdiction should extend across the physical “gap” between Amtrak’s terminals and Texas Central’s, between which the railroad will transfer passengers during their interstate travels.

The ICC and the courts have applied a similar analysis to motor carriers’ “transit privileges,” *i.e.*, the storage of goods in “warehouse or distribution centers” between interstate and intrastate portions of a movement. *See Ass’n of Tex. Warehousemen—Petition for Declaratory Order—Certain for-Hire Motor Carrier Transp. Within Tex.*, 8 I.C.C.2d 476, 478 (1992). In *Texas Warehousemen*, for example, motor carriers shipped goods from other states into Texas, where the goods were stored in warehouses—sometimes for weeks—before shipment to other points in Texas. *See id.* at 478, 480. The ICC easily found jurisdiction over the “Texas portions of the movements.” *Id.* at 478. Drawing on several prior decisions reaching the same result, the Commission explained that the “all-Texas portion[s]” of the shipments were part of “continuous interstate commerce movements” because the shipper “inten[ded] for the shipment to continue in interstate or foreign commerce throughout the entire movement from origin, via the warehouse, to the ultimate destination point.” *Id.* at 481–83 (citing, *e.g.*, *Armstrong World Indus., Inc.—Transp. Within Tex.—Petition for Declaratory Order*, 2 I.C.C. 2d 63, 69 (1986)). In these cases, the

Commission examined “the essential character of a shipment” based on all the facts, including “common incidents of through carriage such as through billing.” *Armstrong*, 2 I.C.C. 2d at 69. “The existence of appropriate transit arrangements was deemed sufficient to convert these otherwise separate movements into a through interstate movement.” *Id.* at 70 (citing *Commercial Oil Transport Extension—Jacksonville, Ill.*, 73 M.C.C. 527 (I.C.C. 1957)).

In reaching its holding, the ICC also relied on the Supreme Court’s decisions in *Walling* (discussed above) and *S. Pac. Terminal Co. v. ICC*, 219 U.S. 498 (1911). In *Southern Pacific*, as the ICC explained, “goods moved via rail from Texas points to a dockside warehouse leased by the shipper,” where they were held “for long periods” and “prepared . . . for transportation overseas.” *Tex. Warehousemen*, 8 I.C.C. 2d at 483 (citing *S. Pac.*, 219 U.S. at 525–27). The Supreme Court held that “the single-State rail movement was . . . within the Commission’s jurisdiction as part of a continuous movement in foreign commerce.” *Id.* Again, the same reasoning applies here.

The “transit privileges” in these cases are analogous to the transfer service Texas Central and Amtrak will offer here. Even though both services involve “a break in the[] physical continuity of transit,” neither defeats the Board’s jurisdiction because both are simply part of an ultimately continuous interstate journey. *See Walling*, 317 U.S. at 569.

The transfer service here is also similar to “intermodal transloading operations,” which “are part of rail transportation that would come within the Board’s

jurisdiction.” *New England Transrail, LLC, d/b/a Wilmington & Woburn Terminal Ry.—Constr., Acquisition & Operation Exemption—in Wilmington & Woburn, MA*, No. 34797, 2007 WL 1989841, at *6 (S.T.B. June 29, 2007). Transloading is simply “the practice of transferring a shipment from one mode of transportation to another.” *New York & Atlantic Ry. Co. v. Surface Transp. Bd.*, 635 F.3d 66, 68 n.2 (2d Cir. 2011). For example, the Board has jurisdiction over the transfer of bulk shipments of ethanol from trains onto surface tank trucks, *Norfolk Southern Railway Company v. City of Alexandria*, 608 F.3d 150, 154 (4th Cir. 2010), or transfer of wood pellets from train cars to trucks, including packing and packaging services, *Del Grasso v. Surface Transp. Bd.*, 898 F.3d 139, 143–44 (1st Cir. 2018). Likewise here, Texas Central’s transfer service would involve the transfer (of passengers) from one mode of transportation (rail) to another (automobiles or motor carriers), and then back again.

