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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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October 8, 2019  
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**Finance Docket No. 36025**

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**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**

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**REPLY OF DELTA TROY INTERESTS, LTD.**

**TO**

**PETITIONERS' RESPONSE AND ADDITIONAL INFORMATION**

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Delta Troy Interests, Ltd. (“Delta Troy”) hereby replies to the Response and Additional Information (“Response”) submitted by Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC (collectively, “TCR”) on August 21, 2019.<sup>1</sup> In the Response, TCR responded to questions and information requests posed by the Surface Transportation Board (“Board” or “STB”) in the decision issued June 20, 2019 (“Decision”) to assist the Board in evaluating TCR’s pending Petition to Reopen. The Response confirms, yet again, that reopening of this proceeding is not warranted and there is no need for the Board to revisit its determination that the proposed TCR project is outside Board jurisdiction.

In the Response, TCR failed to fully respond to the questions posed by the Board. The Board asked for passenger transfer projections from TCR with “Amtrak’s written concurrence.”<sup>2</sup>

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<sup>1</sup> The Board established October 8, 2019 as the due date for replies in a decision served July 15, 2019.

<sup>2</sup> Decision at 3.

Instead, TCR put forth Amtrak's numbers as its own. The Response reveals that, even under the figures proffered by TCR, Amtrak passengers would be a tiny proportion of overall projected TCR ridership. The low Amtrak figures are not a surprise because the theoretical Amtrak-bus-TCR journey through Dallas would be **slower and more cumbersome** than the existing Amtrak Thruway Bus it is meant to replace. The Response also erroneously conflates Board jurisdiction with FRA jurisdiction, relies on faulty circular reasoning, and cites to legal authority that merely serves to highlight the non-jurisdictional nature of the proposed passenger rail construction project.

Given these facts, Delta Troy respectfully requests that the Board deny the Petition to Reopen filed by TCR on May 4, 2018.

**I. The Responsive Information Submitted By TCR About The Theoretical Amtrak-Bus-TCR Service Confirms That Reopening Is Not Warranted.**

**A. TCR Did Not Completely Answer The Board's Questions.**

The Board "directed" TCR to provide supplemental information, including "[p]rojections related to annual passenger transfers in the first, fifth and tenth full year of operation...as well as Amtrak's written concurrence in the projections." Decision at 3 and 6. TCR did not follow this direction. Instead, TCR simply enlisted Amtrak to provide Amtrak's projections. See, e.g., Response at 7 ("Amtrak estimates..."), 8 ("Amtrak's connecting passenger forecasts..."), and 9 ("To develop these projections...Amtrak performed a ridership study...."). TCR's disregard of the Board's directive is disappointing.

TCR almost certainly has its own numbers regarding projected Amtrak passengers who would also use TCR. In 2016, TCR repeatedly trumpeted the importance of its proposed rail line by referring to possible Amtrak passengers who would travel to the TCR stations (and vice versa) in order to also use the TCR service. See, e.g., Petition for Exemption at 18 ("These

Amtrak stations would function as ‘feeders’ for the Texas Central Line, and vice-versa.”). See also Petition for Exemption at 9-10, 16-17, and 23-24. Given these repeated references, it is reasonable to expect that TCR likely has its own internal estimates of Amtrak passengers who would use the TCR service, but TCR has inexplicably failed to provide its own estimates, data, and methodologies as requested by the Board. Instead, it relies solely on seemingly new Amtrak ridership forecasts that were only recently developed to answer the Board’s question.

**B. An Inappropriate Ridership Model Was Used.**

TCR’s reliance on the Amtrak Long Distance Train Demand Forecasting Model (“Long Distance Model”) is curious at best. The proposed TCR service between Dallas and Houston – a mere 240 miles to be traversed in 90 minutes – is demonstrably **not** “long distance.” When used by Amtrak, the term “long distance” refers to “routes of more than 750 miles.”<sup>3</sup> Neither TCR nor Amtrak has addressed the mismatch between the Long Distance Model and theoretical TCR ridership. Moreover, TCR’s willingness to rely on any business forecasting from Amtrak is quaint given that Amtrak is not a paragon of financial or transportation stability. Amtrak has lost \$1.2 billion per year in recent times,<sup>4</sup> with most of those losses coming from the long-distance routes<sup>5</sup> that presumably were developed based on the Long Distance Model, indicating that perhaps Amtrak is not the best enterprise for TCR to emulate.

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<sup>3</sup> See, e.g., Exhibit 1 at p. 14 and 43 (attached hereto as excerpt). Exhibit 1 is the “Amtrak General and Legislative Annual Report & Fiscal Year 2020 Grant Request” (dated March 19, 2019) (addressed to Speaker of the House Nancy Pelosi and President of the Senate Michael Pence). The full report is available at: <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/reports/Amtrak-General-Legislative-Annual-Report-FY2020-Grant-Request.pdf>. See also Exhibit 2 at p. 12 (attached hereto as excerpt). Exhibit 2 is a report from the Government Accountability Office titled Amtrak: Better Reporting, Planning, and Improved Financial Information Could Enhance Decision Making, Report No. GAO-16-67 (Jan. 2016).

<sup>4</sup> Exhibit 2 at p. 5, Report No. GAO-16-67 (Jan. 2016).

<sup>5</sup> Exhibit 2 at p. 15, Report No. GAO-16-67 (Jan. 2016).

**C. The Theoretical Amtrak-Bus-TCR Journey Would Be Slower Than The Existing Amtrak Service It Is Meant To Replace.**

The lynchpin of TCR's jurisdictional argument is its alleged arrangement with Amtrak to offer a combined, multi-stage Amtrak-bus-TCR journey to the traveling public.<sup>6</sup> TCR asserts that up to 0.5% of its passengers in the tenth year of operations would be coming from (or heading to) Amtrak via the bus service.<sup>7</sup> The percentage in earlier years would be far lower, according to the figures submitted by TCR.<sup>8</sup> This 0.5% figure is vanishingly small, yet still appears overly optimistic. The theoretical Amtrak-bus-TCR trip would actually be slower than the existing Amtrak Thruway Bus that it is planned to replace.<sup>9</sup>

According to TCR, approximately 80% of the Amtrak passengers who utilize TCR are expected to do so via Dallas.<sup>10</sup> As is relevant here, Amtrak's service through Texas is in a northeast-southwest orientation – the Texas Eagle – from Texarkana through Dallas and Fort Worth then southwest to Austin and San Antonio. See Response at 3 (Amtrak map). Amtrak also has an east-west route – the Sunset Limited – across Texas through San Antonio and Houston. In light of the relationship of existing Amtrak service to the proposed north-south TCR rail line, any Amtrak passengers heading east on the Texas Eagle or Sunset Limited, with the ultimate goal of reaching Houston, would likely simply stay on the Amtrak train from San

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<sup>6</sup> See, e.g., Response at pages 1 and 7-12.

<sup>7</sup> See, e.g., Response at 8 (showing up to 20,500 Amtrak passengers in the tenth year) and Petition for Exemption (filed April 19, 2016) at 7 (showing ridership of 4 million annually starting in the fourth year).  $(20,500) \div (4,000,000) = 0.005 = 0.5\%$ .

<sup>8</sup> See, e.g., Response at 8 (showing no more than 5,700 Amtrak passengers on TCR in the first year of operations).

<sup>9</sup> See, e.g., Response at 11 (stating that the Amtrak-bus-TCR journey will “replac[e] the Thruway bus service Amtrak operates between Houston and Longview, Texas”).

<sup>10</sup> See, e.g., Response at 8.

Antonio to Houston or make other arrangements.<sup>11</sup> Such passengers would not take Amtrak northeast to Dallas, then take a bus, then take the proposed TCR service back south to Houston.

Consequently, passengers switching from Amtrak service to TCR service in Dallas, if any, are likely to be headed westbound on the Texas Eagle. The current Amtrak schedule for the westbound Texas Eagle shows that it arrives at 8:28 a.m. daily in Longview, TX – which is just east of Dallas.<sup>12</sup> At Longview, the Texas Eagle connects to an Amtrak Thruway Bus that departs at 8:40 a.m., arriving in downtown Houston at the Amtrak Station at 1:15 p.m.<sup>13</sup> TCR wants to replace this 4 hour and 47-minute journey with a combined Amtrak-bus-TCR journey that would take 6 hours and 2 minutes, an **hour and 15 minutes longer**. In TCR’s view, that jurisdictionally-critical westbound “connecting” passenger would not exit the Amtrak train at Longview, but would stay on the Amtrak train at 8:28 a.m., arriving in Dallas at 11:30 a.m. Upon arrival in Dallas, this passenger would catch TCR’s bus service at 11:50 a.m., arriving at the TCR station in Dallas at 12:20 p.m. Then, the passenger would get on a TCR train in Dallas at 1 p.m., finally arriving in the northwestern Houston area at 2:30 p.m.<sup>14</sup> If the passenger wanted to travel to downtown Houston, an additional taxi or bus ride would be needed.

This theoretical Amtrak-bus-TCR service would be impractical and more expensive than the existing service it is meant to replace. Right now, a passenger from Marshall, Texas can buy

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<sup>11</sup> For example, travelers heading from San Antonio (or points west) to Houston can simply stay on the Sunset Limited to reach Houston, a four-hour-and-forty-five-minute trip from San Antonio. Similarly, travelers heading from Austin to Houston can avoid a convoluted Amtrak-bus-TCR trip by simply taking a short 3-hour Greyhound bus – which operates three times per day for a low fare of approximately \$13.

<sup>12</sup> Passengers originating in Longview and headed to Houston can purchase a Greyhound ticket for the approximately four-and-a-half-hour bus journey (which operates twice per day), as the bus station is adjacent to the Amtrak station.

<sup>13</sup> See **Exhibit 3** (attached hereto).

<sup>14</sup> This assumes a 90-minute TCR journey from Dallas to Houston. See Petition for Exemption (filed April 19, 2016) at 3.

a ticket from Amtrak for \$32 for a 5 hour and 25-minute journey to Houston, utilizing the Texas Eagle and the Thruway Bus from Longview. See Exhibit 4 (attached hereto). Alternatively, the same passenger can buy an Amtrak ticket to travel to Dallas for \$20 for a 3 hour and 40-minute journey. See Exhibit 5 (attached hereto). In TCR's theoretical world, this passenger, upon arrival in Dallas, would then take a bus to the TCR station in Dallas, then travel via TCR to northwestern Houston, arriving at 2:30 p.m., for a complete journey time of 6 hours and 40 minutes. The total passenger outlay would be the TCR ticket price (likely at least \$80<sup>15</sup>) plus the \$20 Amtrak fare – or \$100 total at a minimum. Thus, the price would be over three times higher for a slower journey with more travel mode changes.

In short, the TCR proposal is for slower service that would be noticeably more expensive. Travelers are not likely to use the theoretical Amtrak-bus-TCR service, and TCR's expectation that 0.5% of its passengers will be from Amtrak is likely overstated. It is evident that the Amtrak-bus-TCR scheme is simply a slapdash, last-gasp effort by TCR to shoehorn its insular and intrastate rail proposal into Board jurisdictional oversight. Cf. Napa Valley Wine Train, Inc. – Petition for Declaratory Order, 7 ICC2d 954, 964-965 (1991) (no jurisdiction over intrastate passenger rail service because there was “no physical interchange of equipment for the through movement of passengers” and link to Amtrak required “intervening bus service” that would be “impractical” for Amtrak passengers).