VI. Congressional direction and Board precedent favor the streamlined exemption process in this matter.

The Board suggested that it may require a full application “in light of the questions raised in the current record.”⁷⁴ Yet Congress directed the agency to use the streamlined exemption process “to the maximum extent” practical. 49 U.S.C. § 10502(a). Forcing Texas Central through a full application process is contrary to the strong presumption in favor of new rail construction, the liberal nature of the STB

⁷⁴ 2019 Decision at 4, 5.

licensing statute, and established court and agency precedent. The Board should not needlessly delay its review of this project.⁷⁵

Congress directed the STB to adopt a light-handed regulatory approach to rail construction projects to the maximum extent possible. The Board “shall exempt” a transaction (including a construction proposal) in whole or in part if: (1) application of the statutory provision from which exemption is sought is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101 (“RTP”); and (2) either (a) the transaction is of limited scope, or (b) applying the statutory provision is not needed to protect shippers from the abuse of market power. 49 U.S.C. § 10502(a); *Cal. High-Speed Rail Authority—Constr. Exemption—In Fresno, Kings, Tulare, and Keen Counties, CAL*, STB Docket No. 35724 (Sub-No. 1) at 10 (Aug. 12, 2014) (“*Cal. HSR (Fresno)*”). “Congress has thus directed the Board to exempt a rail construction proposal from the requirements of the full application process—even if significant in scope—so long as the application of § 10901 is not necessary to carry out the RTP and there is no danger of market power abuse.” *Cal. HSR (Fresno)* at 10; *see also Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1082–83 (9th Cir. 2013) (statute allows STB to grant an exemption “if the project is of limited scope *or* the full statutory proceedings are not necessary to protect shippers from abuse of market power”); *Vill. of Palestine v. ICC*, 936 F.2d 1335, 1337 (D.C. Cir. 1991) (noting that an

⁷⁵ Rather than forcing Texas Central to start over with a full application—an abrupt departure from agency precedent—the Board could instead take jurisdiction and then simply ask Texas Central to answer targeted and relevant questions it might have under seal (pursuant to the existing protective order).

exemption “streamlines” the regulatory process); H.R. Conf. Rep. No. 96-1430, at 105 (1980) (House Report on Staggers Act explaining that the ICC was charged with removing “as many as possible of the Commission’s restrictions”).

In its decision, the Board nonetheless suggests it may demand a full construction application to address doubts raised by opponents about the financial feasibility of the rail project. But the financial feasibility of the project can and should be determined by the financial markets, not the Board. “Congress has established a presumption that, unless shown to be otherwise, rail construction projects are in the public interest and should be approved.” *Cal. HSR (Fresno)* at 9 (citing *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1091–92 (9th Cir. 2011)); *see also Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 552 (8th Cir. 2003) (“there is a statutory presumption that rail construction is to be approved”); *Alaska R.R. Corp.—Constr. & Operation Exemption—Rail Line Between N. Pole & Delta Junction, Alaska*, No. 34658, 2010 WL 24954, at *4 (S.T.B. Jan. 6, 2010). Opponents clamor about the financial viability of this project, but offer no evidence to overcome this strong Congressional presumption in favor of new rail construction projects.

Moreover, demanding that applicants demonstrate that the marketplace will ultimately finance a project puts the cart before the horse. As the Board has correctly noted, financing follows permitting and licensing, not vice versa. *See Dakota, Minnesota & Eastern R.R. Corp. Constr. into the Powder River Basin*, 3 S.T.B. 847 (1998) (recognizing Board licensing approval will help the project move forward and obtain necessary financing and that “the ultimate determination of the financial

viability of the project will be made by the financial markets.”) In other words, it is counterproductive to require applicants of major, multi-billion dollar private rail project to convince the STB of the project’s financial viability, when a critical mass of investors will inevitably await the federal licenses and permits before committing to the project. Here, the project will be financed entirely by investors and entrepreneurs. Texas Central is an investor-funded company utilizing a market-led approach to financing, led by a group of primarily Texan investors. It has no plans to seek grants from the U.S. Government or the State of Texas, nor any operational subsidy once operation begins. In other words, the financial viability of this project will be determined by the investors and lenders involved in the financial markets, not federal regulators, as Congress contemplated.

Nor is this project remotely similar to the California or the Great Lakes Basin projects referenced by the Board. The Great Lakes Basin company only had \$150 to its name, which the Board found patently insufficient. And the California project was always designed to be a ward of the state, with all its financing from public taxpayers. The California project was also designed to proceed piecemeal, with only a small portion of that project brought to the Board for licensing approval. This case is different. Texas Central will not rely on public funding, has raised over \$450 million in capital commitments,⁷⁶ and will bring the entire project to the Board for construction approval. Once licensing is obtained from the STB (and FRA), market

⁷⁶ Keith V.S. ¶ 4.

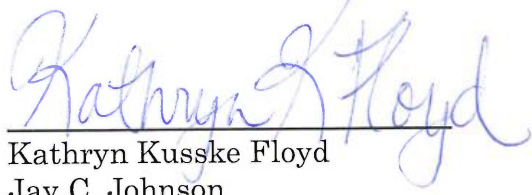
participants will scrutinize the business plan and judge the ultimate financial viability of the project.

In the end, the Board and the courts have recognized the limited and permissive nature of the agency's construction approval process. As the Eighth Circuit observed, "the ultimate test of financial fitness will come when the railroad seeks financing. Without impugning the accuracy of the financial analyses presented by the various parties in this case, we believe that the nation's financial institutions possess the expertise and insight necessary to determine the financial viability of this project. Given the liberal nature of the licensing statute[,] they should have that opportunity." *Mid States Coalition Progress v. Surface Transp. Bd.*, 345 F.3d 520, 552 (8th Cir. 2004). Texas Central should have the same opportunity.

CONCLUSION

Texas Central's agreement with Amtrak is the first of many commercial contracts and is of substantial value to the company. Just as important, the Texas Central Line fills an important gap in Amtrak's interstate rail network. It will serve tens of thousands of interstate passengers, coordinating through tickets from other states and providing convenient transfer services between terminals. Texas Central's through-ticketing arrangement with Amtrak provides the practical continuity of interstate movement that creates Board jurisdiction under the ICA's text, controlling Supreme Court precedent, and persuasive authority in several analogous contexts. Texas Central respectfully requests that the Board reopen these proceedings and exercise jurisdiction over the Texas Central Line.

Respectfully submitted,



Kathryn Kusske Floyd

Jay C. Johnson

Margaret K. Fawal

Raymond A. Atkins

Terence M. Hynes

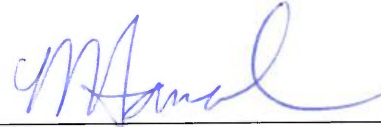
Louis P. Warchot

Counsel to Texas Central Railroad
and Infrastructure, Inc. & Texas
Central Railroad, LLC

Dated: August 21, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of August 2019, I caused a copy of this Response to the Surface Transportation Board's Request for Additional Information to be served on all parties of record electronically or by first class mail, postage prepaid.



Margaret K. Fawal

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC
-AUTHORITY TO CONSTRUCT AND OPERATE-
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV –
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

**PETITIONERS' RESPONSE TO THE SURFACE
TRANSPORTATION BOARD'S REQUEST
FOR ADDITIONAL INFORMATION**

EXHIBIT 1

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC. AND
TEXAS CENTRAL RAILROAD, LLC
– AUTHORITY TO CONSTRUCT AND OPERATE –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV–
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

**VERIFIED STATEMENT OF
BRUCE T. WILLIAMS IN RESPONSE TO THE
SURFACE TRANSPORTATION BOARD'S REQUEST
FOR ADDITIONAL INFORMATION**

1. My name is Bruce T. Williams. I am Senior Director, Demand Forecasting for the National Railroad Passenger Corporation (Amtrak). My business address is One Massachusetts Avenue, N.W., Washington, D.C. 20001.

2. In my current position, I am responsible for developing ridership and revenue forecasts for Amtrak's existing services and for proposed changes in or additions to those services. This includes projecting the number of passengers who will utilize Amtrak trains and connecting Amtrak Thruway Services, which are bus, rail, van and ferry services provided by other operators for which Amtrak sells through tickets.

3. Prior to joining Amtrak in 2014, I spent thirty years as a transportation planner specializing in demand forecasting with KPMG and AECOM, where I held the position of Senior Transportation Manager. I have over two decades of experience in developing rail passenger ridership and revenue forecasts for Amtrak and states

as a consultant at AECOM and in my current position. I received a Bachelor of Science degree in Civil Engineering from the University of Virginia, and a Master of Science degree in Civil Engineering, with a concentration in Transportation Demand and System Analysis, from Northwestern University.