#### **D. The Dallas Walking Route Confirms The Absence Of A “Connection.”**

Passengers traveling by foot from Amtrak rail service to TCR rail service would be required to traverse a 0.8-mile route through Dallas, which includes eight city blocks, a tunnel

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<sup>15</sup> The TCR website states that, at the low end, tickets will be competitive with the cost of driving. See <https://www.texascentral.com/facts/>. The highway distance from downtown Dallas to downtown Houston is approximately 246 miles which, at the Internal Revenue Service mileage rate of \$0.58 per mile, is \$142.

underneath the Hutchison Convention Center, a bridge over a 13-lane highway, an underpass beneath a road, and a separate underpass beneath railroad tracks.<sup>16</sup>

This is not a “connection” under any common usage of the word. TCR admits that it would be “unlikely” that many Amtrak passengers would carry their luggage and walk this route through the city to the TCR station. Response at 13. TCR describes the relevant distance to/from Amtrak as 0.8 miles in Dallas and approximately 7.4 miles in Houston. Response at 13 and 15. TCR refers to a possible “dedicated pedestrian walkway,”<sup>17</sup> but it is not clear what this means, given that the 0.8-mile distance is along several different public streets in Dallas. In other words, TCR cannot “dedicate” public sidewalks to the “unlikely” few people, if any, who might walk from TCR service to Amtrak service through Dallas.

For passengers walking between TCR and Amtrak in Dallas, the Board specifically asked for “what...arrangements would be made for transferring luggage.” Decision at 3 (question #2). TCR effectively admitted that no such luggage transfer service would be provided for passengers who walk, stating only that it would be “unlikely” for passengers to carry their luggage and walk. Response at 13. Amtrak’s witness similarly stated that “passengers will be able to bring their baggage with them on the transfer service.”<sup>18</sup>

#### **E. Other Flaws Permeate The Responsive Information.**

The Board asked TCR for “[d]etails pertaining to the proposed connecting transfer service,” such as “how frequently” the service would operate and the “average and maximum wait time for passengers.” Decision at 3-4. In attempt to answer this request, TCR offered hypothetical bus service schedules and some general guidelines, but the offered information is

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<sup>16</sup> This description is based on the proposed location of the Dallas station as indicated on page 16 of TCR’s Response.

<sup>17</sup> Response at 13.

<sup>18</sup> Response, Exhibit 1, Verified Statement of Bruce T. Williams, page 4.

conflicting. Response at 17-20. In particular, TCR stated that, “[t]o ensure passengers make their connections, neither carrier will sell ticket combinations with a transfer window smaller than 90 minutes.” Response at 17. Yet, the proffered bus schedules do reveal transfer times less than 90 minutes, raising additional questions. For example, the bus schedule on page 18 of the Response shows a TCR train arriving in Dallas at 10:28 a.m., connecting to a bus at 11:00 a.m., which arrives at the Amtrak station at 11:30 a.m. in order to meet the westbound Texas Eagle at 11:50 a.m. (TCR calls this train the “eastbound” Texas Eagle but this assertion, too, is incorrect.) This schedule reveals a transfer time of 82 minutes (11:50 – 10:28), casting doubt on the veracity of TCR’s assertions. The same problem recurs in several of TCR’s other bus schedules. There is a 72-minute transfer to the eastbound Texas Eagle on the same page (15:40 – 14:28) (TCR erroneously calls this the “westbound” Texas Eagle), and an 87-minute transfer to the westbound Sunset Limited in Houston on page 19 (18:55 – 17:28).

In defending its ridership estimates, TCR relied on the theory of “induced demand,” which basically means that the number of travelers between Dallas and Houston will rise if there is an increase in the supply of available travel options between the two cities. Response at 12. This new reliance on induced demand casts doubt on TCR’s earlier contention that its rail project would reduce carbon emissions. See Petition for Exemption at 24 (filed April 19, 2016).

#### **F. The “Through Ticketing” Arrangement Is Ephemeral.**

Delta Troy has previously shown that there is actually no “through-ticketing arrangement” between TCR and Amtrak.<sup>19</sup> The “agreements” submitted by TCR to the Board in 2018 are, at most, merely unenforceable “agreements-to-agree” that do not actually establish any through-ticketing. TCR has no obligation to create through-ticketing under the so-called

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<sup>19</sup> See Delta Troy Reply in Opposition to Petition to Reopen at 4-10 (filed May 31, 2018).

“Reservation and Ticketing Agreement,” which reserves for TCR the right to “provide to Amtrak notice in writing to proceed” before any through-ticketing actually occurs.<sup>20</sup> Thus, even if the agreements are enforceable, TCR could simply refrain from giving Amtrak the “notice to proceed,” meaning that no through-ticketing would ever be offered. Moreover, TCR has made no showing and no attempt to show that alleged “through passengers,” if any, would begin or end their Amtrak trips outside the state of Texas.

TCR relies heavily on the ICC’s Cape Cod decisions to support the alleged relevance of the through-ticketing arrangement with Amtrak,<sup>21</sup> but these decisions actually show that the TCR proposal is not within Board jurisdiction. In Cape Cod, the ICC issued two decisions exempting through-ticketing arrangements between Amtrak and an intrastate rail passenger service provider known as the Cape Cod & Hyannis Railroad, Inc. (“CCHR”). No one contested ICC jurisdiction, which was not at issue in the two decisions. In both decisions, the ICC mentioned through-ticketing arrangements between CCHR and Amtrak, but the details surrounding CCHR service highlight the insular and non-connected nature of TCR’s proposal.

CCHR operated on tracks that were an integral part of the national rail network. The tracks were owned by the State of Massachusetts and physically connected to the larger rail network.<sup>22</sup> In fact, freight rail operations by other Board-authorized carriers occurred on the

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<sup>20</sup> See Delta Troy Reply in Opposition to Petition to Reopen at 5 (filed May 31, 2018).

<sup>21</sup> See, e.g., Response at 24-26.

<sup>22</sup> See, e.g., Cape Cod & Hyannis Railroad, Inc. – Exemption from 49 U.S.C. Subtitle IV, ICC Docket No. 30859, 1986 ICC Lexis 174 at \*1 (Aug. 25, 1986). See also Massachusetts DOT State Rail Plan 2018, pages 20-22, available at: [https://www.mass.gov/files/documents/2018/06/14/FinalRailPln\\_Sprng18.pdf](https://www.mass.gov/files/documents/2018/06/14/FinalRailPln_Sprng18.pdf) (showing connections from the Attleboro-Hyannis line to the larger national rail network).

tracks.<sup>23</sup> In contrast, TCR proposes a wholly insular system with no physical connection to other tracks, no freight rail service, no service by other railroads, and no interchanging with other railroads. Moreover, CCHR and Amtrak utilized the same railroad station in Attleboro for their connecting service, which is not a surprise because they operated on the same tracks.<sup>24</sup> Therefore, CCHR and Amtrak had real, actual “through” service. There is no such connection for the theoretical Amtrak-bus-TCR service, which would require a bus journey from Amtrak’s station to the proposed TCR station.

Coupled with the *de minimis* ridership anticipated for this theoretical Amtrak-bus-TCR service, the differences from the Cape Cod case show that TCR will not be “part of the interstate rail network” or meaningfully participate in interstate commerce. At most, TCR will be engaged in a non-jurisdictional marketing arrangement with Amtrak.<sup>25</sup>

## **II. Board Jurisdiction Depends On A Fact-Specific Evaluation Of All Relevant Circumstances.**

The Board has jurisdiction over intrastate rail transportation only if that transportation is “part of the interstate rail network.” 49 U.S.C. § 10501(a)(2)(A). “Whether an intrastate passenger rail service is part of the interstate rail network is a fact-specific determination based on the totality of circumstances.”<sup>26</sup> This sentiment has been repeatedly emphasized by the Board

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<sup>23</sup> See, e.g., Massachusetts DOT State Rail Plan 2018, pages 20-22, available at: [https://www.mass.gov/files/documents/2018/06/14/FinalRailPln\\_Sprng18.pdf](https://www.mass.gov/files/documents/2018/06/14/FinalRailPln_Sprng18.pdf) (showing freight rail operations on tracks from Attleboro to Hyannis).

<sup>24</sup> See, e.g., [https://en.wikipedia.org/wiki/Attleboro\\_station\\_\(Massachusetts\)](https://en.wikipedia.org/wiki/Attleboro_station_(Massachusetts)). See also [https://en.wikipedia.org/wiki/Cape\\_Codder\\_\(train\)](https://en.wikipedia.org/wiki/Cape_Codder_(train)) (showing Amtrak operated Attleboro to Hyannis, too, during the 1986-1988 time period covered by CCHR).

<sup>25</sup> Stagecoach Group PLC and Coach USA, Inc., et al. – Acquisition of Control – Twin America, LLC, STB Docket No. MC-F 21035, slip op. at 2 (served April 4, 2012).

<sup>26</sup> Decision, STB Docket No. 36025, slip op. at 4 (served July 18, 2016).

and other authorities.<sup>27</sup> TCR, too, agrees that the determination of jurisdictional status requires a “fact-specific inquiry.”<sup>28</sup> Careful evaluation of all circumstances is important because “no one factor is controlling.”<sup>29</sup> As Delta Troy has previously shown, a consideration of all circumstances reveals that the proposed TCR project is not “part of the interstate rail network.”<sup>30</sup>

The Board properly determined in 2016 that it did not have jurisdiction over the proposed TCR project, and there have been no material changes in the project in the interim. The proposal is still for an insular, intrastate rail line, in Texas only, with no track connections to the rest of the national rail network. The project would provide passenger service from new-build stations, and would not utilize or serve any existing Amtrak stations. The TCR project would rely on proprietary Shinkansen N700 bullet train technology that is not utilized anywhere else in the United States. No existing Board-authorized rail carriers would operate on this track, and no TCR trains would operate on the national rail network. No interchanging with existing U.S. railroads would occur. This proposal is a quintessential rail project outside Board jurisdiction. If the statutory phrase “as part of the interstate rail network” is to have any meaning whatsoever, the Board must decline to reopen this proceeding.

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<sup>27</sup> All Aboard Florida – Operations LLC and All Aboard Florida – Stations – Construction and Operation Exemption – In Miami, Fla. and Orlando, Fla., STB Docket No. 35680, slip op. at 3 (served Dec. 21, 2012); California High-Speed Rail Authority – Construction Exemption, STB Docket No. 35724, slip op. at 11-12 (served June 13, 2013); Denver & Rio Grande Railway Historical Foundation – Petition for Declaratory Order, STB Docket No. 35496, slip op. at 8 (served Aug. 18, 2014). Cf. Pennsylvania Public Utility Commission v. United States, 812 F.2d 8, 11 (D.C. Cir. 1987) (stating that Yellow Cab “suggests that a variety of the factors bearing on the character of the transportation should be considered” in a jurisdictional analysis).

<sup>28</sup> Petition for Exemption at 14 (filed April 19, 2016).

<sup>29</sup> Decision, STB Docket No. 36025, slip op. at 4 (served July 18, 2016).

<sup>30</sup> See, e.g., Delta Troy Reply to Petition for Clarification at 2-4 (filed May 19, 2016); Delta Troy Reply to Petition for Exemption at 4-11 (filed May 31, 2016); Delta Troy Reply in Opposition to Petition to Reopen at 4-12 (filed May 31, 2018).

The change asserted by TCR – the theoretical Amtrak-bus-TCR service – does not warrant reopening of this proceeding or revision of the Board’s jurisdictional finding. The only thing that has changed since 2016 is that TCR has developed an “agreement-to-agree” with Amtrak that does not actually require any through-ticket sales by either TCR or Amtrak. This unenforceable arrangement pertains to theoretical Amtrak-bus-TCR service that would be slower than the existing Amtrak service it is meant to replace. The projected usage of this theoretical service is tiny. Even if any passengers utilized this service, there is no certainty that any of them would actually be traveling interstate. As such, the proposed TCR construction project remains far more insular and divorced from the interstate rail network than the system in All Aboard Florida, where Board jurisdiction did not exist.<sup>31</sup>

A consideration of all circumstances is important in order to prevent transportation providers from seeking agency jurisdiction as a “subterfuge” to simply avoid state government oversight. See, e.g., Gray Lines Tour Company v. ICC, 824 F.2d 811, 814-815 (9<sup>th</sup> Cir. 1987). TCR seems to suggest that Board jurisdiction depends only on the single issue, litmus test of whether a through-ticketing agreement exists. See Response at 26. As described above in this section, all circumstances must be evaluated, and TCR’s position does not comport with relevant precedent. Cf. Napa Valley, 7 ICC2d 954, 964 (Alleged through-ticketing is “relevant” but is not necessarily determinative of agency jurisdiction.).

### **III. The Board Should Consider Scale, Scope, And Proportion.**

The Board’s determination of jurisdiction over a rail construction project is an all-or-nothing, one-time decision; it is not something that can be limited to only the traffic that is

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<sup>31</sup> See, e.g., Delta Troy Reply to Petition for Exemption at 5-9 (filed May 31, 2016).

actually interstate, as the Supreme Court did in certain decisions cited by TCR,<sup>32</sup> nor is it a determination that can be reversed later if operations of the entity change from interstate to intrastate or vice-versa. Hence, the analysis of whether a construction project is “part of the interstate rail network” must necessarily include a component of scale, scope, and proportionality. “The question is necessarily one of degree.”<sup>33</sup> It would be a misapplication of the governing statutes for jurisdiction to be asserted over an \$18 billion project where there is only the barest, *de minimis* tangential relationship to the interstate rail network.<sup>34</sup> This is exactly the situation facing the Board: there is no physical connection of trackage, no use of the same stations, no compatibility of technology, no interoperability, no interchanging or through-running. There is only a theoretical, cobbled-together “agreement-to-agree” that imposes no actual obligations on either party and would cover, at best, 0.5% of the passengers ten years after operations begin.

Therefore, the comparative scale, scope, and proportion of the alleged “interstate” element is critical in determining if the Board should assert jurisdiction over the TCR proposal. Asserting authority over a rail construction project is an “all-or-nothing” determination by the Board, in contrast to the older operational cases cited by TCR where the court limited its determination to the actual interstate traffic at issue. See Section V below. Precedent confirms that the scale, scope, and proportion of the interstate element is relevant in determinations of jurisdiction.

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<sup>32</sup> See, e.g., Cincinnati, New Orleans & Texas Pacific Railway v. ICC, 162 U.S. 184, 193 (1896) (“[s]ubject, then, we hold the Georgia Railroad Company is, under the facts found, to the provisions of the act to regulate commerce, in respect to its interstate freight”).

<sup>33</sup> NLRB v. Jones & Laughlin Steel Corporation, 301 U.S. 1, 37 (1937).

<sup>34</sup> Cf. Gray Lines Tour Company v. ICC, 824 F.2d 811, 814 (9<sup>th</sup> Cir. 1987).

In one case, the ICC determined that the lawfulness of certificated intrastate bus service under a former statutory provision depended upon several related factors. Initially, the ICC cautioned that “it is not enough for the carrier to offer interstate transportation,” instead, “[t]he interstate service must be active....[and] substantial.”<sup>35</sup> In fact, “the interstate traffic is to be substantial in relation to the intrastate traffic in that same operation.”<sup>36</sup> In a second case, the ICC considered “the incidental or dominant character of the intrastate traffic as a portion of the carrier’s overall operation” as one factor in determining whether a carrier routing through an adjacent state was simply a “subterfuge” to gain agency jurisdiction.<sup>37</sup>

In a third case, the ICC found no jurisdiction over an intrastate passenger rail line which had some interstate freight operations, but such operations were “very minimal.” Napa Valley, 7 ICC2d 954, 965-968. This determination was made even though the ICC found that “it seems likely that some portion of ex-Amtrak customers would be moving between intrastate points.” Napa Valley, 7 ICC2d 954, 964 (n. 28). Thus, the ICC stated, that, “whatever miniscule portion” of rail customers would “arrive from” or be “destined to Amtrak connections, it appears that only a **very small percentage** would be moving in uninterrupted interstate commerce.” Napa Valley, 7 ICC2d 954, 964 (n. 28) (emphasis added).

Other authorities reflect this concern for the proportion of interstate traffic in a jurisdictional analysis. Years ago, the Ninth Circuit decided whether a limousine “airporter” service provided at the Honolulu Airport was part of interstate commerce such that the Fair Labor Standards Act (“FLSA”) applied. The court looked to precedent as part of its analysis, noting that the FLSA was previously found to apply to a North Carolina airport limousine

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<sup>35</sup> Holland Industries, Inc. – Intrastate Operations – Petition for Declaratory Order, No. MC C 30036, 1988 WL 226101 (I.C.C.) at \*3 (Mar. 16, 1988).

<sup>36</sup> Holland Industries, 1988 WL 226101 (I.C.C.) at \*3.

<sup>37</sup> Gray Lines, 824 F.2d 811, 814 (citation and quotation omitted).

service where “the limousines were used exclusively for airport transportation,” which contrasted greatly with the situation before the court, where “the airporters were used for a variety of purposes.”<sup>38</sup>

#### **IV. TCR’s Other Legal Arguments Are Insufficient.**

##### **A. FRA Jurisdiction Is Not Board Jurisdiction.**

TCR erroneously conflates Board jurisdiction with that of the Federal Railroad Administration (“FRA”). See, e.g., Response at 32-35. However, “the jurisdictions of the Board and FRA are not coextensive.” Denver & Rio Grande, STB Docket No. 35496, slip op. at 11. FRA jurisdiction is much broader than Board jurisdiction; in fact, FRA jurisdiction extends to “those not engaged in interstate commerce.”<sup>39</sup> FRA regulations explain that the Federal Railroad Safety Act of 1970 was intended to reach “all railroads that affect interstate commerce...rather than be limited to common carriers actually engaged in interstate commerce.”<sup>40</sup>

##### **B. The Transfer And Transload Cases Do Not Support Reopening.**

The Board asked TCR to discuss whether its proposed bus transfer service is “similar to transfer, transload, or similar activities in the freight context.” Decision at 4. TCR responded to the Board’s request, but failed to explain the link between the transfer/transload cases and TCR’s proposed rail construction project. TCR claimed that its bus transfer service is “analogous to freight transfer or transloading services” over which the ICC asserted jurisdiction. Response at 40. Likewise, TCR asserted that the bus “transfer service” it is proposing with Amtrak is “similar to” the Board’s jurisdiction over certain rail transloading operations as described in

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<sup>38</sup> Mateo v. Auto Rental Company, 240 F.2d 831, 834 (9<sup>th</sup> Cir. 1957), *citing Airlines Transportation, Inc. v. Tobin*, 198 F.2d 249 (4<sup>th</sup> Cir. 1952).

<sup>39</sup> Napa Valley, 7 ICC2d 954, 966 (n. 33).

<sup>40</sup> See 49 CFR Part 209, Appendix A, The Extent and Exercise of FRA’s Safety Jurisdiction at para. 3.

certain cited cases.<sup>41</sup> Response at 42. However, TCR never explained how the cited cases affect the jurisdictional status of the proposed Dallas-to-Houston rail project. TCR only addressed the status of the bus service it is proposing with Amtrak, but the jurisdictional status of the proposed bus transfer service is not at issue.

The transfer and transload cases cited by TCR do not support jurisdiction over the proposed rail project. The older cases are of debatable applicability given the ICC's pervasive bus, truck, and rail regulation that existed for much of the 20<sup>th</sup> century. Buses and trucks were heavily regulated as utilities by the ICC for much of the 20<sup>th</sup> century until deregulatory efforts in statutes such as the Motor Carrier Act of 1980, the Bus Regulatory Reform Act of 1982, and the Interstate Commerce Commission Termination Act ("ICCTA").<sup>42</sup> In light of ICCTA, the Board's jurisdiction over motor carriers is very limited:

In particular, the ICC's jurisdiction over motor carriers was partitioned, and the Board received narrowly circumscribed responsibility which did not include, as pertinent here, the motor carrier licensing function (under former 49 U.S.C. 10922 and 10923). Instead, that function was replaced with motor carrier "registration" and transferred to the Secretary of Transportation (DOT Secretary) (under 49 U.S.C. 13902). Accordingly, **disputes concerning whether operations were interstate or intrastate in nature**, which could have been resolved by the ICC in the context of its pre-ICCTA motor carrier licensing function, **are not matters to be resolved by the Board**, but rather appear to be matters within the jurisdiction of the DOT Secretary.

Professional Logistics Management Co., Inc. – Petition for Declaratory Order – Certain Practices of Knight Transportation, Inc., STB Docket No. 42047, slip op. at 1-2 (served Oct. 7, 1999) (emphasis added). The Board has previously recognized that statutory changes can make older precedent of "limited relevance" to current proceedings. Bulkmatic Railroad Corporation –

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<sup>41</sup> Response at 42.

<sup>42</sup> See, e.g., William E. Thoms, *Unleashing the Greyhounds – The Bus Regulatory Reform Act of 1982*, 6 CAMPBELL L. REV. 75, 80, 83, and 92-94 (1984). See also Motor Carrier Bureaus – Periodic Review Proceeding, STB Ex Parte No. 656, slip op. at 6-8 (served May 7, 2007).

Acquisition and Operation Exemption – Bulkmatic Transport Company, STB Docket No. 34145, slip op. at 10 (n. 17) (served Nov. 19, 2002).

Recent transload cases are also of limited applicability to the TCR situation. Where truck-rail transload operations are under railroad control, the Board has often determined that it has jurisdiction over such operations.<sup>43</sup> The transload operation must also be “integrally related” to the railroad’s ability to provide rail transportation services.”<sup>44</sup> Bus service through a city on public streets is not “integrally related” to transportation by rail. In fact, Congress has specifically removed most agency regulatory authority over buses.<sup>45</sup> Therefore, the intrastate rail service by TCR at the end of that bus journey cannot magically be swept into Board jurisdiction. Cf. East West Resort Transportation, LLC and TMS, LLC, d/b/a Colorado Mountain Express – Petition for Declaratory Order – Motor Carrier Transportation of Passengers in Colorado, STB Docket No. MC-F-21008 (served Jan. 31, 2007) (Board rejects request to assert jurisdiction over bus operations.).<sup>46</sup>

Hi Tech Trans is instructive on this point. In that case, a motor carrier sought Board jurisdiction for its truck shipments to a truck-to-rail transload facility on Canadian Pacific Railway (“CP”) property, but the Board rejected the request, finding that “it is clear that the Board does not have jurisdiction over those activities described here that extend beyond the rail-related activities at the CP transloading facility.” Hi Tech Trans, STB Docket No. 34192, slip op. at 3. The Board explained that it only has jurisdiction over “transportation by rail carrier,”

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<sup>43</sup> See, e.g., Town of Babylon and Pinelawn Cemetery – Petition for Declaratory Order, STB Docket No. 35057, slip op. at 4 (served Feb. 1, 2008).

<sup>44</sup> Hi Tech Trans, LLC – Petition for Declaratory Order – Hudson County, NJ, STB Docket No. 34192, slip op. at 3 (served Nov. 20, 2002) (citations omitted).

<sup>45</sup> See, e.g., William E. Thoms, *Unleashing the Greyhounds – The Bus Regulatory Reform Act of 1982*, 6 CAMPBELL L. REV. 75 (1984).