4. Texas Central Railroad, LLC (Texas Central) plans to construct and operate a high-speed passenger rail line between Dallas and Houston, both of which are served by Amtrak trains. Amtrak and Texas Central have entered into a Voluntary Coordination Agreement and a Reservation and Ticketing Agreement (the Agreements) under which passengers connecting between Amtrak and Texas Central trains at Dallas and Houston (Connecting Passengers) will be able to make reservations and purchase a through ticket from their origin to their destination. The ticket will include transportation on both Amtrak and Texas Central trains, and on a transfer service provided by Texas Central that will connect Amtrak's stations to Texas Central's stations in those cities.

5. I am submitting this Verified Statement in response to the request of the Surface Transportation Board (the Board), in numbered paragraph one of the "Supplemental Information" section of its June 20, 2019 decision, for projections, with which Amtrak concurred, of the number of Connecting Passengers in the first, fifth and tenth years following the initiation of Texas Central's service. Amtrak is in the best position to provide these projections. On a regular basis, Amtrak develops ridership and revenue forecasts for the long distance and state supported routes that will connect with Texas Central, and for Amtrak Thruway services connecting

to its trains for which Amtrak offers through ticketing. Amtrak is required by Section 11203 of the Fixing America's Surface Transportation (FAST) Act to include ridership and revenue projections for each Amtrak route in the annual business plans it submits to Congress. Amtrak's ridership and revenue forecasts are used for financial and operations planning purposes by Amtrak, and by Amtrak's state partners who provide funding for state-supported services. Amtrak also develops forecasts of changes in ridership and revenues attributable to service changes under consideration by Amtrak or its state partners, including new or modified Amtrak Thruway services.

6. Passengers will be able to utilize through ticketing and the transfer service to connect between Texas Central's service and two Amtrak routes:

- the *Texas Eagle*, a daily long distance train that serves Dallas on its Chicago-San Antonio route (and carries through cars three days per week that continue from San Antonio to Los Angeles). The transfer service will operate between Amtrak's station and Texas Central's planned station. (Passengers holding through tickets could also opt to walk between the two stations.)
- the *Sunset Limited*, a tri-weekly long distance train that serves Houston on a New Orleans to Los Angeles route. The transfer service will operate between Amtrak's station and Texas Central's planned station.

7. As described in the Verified Statement of Timothy B. Keith of Texas Central (Keith Verified Statement), Texas Central plans to utilize rubber tire electric buses for the transfer service between Amtrak's and Texas Central's stations. Passengers will be able to bring their baggage with them on the transfer service, as they do when using an airport shuttle, and on Texas Central's trains. (Like Amtrak's short distance trains, Texas Central's trains will not have checked baggage service.)

8. Texas Central has developed a schedule for the transfer service and connections to/from its trains that is tied to the schedules of the three Amtrak trains. The proposed transfer schedule was reviewed by me and others at Amtrak. The final version, which is included in the Keith Verified Statement, reflects Amtrak's recommendations regarding timing of connections and minimum connecting times. I believe that the type of transfer service Texas Central plans to provide – buses that will operate directly between Amtrak's and Texas Central's stations – and the schedules proposed should meet customer expectations and help to maximize the number of Connecting Passengers.

9. The minimum connecting time between trains reflected in the schedule is 90 minutes. This should provide reliable connections even if transfer buses are delayed by traffic or trains arrive late.

10. Texas Central's trains, operating for just 90 minutes with one intermediate stop on a rail line used only by high-speed passenger trains, can be expected to have a very high level of on-time performance. Amtrak trains operating on longer schedules over host railroad-owned lines are more likely to arrive late.

While the transfer buses are scheduled to depart Amtrak and Texas Central's stations approximately 20 to 30 minutes after each train carrying Connecting Passengers arrives, the buses will wait for passengers on late arriving trains to get them to their connecting train as quickly as possible. If a late arriving Amtrak train causes a Connecting Passenger to miss their scheduled Texas Central train, Texas Central, whose trains will operate every half hour, will be able to reaccommodate the passenger on a subsequent train.

11. Amtrak has developed the ridership and revenue projections the Board requested with its Long Distance Train Demand Forecasting Model (Long Distance Model). Amtrak uses the Long Distance Model to forecast the impact of service changes on long distance routes such as the *Texas Eagle* and *Sunset Limited*, and on state-supported short distance routes (such as the Fort Worth-to-Oklahoma City *Heartland Flyer*) on which there is only one daily round trip and/or that are critically linked to the long distance network.