<sup>46</sup> TCR also forgets that the Board’s jurisdictional reach under the rail construction statute of § 10901 is limited to “railroads.”

and that, while transfer and transload operations can be covered under that umbrella, such activities “must be integrally related to the railroad’s ability to provide rail transportation services.” Id. Thus, the impact of state regulation on truck shipments to the transload facility “is on truck shipments within the state, not on interstate rail shipments. Hi Tech’s attempt to link these activities as one continuous intermodal movement must fail.” Id. The Board’s analysis in Hi Tech Trans properly limits Board jurisdiction to rail transportation, as intended in 49 U.S.C. §§ 10102 and 10501.

**C. TCR Relies On Faulty Circular Reasoning.**

A broader problem plagues TCR’s attempted reliance on transload and transfer service as support for the jurisdiction status of the TCR proposal. Where the Board finds jurisdiction over transload activities, it does so because the activity is provided by (or under control of) a “rail carrier.”<sup>47</sup> TCR proposes to “provide....fund and operate” a bus service for its passengers.<sup>48</sup> TCR seeks to rely on this bus service (which it will provide) to prove that TCR is a rail carrier under the Board’s jurisdiction. This is fatally circular reasoning. Assuming for a moment that the Board actually could have rail jurisdiction over the proposed bus service (which Delta Troy does not concede, as explained above), the bus service itself is only within the Board’s rail jurisdiction (and can only provide the crucial justification for TCR’s alleged jurisdiction) if it is provided by a Board-authorized “rail carrier.” But it will not be provided by such a rail carrier. It will be provided by TCR, which is seeking to rely on the bus service in order to obtain jurisdiction. Briefly put, TCR cannot rely on the bus service for jurisdiction unless the bus service itself is within Board jurisdiction, but the bus service is not within Board jurisdiction

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<sup>47</sup> Hi Tech Trans, LLC – Petition for Declaratory Order – Newark, NJ, STB Docket No. 34192 (Sub-No. 1), slip op. at 4 (served Aug. 14, 2003).

<sup>48</sup> Response at 14.

unless it is provided by a Board-authorized rail carrier. This flawed reasoning also affects TCR's reliance on U.S. v. Yellow Cab Company and other cases.

In its discussion of these cases, TCR has also failed to address scale, scope, and proportionality, especially in the distinction between a one-time, all-or-nothing jurisdictional decision compared to ongoing assessment of operations.<sup>49</sup> If a party can drive a bus across a city to extend Board jurisdiction, then almost nothing is outside such jurisdiction and the bus begins to look like a subterfuge. Therefore, scale, scope, and proportionality must be considered. If the federal system of government is to have any meaning whatsoever, jurisdiction does not exist over the TCR proposal. State-focused activities must be under state control.

**V. TCR's Claim Of "Controlling" Supreme Court Precedent Is Without Merit.**

TCR cryptically concludes its Response with an oblique assertion that there is "controlling Supreme Court precedent" regarding Board jurisdiction over the TCR proposal.<sup>50</sup> No explanation or citation is provided, and the Board should reject TCR's wholly unfounded claim.

There are ten U.S. Supreme Court cases cited in the Response, but none of them suggest or indicate in any way that Board jurisdiction exists over the TCR proposal. The fantastical nature of TCR's "controlling" claim is evident simply from the fact that the ten cited cases were decided between 1890 and 1958, with an average "decision date" of 1928. The Board did not even exist – and was decades from being created – when these cases were decided. In deciding these ten cases, the Supreme Court was operating in a wholly different legal environment, when railroads were considered and regulated like utilities, when railroads' common carrier obligation included passenger service, and long before the dramatic statutory changes that occurred with the

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<sup>49</sup> See Section III above.

<sup>50</sup> Response at 47.

4R Act, the Staggers Act, and ICCTA. It is simple misinformation to say there is “controlling” Supreme Court precedent regarding the Board’s jurisdictional reach.

Of the ten cases, TCR appears to rely most on U.S. v. Yellow Cab Company, 332 U.S. 218 (1947). This decision concerned whether the Sherman Antitrust Act prohibited an arrangement among taxicab operating and manufacturing companies. See, e.g., 332 U.S. at 226 (“The Sherman Act is concerned with more than the large, nation-wide obstacles in the channels of interstate trade. It is designed to sweep away all appreciable obstructions so that the statutory policy of free trade might be effectively achieved.”). As is relevant here, the taxi companies provided service between railroad stations in Chicago for “through passengers” transferring from one rail line to another. See, e.g., 332 U.S. at 229 (“The transportation of such [through] passengers and their luggage between stations in Chicago is clearly a part of the stream of interstate commerce.”). Importantly, it was established and assumed that the rail journeys on either end of the intermediate taxi trip were interstate in nature.<sup>51</sup> The key question in Yellow Cab was whether the intermediate taxi journey was part of interstate commerce and, thus, subject to the Sherman Antitrust Act.<sup>52</sup>

TCR relies upon Yellow Cab to supposedly show the jurisdictional nature of the TCR proposal (see, e.g., Response at 40), but the comparison necessarily fails. The issue currently before the Board is the jurisdictional status of a proposed intrastate rail construction project at the **end** of a theoretical Amtrak-bus-TCR journey; in contrast, the issue in Yellow Cab was the

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<sup>51</sup> See, e.g., 332 U.S. at 228 (“The complaint points out the wellknown [sic] fact that Chicago is the terminus of a large number of railroads engaged in **interstate** passenger traffic and that a great majority of the persons making **interstate** railroad trips which carry them through Chicago 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 at the latter station.”) (emphasis added).

<sup>52</sup> See, e.g., 332 U.S. at 229 (“Any attempt to monopolize or to impose an undue restraint on such a constituent part of interstate commerce brings the Sherman Act into operation.”).

jurisdictional status of the **intermediate** step – the taxi service – sandwiched between two interstate rail journeys. The status of the intermediate bus proposed by TCR is not before the Board. Moreover, the rail end segments were both assumed to be interstate in Yellow Cab; in contrast, the rail segments in the theoretical Amtrak-bus-TCR service consist of one intrastate segment (TCR) and one where passengers on the Amtrak-bus-TCR service if any, could be traveling intrastate or interstate (Amtrak).

In other words, the Yellow Cab decision was predicated on “railroads engaged in interstate passenger traffic.”<sup>53</sup> In contrast, the TCR situation involves only one railroad engaged in interstate traffic (Amtrak), while the other (TCR) operates purely intrastate. The Yellow Cab decision evaluated whether (1) an intermediate taxi service (2) between two railroad stations in Chicago (3) as part of interstate through railroad service (4) constituted interstate commerce under the Sherman Act. The TCR question before the Board is:

- not about the status of the intermediate service (the proposed bus service) between the rail stations, but instead about the status of TCR’s intrastate rail line.
- not about the existence of interstate commerce for Sherman Act purposes, but instead about whether Board jurisdiction exists.

For TCR to claim the Yellow Cab case is “controlling” is far-fetched at best.

The other cases cited by TCR are similarly distinguishable. Perhaps most importantly, the legal analysis in each generally relies upon the fact that interstate or international commerce was actually occurring. In one case, the Supreme Court plainly stated that, “[h]ere, interstate commerce was involved in the transportation of the materials to be processed across state lines to

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<sup>53</sup> 332 U.S. 218, 228.

the factory.”<sup>54</sup> Other cases are similar.<sup>55</sup> This is dramatically different from the Amtrak-bus-TCR scenario, where there is no certainty that the handful of passengers utilizing this cumbersome multi-stage itinerary, if any, would be traveling to or from outside Texas. In at least one case, the Supreme Court specifically limited its holding to only those shipments that were actually moving interstate.<sup>56</sup>

The rail-related Supreme Court cases generally involved tracks that physically connected to the national rail network, enabling actual interchange with and operations by railroads that operate across state lines.<sup>57</sup> Again, this is fundamentally different from the proposal before the Board, where the envisioned rail line would be insular in nature with no connection to or interoperability with the national rail network. TCR also cited to a number of non-rail cases, which were decided based upon the specific statutes and legislative history at issue.<sup>58</sup> In one of

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<sup>54</sup> NLRB v. Fainblatt, 306 U.S. 601, 605 (1939).

<sup>55</sup> See, e.g., Southern Pacific Terminal Company v. ICC, 219 U.S. 498, 527 (1911) (all shipments were “destined for export”); United States v. Capital Transit Company, 338 U.S. 286, 290 (1949) (ICC jurisdiction upheld for D.C.-origin passengers “going to and from the Virginia establishments”); Norfolk & Western Railroad Company v. Pennsylvania, 136 U.S. 114, 119 (1890) (relying on earlier maritime decision which found that “[s]o far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan and destined to places within the State, she was engaged in commerce between the States”) (citation omitted); City of Chicago v. Atchison, Topeka & Santa Fe Railway Company, 357 U.S. 77, 81 (1958) (“[t]he complaint asserted that the City’s requirement of a certificate of convenience and necessity was inconsistent with the provisions of the Interstate Commerce Act....insofar as it applied to vehicles transferring interstate passengers”).

<sup>56</sup> Cincinnati, New Orleans & Texas Pacific Railway v. ICC, 162 U.S. 184, 193 (1896) (“[s]ubject, then, we hold the Georgia Railroad Company is, under the facts found, to the provisions of the act to regulate commerce, in respect to its interstate freight”).

<sup>57</sup> See, e.g., Southern Pacific, 219 U.S. 498, 523 (tracks of the subject Terminal Company connect to the national rail network through the Galveston, Harrisburg and San Antonio Railway Company); U.S. v. Union Stock Yard & Transit Company, 226 U.S. 286, 299 (1912) (“[t]he tracks of the Junction Company are frequently used by the trunk lines to connect the eastern and western systems and to deliver shipments originating without the State”).

<sup>58</sup> See, e.g., Walling v. Jacksonville Paper Company, 317 U.S. 564, 567 (1943) (Citing legislative history and stating that “[i]t is clear that the purpose of the [National Labor Relations] Act was to extend federal control in this field throughout the farthest reaches of the channels of

the non-rail cases, the court cautioned that “decisions dealing with various assertions of state or federal power in the commerce field are not particularly helpful in determining the reach of this [National Labor Relations] Act.”<sup>59</sup>

Even in rail cases, the outdated nature of the relevant statutory framework, as well as the particular issue before court, is evident and plays a role in the assertion of agency jurisdiction.<sup>60</sup> In one case, the issue centered on “off-track” terminals operated by interstate railroads in the St. Louis area – a practice that all parties to that dispute agreed was within the ICC’s extensive rail regulation of the day given the governing caselaw and applicable statutes.<sup>61</sup> At that time, the ICC governed rates,<sup>62</sup> closure,<sup>63</sup> truck transfer service,<sup>64</sup> and other issues related to the railroads’ off-track terminals. Eventually, the growth of trucking and the ICC’s assertion of jurisdiction over certain truck services led Congress to formally place motor carriers under ICC regulatory

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interstate commerce.”); Yellow Cab, 332 U.S. 218, 229 (“Any attempt to monopolize or to impose an undue restraint on such a constituent part of interstate commerce brings the Sherman Act into operation.”); NLRB v. Fainblatt, 306 U.S. 601, 604 (“The end sought in the enactment of the statute was the prevention of the disturbance to interstate commerce consequent upon strikes and labor disputes induced or likely to be induced because of unfair labor practices named in the [National Labor Relations] Act.”).

<sup>59</sup> Walling, 317 U.S. at 569.

<sup>60</sup> See, e.g., Southern Pacific, 219 U.S. 498, 526 (“[T]o make the wharves...for one shipper and not for all is to give that shipper a preference. And, being a preference, the traffic necessarily comes under the jurisdiction of the Interstate Commerce Commission.”); City of Chicago v. ATSF, 357 U.S. 77, 86 (“the Interstate Commerce Commission has held that it has the authority to require motor service between terminals”); Central Transfer Company v. Terminal Railroad Association, 288 U.S. 469, 473 (n. 1) (1933) (describing the various statutes and precedent by which the ICC had jurisdiction over motor carriage provided by railroads).