12. Amtrak's projections of the number of Connecting Passengers are set forth in the table below. These projections assume Texas Central's service will begin in 2026 (year one), which means that 2030 is assumed to be year five and 2035 is year ten.

Amtrak Route	Connection Details	2026 Ridership	2030 Ridership	2035 Ridership
Texas Eagle	Dallas: Connecting shuttle (or walk)	4,000 - 4,500	13,700 - 15,400	14,400 - 16,100
Sunset Limited	Houston: Connecting shuttle	1,100 - 1,200	3,700 - 4,200	3,900 - 4,400
TOTAL		5,100 - 5,700	17,400 - 19,600	18,300 - 20,500

13. As indicated in the Keith Verified Statement, Texas Central may also provide a transfer service, operating between Amtrak's Fort Worth station and Texas Central's planned Dallas station, to connect with the daily *Heartland Flyer*. If Texas Central provides the *Heartland Flyer* transfer service described, Amtrak projects that it would generate an additional 800 to 1,000 Connecting Passengers in 2026, 2,900 to 3,300 Connecting Passengers in 2030, and 3,000 to 3,400 Connecting Passengers in 2035.

14. The Long Distance Model uses a direct demand approach to forecast Amtrak ridership by geographic market and class of service, based upon customer travel surveys and actual ridership and revenue data. The surveys include stated preference questions addressing sensitivities to changes in key characteristics of travel by Amtrak. The Model utilizes existing and historical ridership data, where available, to validate the baseline (no-action) condition, such as ridership data from Amtrak's existing Thruway bus connection between Longview, a stop on the *Texas Eagle* route, and Houston. For a particular analysis, the model is applied to all existing and new markets impacted by the proposed change(s), including markets served directly by a "one seat ride" and major markets served by Thruway services that connect to trains.

15. Key inputs to the Long Distance Model include:

- Socio-economic data and forecasts of population, employment, and income, provided by Woods & Poole, which are assembled for within 30 miles of each station area.

- Timetables for each train and connection, whose departure and arrival times in each city pair market define travel times; the time of day the train departs from the origin and arrives at the destination; and the number of nights required for the trip.
- Class(es) of service provided (coach, business, sleeper).
- Frequency of service (daily, tri-weekly, etc.).
- Whether the service is direct or requires connections, and the mode of the connections (bus, rail, etc.).
- Fares (for connections, based upon the total of the average fares for each segment).

16. The projections for the number of Connecting Passengers developed with the Long Distance Model are based upon:

- Current Amtrak services and schedules, including arrival and departure times, service frequency, and classes of service offered.
- Current on-time performance of the Amtrak trains.
- Current average fares paid by passengers in city pairs between which Connecting Passengers will travel by Amtrak, which are assumed to increase only to match inflation.
- Proposed schedules provided by Texas Central that show departure and arrival times at Dallas and Houston and at

Brazos Valley, an intermediate stop that Amtrak does not presently serve.

- The transfer service and proposed transfer and connecting schedules described in the Keith Verified Statement.
- The connection via Texas Central replacing the Thruway bus service Amtrak operates between Houston and Longview, Texas to connect with the *Texas Eagle*.

17. Since Texas Central's service will be new, data on fares paid by current passengers is not available. Like Amtrak and airlines, Texas Central plans to revenue manage its fares, which means that fares will vary based upon demand. The projections therefore assume a range of fares for the Texas Central segment. Because of this, and because of the uncertainty inherent in any future forecast, projected ridership shown in the table above is expressed as a range of numbers rather than as a single figure.

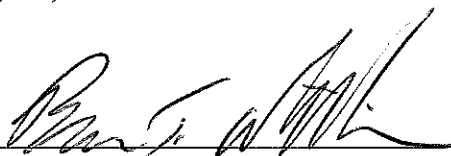
18. Based upon the 2030 forecasts, Amtrak expects that Connecting Passengers will account for about 27-30% of total *Texas Eagle* ridership at Dallas and about 16-18% of *Sunset Limited* passengers at Houston. Connecting Passengers are expected to account for about 4-5% of total passengers on both routes. Because the *Sunset Limited* and *Texas Eagle* and their connecting Thruway Services serve dozens of stations and hundreds of city pairs along their 2,000 to 2,700 mile routes, no single station or city pair accounts for a large portion of their total route ridership.

19. Since it takes a while for all potential passengers to become aware of new services and build their travel plans around them, new services do not immediately realize their full ridership potential. In Amtrak's experience, the ramp up time to full projected ridership typically occurs within three years. Therefore, the Connecting Passenger forecasts assume that ridership in year one (2026) will be 30% of projected demand; that ridership in year two (2027) will be 70% of projected demand; and that full ramp up to 100% will occur in year three (2028). Consequently, of the three years for which the Board requested ridership projections, year five (2030) is the first year to reflect full ramp up. These assumptions are conservative, particularly given that Amtrak already serves the largest potential market – passengers to/from Houston connecting with the Texas *Eagle* – with a Thruway bus connection.

VERIFICATION

I, Bruce T. Williams, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 21 day of August, 2019.


Bruce T. Williams

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC
-AUTHORITY TO CONSTRUCT AND OPERATE-
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV –
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

**PETITIONERS' RESPONSE TO THE SURFACE
TRANSPORTATION BOARD'S REQUEST
FOR ADDITIONAL INFORMATION**

EXHIBIT 2

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD & INFRASTRUCTURE, INC. AND
TEXAS CENTRAL RAILROAD, LLC
– AUTHORITY TO CONSTRUCT AND OPERATE –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV–
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

**VERIFIED STATEMENT OF TIMOTHY B. KEITH
IN SUPPORT OF PETITIONERS' RESPONSE TO THE
SURFACE TRANSPORTATION BOARD'S REQUEST
FOR ADDITIONAL INFORMATION**

1. My name is Timothy B. Keith. I am Chief Investment Officer of Texas Central Partners, LLC ("TCP"), the parent company of Texas Central Railroad & Infrastructure, Inc. ("TCRI") and Texas Central Railroad, LLC ("TCRR") (hereinafter TCP, TCRI, TCRR and other affiliates, including Texas Central High-Speed Railway, LLC, are referred to as "Texas Central"). My business address is 1409 South Lamar Street, Suite 1022, Dallas, TX 75215.

2. Prior to assuming a position at Texas Central in June 2015, I served as Chief Investment Officer of HKS Capital Advisors, LLC, an investment advisory firm with a focus on private enterprise transactions. Between 2000 and 2010, I held various senior executive positions (including Global CEO, Infrastructure Investments) with RREEF/Deutsche Bank Alternative Investments, a New York-based global alternative asset management firm. As Global CEO of RREEF/Deutsche Bank Infrastructure, I had responsibility for managing the worldwide operations of

the firm's infrastructure funds management businesses. I also served as CEO of Cabot Industrial Trust after its privatization on behalf of RREEF clients.

3. I am submitting this Verified Statement in support of the Response to the Surface Transportation Board's Request for Additional Information filed by TCRI and TCRR (collectively, "Petitioners").

4. Texas Central is developing a 240-mile high-speed passenger rail line between Dallas and Houston that will offer a safe and convenient transportation alternative for travelers between the Dallas/Ft. Worth and Houston metropolitan areas. This rail line, the first true high-speed rail service in the United States, will connect two of the nation's largest cities and provide a critical link in the general system of rail transportation. Texas Central has raised over \$450 million dollars in capital commitments for the project.

5. Texas Central and Amtrak have entered into a Through Ticketing Agreement that will allow passengers to transfer between Amtrak's and Texas Central's trains using one ticket. It is estimated that, after a short ramp up period, approximately 20,000 interstate passengers will utilize this through ticketing option every year. This is an important commercial relationship for Texas Central. We will be servicing the traveling public and will sign volume contracts with businesses to cover their traveling employees. While accounting for less than 1% of Texas Central's total expected annual ridership, the forecast of connecting Amtrak passengers represents the equivalent of signing a commercial contract with a company of 1,000

employees that sends every employee on 20 trips per year. This is a valuable contract to Texas Central.

6. Texas Central places great importance of the integration of its services with those of other transportations companies serving its passengers. In addition to Amtrak, these include the Dallas Area Rapid Transit (DART) and Metropolitan Transit Authority of Harris County (METRO) systems, taxis, ride-hailing service, car rental companies, bus lines, cruise lines, and airlines. In order to focus on service enhancements for connecting passengers and develop through traffic, Texas Central appointed a Partnerships Manager with responsibility for managing the relationship with Amtrak as well as other transportation operators.

7. Texas Central sees the Through Ticketing Agreement with Amtrak as the first of a series of partnership agreements with other transportation operators. They not only provide for transfer of passengers between the two operators but also for development of connecting traffic through promotional initiatives and the ability for passengers to book a single ticket for use on both operators.