<sup>61</sup> Central Transfer, 288 U.S. 469, 473-474.

<sup>62</sup> In the Matter of the Legality of Tariffs Purporting to Embrace or Cover Motor-Truck or Wagon Transfer Service in Connection with Transportation by Rail or Water, 91 ICC 539 (1924).

<sup>63</sup> Discontinuance of Inland or Off-Track Stations in New York City, 173 ICC 727 (1931).

<sup>64</sup> Trucking of Less-Than-Carload Freight in lieu of Rail Service in Chicago District, 185 ICC 71 (1932).

purview in the Motor Carrier Act of 1935.<sup>65</sup> This extensive regulation of motor carriage, “similar to utility rate regulation,” continued until deregulation in the last decades of the 20<sup>th</sup> century.<sup>66</sup> In the deregulation that followed, “[a] significant turning point was the 1980 Motor Carrier Act, in which Congress essentially repealed interstate motor carrier regulation in order to promote competition.”<sup>67</sup> With ICCTA in 1995, “Congress removed most of the remaining framework of pervasive regulation in favor of more robust competition.”<sup>68</sup> Finally, in 2007, the Board found that “there is no longer any need for the controlled conditions under which the [motor carrier] industry developed.”<sup>69</sup>

Hence, the Supreme Court cases cited by TCR have limited applicability to the rail construction jurisdiction question currently before the Board, especially considering the pervasive, utility-style regulation of transportation that occurred throughout most of the 20<sup>th</sup> century.

## **VI. If Jurisdiction Exists, An Application Is Required And The Board Should Direct TCR To Take Other Steps.**

If the Board reopens this proceeding and determines it has jurisdiction over the TCR proposal, the Board should require TCR to submit an Application for this multi-billion dollar, “first of its kind”<sup>70</sup> rail project. This would be the first true high-speed rail in the United States,

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<sup>65</sup> See, e.g., Motor Carrier Bureaus – Periodic Review Proceeding, STB Ex Parte No. 656, slip op. at 6 (served May 7, 2007) (The Motor Carrier Act of 1935 “initiated a system under which the ICC restricted new entry into the trucking business and approved specific routes” and otherwise formally engaged in “pervasive regulation.” At the time, “[t]he underlying rationale of the 1935 Act was that the motor carrier sector was economically unstable and that cut-throat competition might destroy the fledgling industry.”).

<sup>66</sup> William E. Thoms, *Unleashing the Greyhounds – The Bus Regulatory Reform Act of 1982*, 6 CAMPBELL L. REV. 75, 83 (1984).

<sup>67</sup> Motor Carrier Bureaus, Ex Parte No. 656, slip op. at 6 (citation omitted).

<sup>68</sup> Motor Carrier Bureaus, Ex Parte No. 656, slip op. at 7.

<sup>69</sup> Motor Carrier Bureaus, Ex Parte No. 656, slip op. at 8.

<sup>70</sup> Verified Statement of Timothy B. Keith, CEO of Texas Central Partners, LLC, page 5,

and this ground-breaking proposal deserves careful consideration in order “to protect....the affected communities from needless disruptions and environmental impacts if the applicant were to start construction but not be able to complete the project and provide the proposed service.”<sup>71</sup> The need for careful consideration is all the more pressing given the well-publicized problems experienced by the California High-Speed Rail Project, which has had to curtail its original plan due to delays and dramatic cost increases. TCR’s proposal that an Application can be replaced by simply “targeted and relevant questions”<sup>72</sup> from the Board is wholly insufficient. For such a massive and ground-breaking project, a short-cut around the required procedural rules is plainly inappropriate. Delta Troy incorporates its prior filings regarding the need for an Application, such as the argument set forth at pages 17-21 of the Delta Troy Reply in Opposition to Petition to Reopen (filed May 31, 2018).

Moreover, if this proceeding moves forward, the Board should also require TCR to update the details set forth in its Petition for Exemption. The true moving entity behind the project is unclear, as six separate entities have taken steps indicating that they are the proper parties, yet only two of them have sought Board authorization. See Delta Troy Reply in Opposition to Petition to Reopen, pages 14-17 (filed May 31, 2018). TCR should also be required to update other details from its Petition for Exemption, substantiate its funding sources,

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attached to TCR’s Petition for Exemption (filed April 19, 2016).

<sup>71</sup> Great Lakes Basin Transportation, Inc. – Rail Construction and Operation – In Rock County, Wisc., Winnebago, Ogle, Lee, LaSalle, Grundy, and Kankakee Counties, Ill., and Lake, Porter, and LaPorte Counties, Ind., STB Docket No. 35952, slip op. at 4 (served Aug. 31, 2017) (citation and quotation omitted).

<sup>72</sup> Response at 44 (n. 75).

and should be required to re-designate certain material previously filed in its Response to Replies to Petition for Exemption (filed June 20, 2016).<sup>73</sup>

## **VII. Conclusion.**

When combined with the other factors regarding TCR's proposal and the events of the past three-plus years in this proceeding at the Board, the attempt by TCR to cobble-together a theoretical arrangement with Amtrak to cover a tiny portion of riders is nothing more than a last-gasp effort to avoid the proper operation of state law in our federal system. It would be contrary to the federal system of government to sweep the entire \$18 billion proposal, with its 4 million riders per year, into federal jurisdiction, when that proposal would be wholly intrastate, with all construction and operations wholly within one state, unconnected to the national rail network, and incompatible with the national rail network, simply on the basis of an ephemeral agreement-to-agree that, at best, would cover a vanishingly small proportion of riders.

TCR wants Board jurisdiction over its wholly intrastate rail proposal and, moreover, wants the Board authorization via a simplified exemption procedure. Yet, at the same time, TCR wants to be fully exempt from all federal railroad obligations described in Subtitle IV of Title 49 of the U.S. Code after construction is complete.<sup>74</sup> Paradoxically, TCR wants to be subject to the federal legal regime but not actually comply with any federal obligations in its rail operations. The reason for the conundrum is quite clear: preemption. TCR is so fervently seeking federal jurisdiction solely to prevent the citizens of Texas from having any say in the "Texas" Central Railway – which is entirely located in Texas, does not physically connect with the national rail

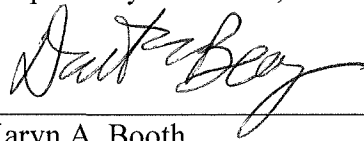
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<sup>73</sup> See Delta Troy Reply in Opposition to Petition to Reopen, pages 22-23 (filed May 31, 2018); Delta Troy's Reply in Opposition to Both the Motion for Leave to File Response to Replies and the Response, pages 3-11 (filed July 11, 2016).

<sup>74</sup> See TCR Petition for Exemption at 1 (filed April 19, 2016) ("Petitioners also request an exemption from ongoing regulation under Subtitle IV of Title 49 once construction is completed and passenger service commences.").

network or use the stations of that network, and relies upon proprietary technology that is not used anywhere else in the U.S. If the federal system of government is to have any meaning, with the states able to govern and regulate those matters occurring within their borders, the Board must decline to reopen this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Benz", written over a horizontal line.

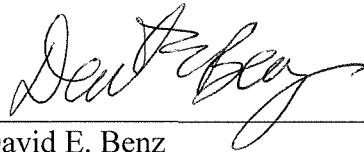
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*Attorneys for Delta Troy Interests, Ltd.*

October 8, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of October 2019, I served a copy of the foregoing upon counsel for Texas Central Railroad and Infrastructure, Inc. and Texas Central Railroad, LLC via electronic mail and U.S. first-class mail, postage prepaid. All other parties of record were served on this day via U.S. first-class mail, postage prepaid.

A handwritten signature in cursive script, appearing to read "David E. Benz", is written over a horizontal line.

David E. Benz

# **TAB 1**

## List of Exhibits

| number | description                                                                                                                                                                                         |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1      | Amtrak General and Legislative Annual Report & Fiscal Year 2020 Grant Request (dated March 19, 2019) ( <i>excerpt</i> )                                                                             |
| 2      | Government Accountability Office, <u>Amtrak: Better Reporting, Planning, and Improved Financial Information Could Enhance Decision Making</u> , Report No. GAO-16-67 (Jan. 2016) ( <i>excerpt</i> ) |
| 3      | Amtrak Texas Eagle schedule (effective Mar. 10, 2019)                                                                                                                                               |
| 4      | Marshall, TX to Houston, Amtrak schedule and sample fare                                                                                                                                            |
| 5      | Marshall, TX to Dallas, Amtrak schedule and sample fare                                                                                                                                             |

# EXHIBIT 1



# General and Legislative Annual Report

*& Fiscal Year 2020 Grant Request*



[Amtrak.com](https://www.amtrak.com)

March 19, 2019

The Honorable Michael Pence  
President of the Senate  
U.S. Capitol  
Washington, DC 20510

Richard Anderson  
President and co-Chief Executive Officer



The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
U.S. Capitol  
Washington, DC 20515

Dear Mr. President and Madam Speaker:

I am pleased to transmit Amtrak's Fiscal Year 2020 General and Legislative Annual Report to Congress. It includes our FY 2020 grant request and an overview of our FY 2018 accomplishments, highlighted below. We will transmit our legislative recommendations later this year for your consideration as part of a comprehensive proposal for the reauthorization of the federal programs and policy related to Amtrak and intercity passenger rail.

FY 2018 Highlights

- Adjusted operating loss was reduced to **\$171 million**, an improvement of 11.9 percent from the prior year, and the lowest in Amtrak's history.
- Operating cost recovery was increased to **95 percent**, another record for the company.
- Total revenue was **\$3.39 billion**, an increase of 2.5 percent over the prior year.<sup>1</sup>
- Capital spending on infrastructure, rolling stock, stations, and other assets and systems was **\$1.46 billion**, one of the highest levels of investment in recent history.
- Began deployment of a Safety Management System (SMS), becoming first major U.S. railroad to do so and implemented Positive Train Control across much of Amtrak's network.

FY 2020 Grant Request

- **\$1.8 billion** overall request to Congress to support the Northeast Corridor and National Network accounts, consistent with the overall level authorized by the FAST Act and which the law requires we not exceed in our grant request.
- An explanation of where additional funding beyond the authorized level is needed.
- Includes the financial breakdown by service line and asset line, and also how the requested federal funding fits within our overall business strategy and investment plan.

Sincerely,

A handwritten signature in blue ink that reads "Richard Anderson".

Richard Anderson  
President and Chief Executive Officer

---

<sup>1</sup> Revenue figure conforms to GAAP standards.

## FY 2020 Federal Grant Request by Service and Asset Line

Table 6: FY 2020 Federal Grant by Service Line

| NEC           | State Supported | Long Distance | Infrastructure Access | Ancillary Services |
|---------------|-----------------|---------------|-----------------------|--------------------|
| \$413,176,600 | \$382,218,592   | \$702,337,852 | \$254,053,044         | \$27,213,913       |

Table 7: FY 2020 Federal Grant by Asset Line

| Transportation | Infrastructure | Equipment     | Stations      | National Assets & Corporate Svs |
|----------------|----------------|---------------|---------------|---------------------------------|
| \$252,265,834  | \$320,975,807  | \$907,204,384 | \$298,553,975 | \$0                             |

Note: Tables 6 and 7 totals do not reflect the takedowns.

As defined by the FRA, the below Service Lines<sup>3</sup> reflect the various activities associated with service types and the needs of respective customers.

- **NEC:** Provides premium and regular intercity rail passenger service along the NEC while seeking to maximize operating surplus. Its customers are intercity travelers on the NEC.
- **State Supported:** Provides intercity rail passenger service and supporting services under contract to States on corridor routes of not more than 750 miles. Its primary customers are State Departments of Transportation and authorities, and intercity travelers.
- **Long Distance:** Provides intercity rail passenger service on routes of more than 750 miles. Its primary customers are travelers and communities across the National Network and the federal government.
- **Infrastructure Access:** Seeks to safely and efficiently plan for, develop, manage, and provide access to Amtrak-owned or controlled infrastructure and facilities consistent with Amtrak's statutory obligations. Its primary customers include rail operators and other public and private sector entities that currently use, or plan to use, Amtrak-owned assets.
- **Ancillary Services** include the following three sub-categories:
  - **Amtrak Services:** Provides rail passenger transportation, maintenance, and related services at market-based prices to commuter rail agencies and commercial entities.
  - **Reimbursable Services** (other than services governed by the state-supported service costing methodology developed under PRIIA Sec. 209): Provides obligatory maintenance, engineering, capital improvement, and other activities for freight and commuter operators and other outside enterprises on a reimbursable cost basis.

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<sup>3</sup> As defined by the FRA's May 2016 document "Account Structure Definition and Accounting Methodology Improvements to Address Section 11201 of the FAST Act of 2015." Since then, Ancillary Services has been updated to reflect Amtrak's business more accurately.

**Table 36: Amtrak FY 2018 Annual Operations Report**

| Route Name                            | Ridership         | Passenger-Miles      | Adjusted Allocated Operating Sources (\$) | Adjusted Allocated Operating Uses (\$) | Revenue-to-Cost Ratio | Fully-Allocated Profit or (Loss) Per Passenger-Mile (\$) |
|---------------------------------------|-------------------|----------------------|-------------------------------------------|----------------------------------------|-----------------------|----------------------------------------------------------|
| <i>Acela Express</i>                  | 3,428,338         | 648,377,570          | 624,321,998                               | 305,501,521                            | 2.04                  | 0.49                                                     |
| <i>Northeast Regional</i>             | 8,686,930         | 1,340,181,213        | 686,794,368                               | 476,095,608                            | 1.44                  | 0.16                                                     |
| NEC Special Trains & Adjustments      | 8,375             | 1,126,730            | 4,806,320                                 | 10,215,568                             | 0.47                  | (4.80)                                                   |
| <b>Northeast Corridor</b>             | <b>12,123,643</b> | <b>1,989,685,513</b> | <b>1,315,922,686</b>                      | <b>791,812,696</b>                     | <b>1.66</b>           | <b>0.26</b>                                              |
| <i>Adirondack</i>                     | 111,740           | 32,257,101           | 12,890,652                                | 13,385,912                             | 0.96                  | (0.02)                                                   |
| <i>Blue Water</i>                     | 185,020           | 36,162,409           | 11,823,062                                | 12,835,701                             | 0.92                  | (0.03)                                                   |
| <i>Capitol Corridor</i>               | 1,706,849         | 113,798,088          | 61,631,932                                | 70,315,399                             | 0.88                  | (0.08)                                                   |
| <i>Carolinian</i>                     | 256,886           | 71,001,150           | 22,964,193                                | 19,214,679                             | 1.20                  | 0.05                                                     |
| <i>Cascades</i>                       | 806,137           | 126,067,567          | 61,240,850                                | 67,240,198                             | 0.91                  | (0.05)                                                   |
| <i>Downeaster</i>                     | 540,038           | 43,973,344           | 17,483,473                                | 17,357,073                             | 1.01                  | 0.00                                                     |
| <i>Empire South</i>                   | 1,150,498         | 141,889,850          | 48,119,854                                | 65,553,569                             | 0.73                  | (0.12)                                                   |
| <i>Empire West/Maple Leaf</i>         | 366,696           | 107,524,669          | 29,493,656                                | 33,573,796                             | 0.88                  | (0.04)                                                   |
| <i>Ethan Allen</i>                    | 49,669            | 9,443,314            | 4,669,394                                 | 5,247,463                              | 0.89                  | (0.06)                                                   |
| <i>Hearland Flyer</i>                 | 68,075            | 11,932,447           | 6,071,116                                 | 6,891,712                              | 0.88                  | (0.07)                                                   |
| <i>Hiawatha</i>                       | 844,396           | 67,832,564           | 23,515,997                                | 21,712,160                             | 1.08                  | 0.03                                                     |
| <i>Hoosier State</i>                  | 27,876            | 4,384,127            | 3,694,043                                 | 5,583,440                              | 0.66                  | (0.43)                                                   |
| <i>Illini/Saluki</i>                  | 245,876           | 43,471,849           | 17,535,994                                | 17,118,334                             | 1.02                  | 0.01                                                     |
| <i>Illinois Zephyr/ Carl Sandburg</i> | 191,612           | 31,092,300           | 15,460,709                                | 14,567,760                             | 1.06                  | 0.03                                                     |
| <i>Keystone</i>                       | 1,519,936         | 132,890,568          | 51,319,314                                | 56,037,299                             | 0.92                  | (0.04)                                                   |
| <i>Lincoln Service</i>                | 586,166           | 106,346,576          | 33,876,929                                | 32,200,553                             | 1.05                  | 0.02                                                     |
| <i>Missouri River Runner</i>          | 169,471           | 31,754,929           | 15,470,882                                | 14,335,064                             | 1.08                  | 0.04                                                     |
| <i>New Haven-Springfield</i>          | 286,477           | 23,833,361           | 19,227,602                                | 23,440,334                             | 0.82                  | (0.18)                                                   |
| <i>Pacific Surfliner</i>              | 2,945,994         | 253,461,238          | 111,099,891                               | 128,908,900                            | 0.86                  | (0.07)                                                   |
| <i>Pennsylvanian</i>                  | 214,827           | 50,295,149           | 14,654,798                                | 17,283,344                             | 0.85                  | (0.05)                                                   |
| <i>Pere Marquette</i>                 | 95,540            | 14,304,062           | 6,279,775                                 | 6,980,191                              | 0.90                  | (0.05)                                                   |
| <i>Piedmont</i>                       | 167,203           | 18,562,086           | 6,379,710                                 | 7,433,616                              | 0.86                  | (0.06)                                                   |
| <i>San Joaquin</i>                    | 1,078,859         | 147,722,510          | 84,021,316                                | 95,073,340                             | 0.88                  | (0.07)                                                   |
| <i>Vermont</i>                        | 97,909            | 24,782,934           | 11,449,169                                | 10,673,534                             | 1.07                  | 0.03                                                     |
| <i>Washington-Lynchburg</i>           | 206,252           | 47,934,742           | 14,760,554                                | 9,610,899                              | 1.54                  | 0.11                                                     |
| <i>Washington-Newport News</i>        | 322,265           | 69,054,413           | 24,373,468                                | 18,667,289                             | 1.31                  | 0.08                                                     |
| <i>Washington-Norfolk</i>             | 152,611           | 28,814,216           | 10,894,656                                | 9,402,936                              | 1.16                  | 0.05                                                     |
| <i>Washington-Richmond</i>            | 158,318           | 23,863,837           | 11,571,581                                | 9,426,328                              | 1.23                  | 0.09                                                     |
| <i>Wolverine</i>                      | 483,670           | 102,710,161          | 30,685,871                                | 32,572,885                             | 0.94                  | (0.02)                                                   |
| Non-NEC Special Trains & Adjustments  | 42,192            | 4,515,119            | 5,678,184                                 | 36,769,049                             | 0.15                  | (6.89)                                                   |
| <b>State Supported</b>                | <b>15,079,058</b> | <b>1,921,676,680</b> | <b>788,338,628</b>                        | <b>879,412,756</b>                     | <b>0.90</b>           | <b>(0.05)</b>                                            |
| <i>Auto Train</i>                     | 224,837           | 193,584,657          | 71,989,213                                | 87,461,429                             | 0.82                  | (0.08)                                                   |
| <i>California Zephyr</i>              | 418,203           | 295,678,349          | 59,058,662                                | 116,349,708                            | 0.51                  | (0.19)                                                   |
| <i>Capitol Limited</i>                | 219,033           | 98,779,079           | 21,380,052                                | 49,009,554                             | 0.44                  | (0.28)                                                   |
| <i>Cardinal</i>                       | 96,710            | 33,313,579           | 7,127,007                                 | 22,643,665                             | 0.31                  | (0.47)                                                   |
| <i>City of New Orleans</i>            | 237,781           | 100,272,820          | 19,399,123                                | 40,437,972                             | 0.48                  | (0.21)                                                   |
| <i>Coast Starlight</i>                | 417,819           | 194,382,390          | 44,541,555                                | 90,112,715                             | 0.49                  | (0.23)                                                   |
| <i>Crescent</i>                       | 274,807           | 129,039,734          | 33,141,871                                | 72,559,789                             | 0.46                  | (0.31)                                                   |
| <i>Empire Builder</i>                 | 428,854           | 303,918,093          | 57,626,494                                | 109,501,033                            | 0.53                  | (0.17)                                                   |
| <i>Lake Shore Limited</i>             | 337,882           | 149,358,299          | 28,411,059                                | 64,083,465                             | 0.44                  | (0.24)                                                   |
| <i>Palmetto</i>                       | 387,919           | 94,908,198           | 30,869,529                                | 36,262,835                             | 0.85                  | (0.06)                                                   |
| <i>Silver Meteor</i>                  | 337,023           | 190,075,999          | 40,082,745                                | 79,869,814                             | 0.50                  | (0.21)                                                   |
| <i>Silver Star</i>                    | 368,518           | 165,945,944          | 34,842,292                                | 69,730,438                             | 0.50                  | (0.21)                                                   |
| <i>Southwest Chief</i>                | 331,239           | 272,714,245          | 45,511,902                                | 102,680,813                            | 0.44                  | (0.21)                                                   |
| <i>Sunset Limited</i>                 | 97,078            | 73,279,546           | 12,391,231                                | 47,569,328                             | 0.26                  | (0.48)                                                   |
| <i>Texas Eagle</i>                    | 335,770           | 154,765,722          | 25,742,874                                | 57,527,780                             | 0.45                  | (0.21)                                                   |
| Long Distance Adjustments             | N/A               | N/A                  | (8,676,561)                               | 20,850,926                             | (0.42)                | -                                                        |
| <b>Long Distance</b>                  | <b>4,513,473</b>  | <b>2,450,016,654</b> | <b>523,439,047</b>                        | <b>1,066,651,265</b>                   | <b>0.49</b>           | <b>(0.22)</b>                                            |
| <b>Total</b>                          | <b>31,716,174</b> | <b>6,361,378,847</b> | <b>2,627,700,361</b>                      | <b>2,737,876,717</b>                   | <b>0.96</b>           | <b>(0.02)</b>                                            |

# EXHIBIT 2



January 2016

# AMTRAK

## Better Reporting, Planning, and Improved Financial Information Could Enhance Decision Making

# GAO Highlights

Highlights of [GAO-16-67](#), a report to congressional requesters

## Why GAO Did This Study

Amtrak provides a range of passenger services on its Northeast Corridor, state-supported, and long-distance routes, but has not consistently reported revenues and expenses for these services. In 2008, PRIIA directed Amtrak to address this and other issues. In response, Amtrak reorganized into three business lines for its services to make its finances more transparent and management more accountable. GAO was asked to review Amtrak's efforts to reorganize and implement certain PRIIA reforms.