8. The Amtrak relationship also is the first in a series that are part of Texas Central's wider sales and marketing activity, which will include engagement with other key accounts such as corporate clients, travel management companies, and convention and visitor bureaus, all of which will play an important part in developing ridership on the new high-speed rail service.

9. We expect that Amtrak will also be committed to making the most of the partnership, given the significant share of its passengers on these services that are forecast to benefit from the Texas Central through ticket.

10. Per its agreements with Amtrak, Texas Central will provide a connecting transfer service between the Texas Central and Amtrak train stations in Dallas and Houston. Texas Central has therefore developed, in cooperation with Amtrak, a specific transportation plan to facilitate passenger transfers between the Texas Central Line and Amtrak's Texas Eagle and Sunset Limited lines. Under this plan, Texas Central will fund and operate air-conditioned rubber tire electric buses—sized appropriately for the expected passenger and luggage volume—to connect the Texas Central terminals in Dallas and Houston with Amtrak's respective services in Dallas and Houston. While the types and sizes of the vehicles are not set, these vehicles would be similar to the Proterra Catalyst 35 all electric bus (currently operating with Dallas DART and capable of a 29 passenger, ADA-compliant configuration), the EMOSS MB16 all electric mini bus (16 passengers with ADA compliance) or other commercially available electric vehicle. In order to provide the most efficient transportation option, Texas Central will continue to evaluate updates in technology and changing local road infrastructure conditions before it initiates service.

11. In Dallas, the transfer service is planned to operate over existing roads between Dallas Union Station and the Texas Central Terminal, a roughly 0.8-mile one-way trip utilizing Young St., South Lamar St., and Cadiz St. In Houston, this

service will operate on a roughly 7.4-mile one-way trip utilizing I-45, I-10 and I-610 between Houston's Amtrak Station and Texas Central's Terminal.

12. Passengers purchasing through tickets would book the connector service at the time of ticketing. Texas Central anticipates that most passengers will elect a same-day transfer service, in which case the transfer service will be part of the base reserved ticket price. Texas Central will coordinate with Amtrak to establish dedicated connection signage, way finding, and kiosks at all connecting stations to facilitate passenger connections.

13. Texas Central has developed a schedule for these bus transfers that is tied to Texas Central's and Amtrak's train schedules. To ensure passengers make their connections, neither carrier will sell ticket combinations with a transfer window smaller than 90 minutes for transfers between Texas Central's and Amtrak's terminals in Dallas and Houston. This transfer window is designed to allow passengers a comfortable amount of time to detrain and embark on a bus, travel on the bus to the connecting terminal/station (with an appropriate margin for traffic conditions), and then disembark the bus and board the next train.

14. Accounting for these transfer windows, and using the current schedule for Amtrak's Texas Eagle and Sunset Limited trains, Texas Central would provide connecting bus services as follows:

Transfers between Dallas HSR Terminal and Dallas Union Station		
DAL HSR Terminal	Connector Shuttle	DAL Union Station
<i>Daily</i>		<i>Texas Eagle (Eastbound)</i>
HSR 10008 ARR 1028		
	DPT DAL HSR Terminal 1100	
	ARR DAL Union Station 1130	
		Amtrak 21 ARR 1130
		Amtrak 21 DPT 1150
	DPT DAL Union Station 1150	
	ARR DAL HSR Terminal 1220	
HSR 10015 DPT 1300		
<i>Daily</i>		<i>Texas Eagle (Westbound)</i>
HSR 10016 ARR 1428		
	DPT DAL HSR Terminal 1455	
	ARR DAL Union Station 1525	
		Amtrak 22 ARR 1520
		Amtrak 22 DPT 1540
	DPT DAL Union Station 1550	
	ARR DAL HSR Terminal 1620	
HSR 10023 DPT 1700		

Transfers Between Houston HSR Terminal and Houston Amtrak Station		
HOU HSR Terminal	Connector Shuttle	HOU Amtrak Station
<i>Tu, Fr, Su</i>		<i>Sunset Limited (EB)</i>
HSR 10007 ARR 1028		
	DPT HOU HSR Terminal 1100	
	ARR HOU Amtrak Station 1130	
		Amtrak 2 ARR 1110
		Amtrak 2 DPT 1210
	DPT HOU Amtrak Station 1200	
	ARR HOU HSR Terminal 1230	
HSR 10016 DPT 1300		
<i>Mo, We, Sa</i>		<i>Sunset Limited (WB)</i>
HSR 10021 ARR 1728		
	DPT HOU HSR Terminal 1750	
	ARR HOU Amtrak Station 1820	
		Amtrak 1 ARR 1818
		Amtrak 1 DPT 1855
	DPT HOU Amtrak Station 1850	
	ARR HOU HSR Terminal 1920	
HSR 00030 DPT 2000		

15. Texas Central also will coordinate final scheduling details to provide bus transfer service to and from Amtrak's Heartland Flyer rail line in Fort Worth. To ensure passengers make their connections, the transfer window would be at least 120 minutes. Based on this window, the bus service would be provided on the following schedule:

Transfers Between Dallas HSR Terminal and Fort Worth Central Station		
DAL HSR Terminal	Connector Shuttle	FW Central Station
<i>Daily</i>		<i>Heartland Flyer (SB)</i>
		Amtrak 821 ARR 1223
	DPT FW Central Station 1245	
	ARR DAL Union Station 1400	
HSR 10019 DPT 1430		
<i>Daily</i>		<i>Heartland Flyer (NB)</i>
HSR 10015 ARR 1454		
	DPT DAL Union Station 1515	
	ARR FW Central Station 1630	
		Amtrak 822 DPT 1725

16. If Amtrak or Texas Central make changes to their respective train schedules in the future, Texas Central will adjust the schedule and frequency of its transfer services accordingly.

17. Texas Central will also adjust its transfer service to accommodate rail delays occurring on the day of travel. In the event of an Amtrak service delay, Texas Central will adjust to Amtrak's schedule. Because Texas Central provides more frequent trains, it can automatically rebook passengers arriving on delayed Amtrak onto the next available Texas Central train. If Texas Central experiences a delay on its line, it will offer passengers on-demand transfer service to the Amtrak terminal so they can make their planned connection. If the planned Amtrak

connection is no longer feasible, Texas Central will assist passengers with alternative arrangements, including rebooking on the next Amtrak train.

18. Due to the proximity of the Amtrak and Texas Central stations in Dallas, transferring passengers could choose to forego Texas Central's transfer service and make their connection by foot. Walking between those stations will require passengers to use public sidewalks covering 0.8 miles.

19. Given that distance, the convenience of the climate-controlled transfer service that Texas Central will provide, and the usual Dallas weather conditions, Texas Central considers it unlikely that many transferring passengers will choose to carry their luggage and walk between stations. But for those passengers who decide to walk, Texas Central is planning some changes to make that trip even easier. As part of current terminal designs, Texas Central will work with the City of Dallas to install a dedicated pedestrian walkway and improve sidewalk access from the Texas Central terminal to the Convention Center DART station. This would facilitate safe foot traffic not only to the DART line but also to Dallas Union Station, which is located blocks further on.

20. Passengers would also have the option to transfer between the Dallas Amtrak and Texas Central stations via the Dallas Area Rapid Transit (DART) metro system. DART has a stop at Dallas Union Station, and the DART Convention Center station is located approximately 0.3 miles (1700 ft) from the Texas Central Station. A map of this route is depicted below:



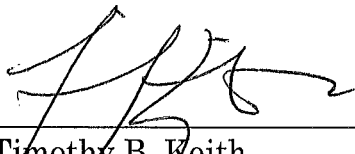
21. In addition to the connections Texas Central will provide to Amtrak's Texas Eagle and Sunset Limited rail service in Houston and Dallas, Texas Central believes there are additional opportunities that will increase the number of interstate passenger transfers. For example, as noted above, Texas Central will coordinate final scheduling details to provide bus transfer service to and from

Amtrak's Heartland Flyer rail line in Fort Worth. High-Speed Rail also will provide an attractive new mode of travel between Dallas and Houston, as well as serving the intermediate station at Brazos Valley, an area in which Amtrak currently has no direct or connecting services. It is likely that, by making it easier for people to travel, this new service will significantly grow the size of the overall market in the corridor, supported by Texas Central's marketing initiatives. We expect this induced demand to increase the number of through rail journeys between Texas Central and Amtrak.

VERIFICATION

I, Timothy B. Keith, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 21st day of August, 2019.



Timothy B. Keith