This report evaluates: (1) the status of Amtrak's reorganization; (2) Amtrak and stakeholder efforts to address Northeast Corridor infrastructure needs; and (3) the impact of PRIIA requirements on state-supported routes. GAO reviewed Amtrak financial data (fiscal years 2010 through 2014), planning documents, and interviewed Amtrak officials and key stakeholders from the FRA, 18 states that support Amtrak routes, and 7 commuter or intercity passenger railroads selected for their scope of operations.

## What GAO Recommends

GAO recommends that Amtrak (1) prioritize the adoption of its strategic management system company-wide, (2) improve its financial reporting, and (3) detail costs of state-supported routes paid by federal grants and (4) that the Commission develop criteria to prioritize planned investments. Amtrak agreed with the first recommendation and provided context about the other recommendations. GAO continues to believe its recommendations are valid as discussed further in this report. The Commission concurred with GAO's recommendation for it.

View [GAO-16-67](#). For more information, contact Susan Fleming at (202) 512-2834 or [flemings@gao.gov](mailto:flemings@gao.gov)

January 2016

## AMTRAK

### Better Reporting, Planning, and Improved Financial Information Could Enhance Decision Making

## What GAO Found

Amtrak's 2012 reorganization into Northeast Corridor, state-supported, and long-distance business lines established a structure to improve accountability for performance, but Amtrak could do more to accurately demonstrate its results. Most notably, Amtrak's new strategic management system as implemented by its long-distance line of business reflects several leading performance-management practices, such as linking line-of-business goals and initiatives to corporate-wide strategic goals, assigning personnel to execute initiatives, and tracking the results. However, Amtrak has not prioritized the implementation of this system across all of its remaining lines of business and departments. Furthermore, Amtrak's inconsistent and incomplete reporting of its financial data hinders Amtrak's ability to demonstrate the performance of its lines of business.

Amtrak and its stakeholders have developed a plan to address critical Northeast Corridor infrastructure needs, but its implementation faces significant challenges. Many of the corridor's bridges and tunnels are aging and in need of replacement to bring them to a state of good repair. The Northeast Corridor Infrastructure and Operations Advisory Commission (Commission)—which includes the Department of Transportation, Amtrak, states, and others—has developed a 5-year capital plan costing \$17.7 billion from fiscal years 2016 through 2020 to begin addressing the backlog of deferred investments and make other improvements. But implementing this plan presents challenges because it lacks funding for 60 percent of its costs and would require Amtrak, states, commuter railroads, or the federal government to provide additional funding of about \$2.1 billion per year through 2020. The Commission also lacks criteria for prioritizing projects; as a result, Congress and states lack information to inform their decisions about whether to provide additional funding to implement the Commission's plans.

Although requirements in the Passenger Rail Investment and Improvement Act (PRIIA) of 2008 have resulted in a methodology that increased states' share of costs on state-supported routes and reduced federal subsidies, these routes still require federal funds to support their operation. More specifically, states' increased share of operating and capital equipment costs reduced Amtrak's reliance on federal funds by about \$100 million for these routes in fiscal year 2014 compared to 2013. Amtrak still required almost \$86 million in federal grants in fiscal year 2014 to cover operating losses from these routes, and Amtrak reported that it will continue to require federal funding for these routes. However, Amtrak has not developed clear information detailing the specific costs and activities that this federal assistance is intended to cover. In the absence of such detailed information, Amtrak lacks critical information to help it assess its costs and is not well positioned to develop strategies to reduce the cost of its services. Similarly, many states have questioned the accuracy or transparency of Amtrak's cost information, and Amtrak has experienced challenges in finalizing fiscal year 2015 operating agreements with several states. In response, Amtrak, states, and the Federal Railroad Administration (FRA) have established a formal process for the parties to discuss states' concerns and make improvements to the cost allocation process moving forward. Some states have also sought opportunities to reduce costs by seeking alternative passenger rail providers, but the results of these efforts have yet to be realized.

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## Abbreviations

|       |                                                          |
|-------|----------------------------------------------------------|
| DOT   | Department of Transportation                             |
| FRA   | Federal Railroad Administration                          |
| IPCD  | Intermodal Passenger Connectivity Database               |
| MBTA  | Massachusetts Bay Transportation Authority               |
| PRIIA | Passenger Rail Investment and Improvement Act of 2008    |
| RRIF  | Railroad Rehabilitation and Improvement Financing        |
| SEPTA | Southeastern Pennsylvania Transportation Authority       |
| TIFIA | Transportation Infrastructure Finance and Innovation Act |

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January 6, 2016

The Honorable Mike Enzi  
Chairman  
Committee on the Budget  
United States Senate

The Honorable Cory Booker  
Ranking Member  
Subcommittee on Surface Transportation and Merchant Marine  
Infrastructure, Safety and Security  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Roger Wicker  
United States Senate

The Honorable Gary Palmer  
House of Representatives

The National Railroad Passenger Corporation (Amtrak) provides almost all the intercity passenger rail service in the U.S., earning about \$3 billion in revenue and carrying about 31-million passengers in fiscal year 2014. Created by the federal government to take over unprofitable passenger rail service from freight railroads, Amtrak started service in 1971 using equipment inherited from these railroads. In 1976, Amtrak acquired control over much of the busy Northeast Corridor rail network, from Washington, D.C., to Boston, MA, allowing Amtrak to operate higher speed intercity passenger rail service and making it responsible for a critical part of the national rail network. Since its early years of operations, Amtrak has also increasingly contracted with states and local governments to provide them intercity rail services across the country. Today, Amtrak's 20,000 employees provide a range of passenger rail services, including frequent service along the Northeast Corridor, shorter-distance intercity services that receive some financial support from 18 states, and long-distance services that connect rural areas with major cities.

However, Amtrak has not consistently reported on the revenues and expenses for its different services and has had difficulty determining which services require more or less federal funds. The Passenger Rail

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Investment and Improvement Act (PRIIA) of 2008 directed Amtrak to work with the Federal Railroad Administration (FRA) and others to address the planning, funding, and performance of Amtrak's services by:

- collaborating with stakeholders to plan infrastructure and operational improvements on the Northeast Corridor, including developing a methodology for sharing operations and infrastructure-maintenance costs among Amtrak and commuter railroads that use the corridor;<sup>1</sup>
- working with states to develop a standardized methodology for allocating responsibility for the costs of state-supported routes to Amtrak and the states;<sup>2</sup> and,
- developing and implementing performance improvement plans for Amtrak's long-distance routes.<sup>3</sup>

In addition, PRIIA required Amtrak to report its revenues and expenditures for each route individually and by lines of business.<sup>4</sup> Partly in response to PRIIA and to increase management focus on the different services it provides, Amtrak reorganized in October and November 2012 into lines of business centered on three different intercity passenger rail operations—Northeast Corridor, state-supported, and long-distance services, and a fourth business line focused on the planning and development of the Northeast Corridor's infrastructure.

You asked that we examine how Amtrak's most recent reforms have impacted its operational and financial performance and affected Amtrak's need for federal funds, among other issues. This report evaluates:

- the status of Amtrak's recent reorganization;
- Amtrak and stakeholder efforts to plan for and address the Northeast Corridor's infrastructure needs; and,

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<sup>1</sup>Pub. Law 110-432, div. B, § 212 (2008).

<sup>2</sup>PRIIA required that Amtrak, relevant states and the District of Columbia develop and implement a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among the states and Amtrak associated with trains operated on each of the state-supported routes. Pub. L. No. 110-432, div. B, § 209.

<sup>3</sup>Pub. Law 110-432, div. B, § 210.

<sup>4</sup>Pub. L. No. 110-432, div. B, § 203(c).

- 
- the impact of PRIIA requirements on state-supported routes.

To assess the status of Amtrak's reorganization, we reviewed Amtrak's documentation on (1) the creation of its lines of business, (2) its 5-year financial plans and audited financial statements for financial results from fiscal years 2010 to 2014, and (3) its strategic management system designed to manage its business improvement initiatives. We compared Amtrak's strategic management system to leading and useful practices regarding the importance of strategic planning and performance reporting.<sup>5</sup> We also compared Amtrak's processes for internal and external reporting of performance and financial information against *Standards for Internal Control in the Federal Government* to determine the extent to which the information and its reporting comported with these criteria.<sup>6</sup> While Amtrak is not required to abide by the *Standards for Internal Control in the Federal Government*, the management controls described in the standards are consistent with the management practices of leading organizations. We also reviewed Amtrak and FRA data from fiscal years 2010 to 2015 on the status of Amtrak's Performance Improvement Plans for all 15 of Amtrak's long-distance routes, which were created from 2010 through 2012. We used Amtrak's audited consolidated financial statements and monthly performance reports, which are unaudited, to describe Amtrak's financial performance overall and by line of business, respectively. To assess the reliability of this information, we reviewed prior reports by GAO and the Inspector General for the Department of Transportation regarding the reliability of Amtrak's financial reporting and cost allocation systems. We reviewed the methodology used by the Inspector General for the Department of Transportation in evaluating Amtrak's financial reporting and determined that it was sufficiently reasonable for us to rely upon the results. We also interviewed Amtrak's Controller and finance department officials, as well as officials in the office of Amtrak's Inspector General. Based on statements on Amtrak's internal controls from Amtrak's external auditors and interviews with Amtrak officials, we determined that Amtrak's financial information for its lines of business has limitations, as we describe in this

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<sup>5</sup>GAO, *Executive Guide: Leading Practices in Capital Decision-Making*, [GAO/AIMD-99-32](#) (Washington, D.C.: December 1998) and GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, [GAO-03-669](#) (Washington, D.C.: July 2, 2003).

<sup>6</sup>GAO, *Internal Control: Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

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report. However, we believe the data are reasonably sufficient to illustrate summary financial information and make general comparisons between lines of business for the purposes of this report.

To assess Amtrak and stakeholder efforts on the Northeast Corridor, we reviewed relevant PRIIA requirements and analyzed documentation from Amtrak and Northeast Corridor stakeholders describing efforts to plan for and address Northeast Corridor investment needs. These stakeholders included states along the Northeast Corridor and commuter railroads that operate over the Northeast Corridor. We compared the process used by Amtrak and these stakeholders to assemble a 5-year capital plan with leading practices for capital decision making that we previously identified.<sup>7</sup> To determine the impact of the requirements in PRIIA for a standardized methodology for allocating the costs of state-supported routes to Amtrak and states, we reviewed the relevant PRIIA provisions and analyzed Amtrak financial data on changes in states' costs from fiscal years 2010 through 2014, when the PRIIA requirements went into effect.

We also interviewed Amtrak, FRA and Transport Canada officials, and representatives from 18 states, 4 labor unions, 7 commuter or other intercity passenger railroads, and 4 freight railroads, in addition to 3 experts about the status and their views of Amtrak's reorganization. We selected the commuter and freight railroads based on the scope of their operations and the experts based on their knowledge of Amtrak's reorganizational history specifically or railroad organizational structure in general as well as interactions with Amtrak concerning its Northeast Corridor infrastructure and routes, state-supported routes, or long-distance routes. The results of these interviews are not generalizable but provided important insights about how they interact with Amtrak, how Amtrak is organized, or the railroad industry in general. For more details on our objectives, scope, and methodology, see appendix I.

Our work was conducted from October 2014 to January 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our

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<sup>7</sup>[GAO/AIMD-99-32](#). GAO identified organizations that were recognized as exhibiting leading practices in capital decision making, compared practices across the organizations, and identified innovative practices used by individual organizations as well as approaches and elements that were common across organizations.

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findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

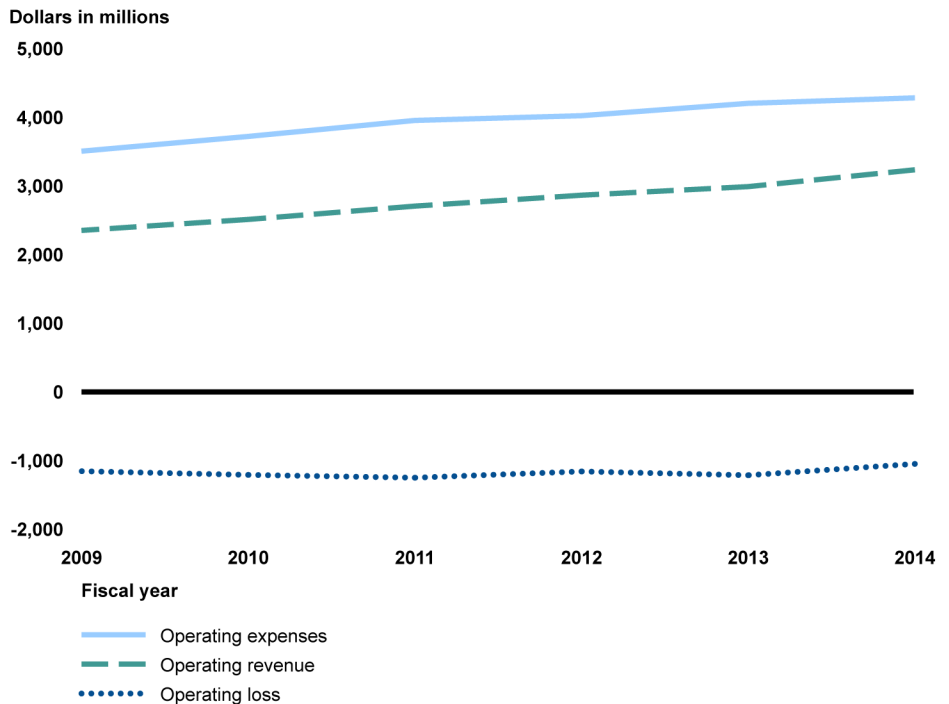
While Amtrak has experienced steady revenue growth in recent years, its costs have also increased, and, like many rail systems worldwide, the railroad operates at a financial loss—about \$1.2 billion per year (see fig.1 below) from fiscal years 2009 through 2014 (the latest audited financial results available).<sup>8</sup> In 2006 we found that Amtrak faced several structural challenges to improving its financial and operational performance— (1) the capital investment backlog on Amtrak-owned Northeast Corridor tracks, (2) aging equipment, (3) difficulty controlling labor and other costs, (4) on-time performance challenges due to operating over freight railroad tracks.<sup>9</sup>

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<sup>8</sup>National Rail Passenger Corporation and Subsidiaries, *Annual Consolidated Financial Statements, Years Ended September 30, 2014 and 2013* (Washington, D.C.).

<sup>9</sup>GAO, *Intercity Passenger Rail: National Policy and Strategies Needed to Maximize Public Benefits from Federal Expenditures*, [GAO-07-15](#) (Washington, D.C.: Nov.13, 2006).

**Figure 1: Amtrak Revenue, Expenses and Operating Losses, Fiscal Years 2009–2014**



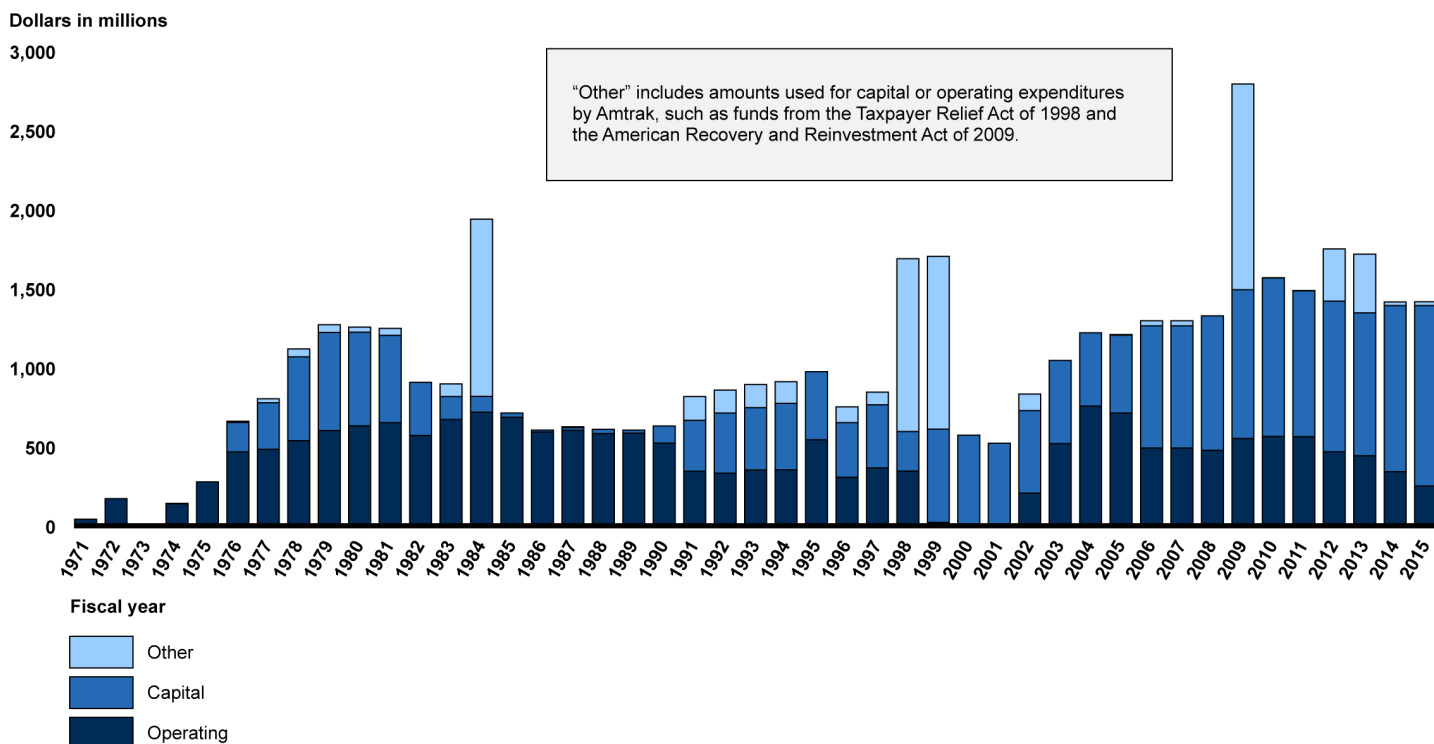
Source: GAO analysis of Amtrak audited financial data. | GAO-16-67

Note: Operating revenue includes items such as: ticket sales (about 79 percent), state capital payments (1 percent), and commuter revenue (about 5 percent) with other revenues making up the remaining 15 percent. Operating expenses includes items such as: salaries, wages, and benefits (48 percent of all operating costs); depreciation (about 16 percent); and fuel, power, and utilities (about 8 percent) with all other expenses making up the remaining 28 percent.

To maintain Amtrak's operations and make capital improvements, Amtrak has received more than \$45 billion in federal funds since 1971 (see fig. 2). Amtrak receives its funding through grants administered by the Department of Transportation (DOT). These grants are used to cover the company's operating losses and capital grants to fund improvements, such as to Amtrak's rolling stock (locomotives and rail cars) and to its railroad infrastructure, both on and off of the Northeast Corridor. Unlike federal highway, transit, and air transportation programs, which are funded at least in part through dedicated funding sources based on user fees or taxes, intercity passenger rail services do not have a dedicated federal funding source. As a result, Amtrak competes with other national priorities for limited general revenue funds each year. Amtrak's funding for operating and capital grants has varied substantially from year to year since 1971, with substantial increases in federal funding of about \$2.2

billion over fiscal years 1998 and 1999 through the Taxpayer Relief Act of 1997 and almost \$1.3 billion in grants through the American Recovery and Reinvestment Act of 2009.

**Figure 2: Federal Grants to Amtrak, Fiscal Years 1971–2015**



Source: GAO analysis of Federal Railroad Administration (FRA) data. | GAO-16-67

Amtrak has reorganized several times in the past 20 years. While Amtrak reported that the general goal of each reorganization was to reduce or eliminate the railroad's need for federal operating subsidies, these efforts were either never fully implemented or did not achieve the goal of financial self-sufficiency. Until recently, Amtrak's organizational structure consisted of separate departments focused on specific railroad functions, such as train operations, or maintenance of equipment and infrastructure.

When Amtrak initially announced its most recent reorganization strategy in its fiscal year 2011–2015 strategic plan, six lines of business were

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envisioned.<sup>10</sup> According to this plan, profit and loss statements would be created for each business line to provide greater transparency to Amtrak's financial information and provide management information needed to make decisions regarding where to deploy resources and cut costs. Amtrak officially reorganized into business lines in October and November 2012. As outlined in its most recent strategic plan for fiscal years 2014—2018, Amtrak's Northeast Corridor and, state-supported and long-distance routes were organized into its three train operation business lines. Almost all of Amtrak's 46 routes operate through one or more of Amtrak's 10 large stations, known as terminals, which are managed by these three operational business lines (see fig. 3). In November 2011, Amtrak also created a separate Northeast Corridor Infrastructure and Investment Development business line, charged with planning and developing Amtrak's Northeast Corridor infrastructure. In January 2015, this department began the ongoing transition into a new fourth business line responsible for planning, developing, and managing Amtrak's nation-wide infrastructure, real estate, and other corporate assets.

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<sup>10</sup>Amtrak, *Strategic Plan FY2011-FY2015*, (Washington, D.C.: 2011). The six lines of business were to be four train operations lines of business (Northeast Corridor, state-supported, long-distance, and commuter) and two infrastructure related lines (Northeast Corridor infrastructure and commercial corporate asset development). Amtrak officials stated that since its commuter services were co-located with its intercity train operations, Amtrak integrated its commuter services within those lines of business.

Figure 3: Map of Amtrak's Lines of Business and Terminals



Sources: Amtrak's Fiscal Year 2014 business plan and Map Resources. | GAO-16-67

Amtrak's three train operations business lines each have unique characteristics that influence their operation and funding:

- **The Northeast Corridor operations business line** is responsible for operating Amtrak's Acela and Northeast Regional trains, which carried 11.6-million passengers in fiscal year 2014, according to Amtrak data, representing about 38 percent of Amtrak's total ridership. Amtrak owns and is responsible for maintaining roughly 80 percent of the rail network, including the entire south-end between Washington, D.C.

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and New York City and portions of several rail corridors that connect to the Northeast Corridor mainline. Other sections are owned by three states and a freight railroad, as shown in figure 4.<sup>11</sup> The Northeast Corridor is a shared resource that is used by almost 2,300 trains each day, including those operated by Amtrak, eight commuter railroads, and four freight railroads. To promote mutual cooperation and planning on the Northeast Corridor, the Northeast Corridor Infrastructure and Operations Advisory Commission (Northeast Corridor Commission) was established and directed to, among other things, develop a standardized formula for allocating costs, revenues, and compensation for all of the operators and owners of the Northeast Corridor.<sup>12</sup> The Northeast Corridor Commission is composed of members representing Amtrak, the Secretary of Transportation, the Federal Transit Administration, FRA, and the eight states and the District of Columbia that constitute the Northeast Corridor, as well as representatives of freight railroads and other stakeholders that serve as non-voting members. In 2012, the FRA initiated the NEC FUTURE planning effort which is intended to develop a vision for rail service through about 2040 that reflects future estimated population and demand. According to FRA officials, NEC FUTURE will provide a comprehensive vision for Northeast Corridor stakeholders to guide project-level planning and investment actions on the corridor.<sup>13</sup>

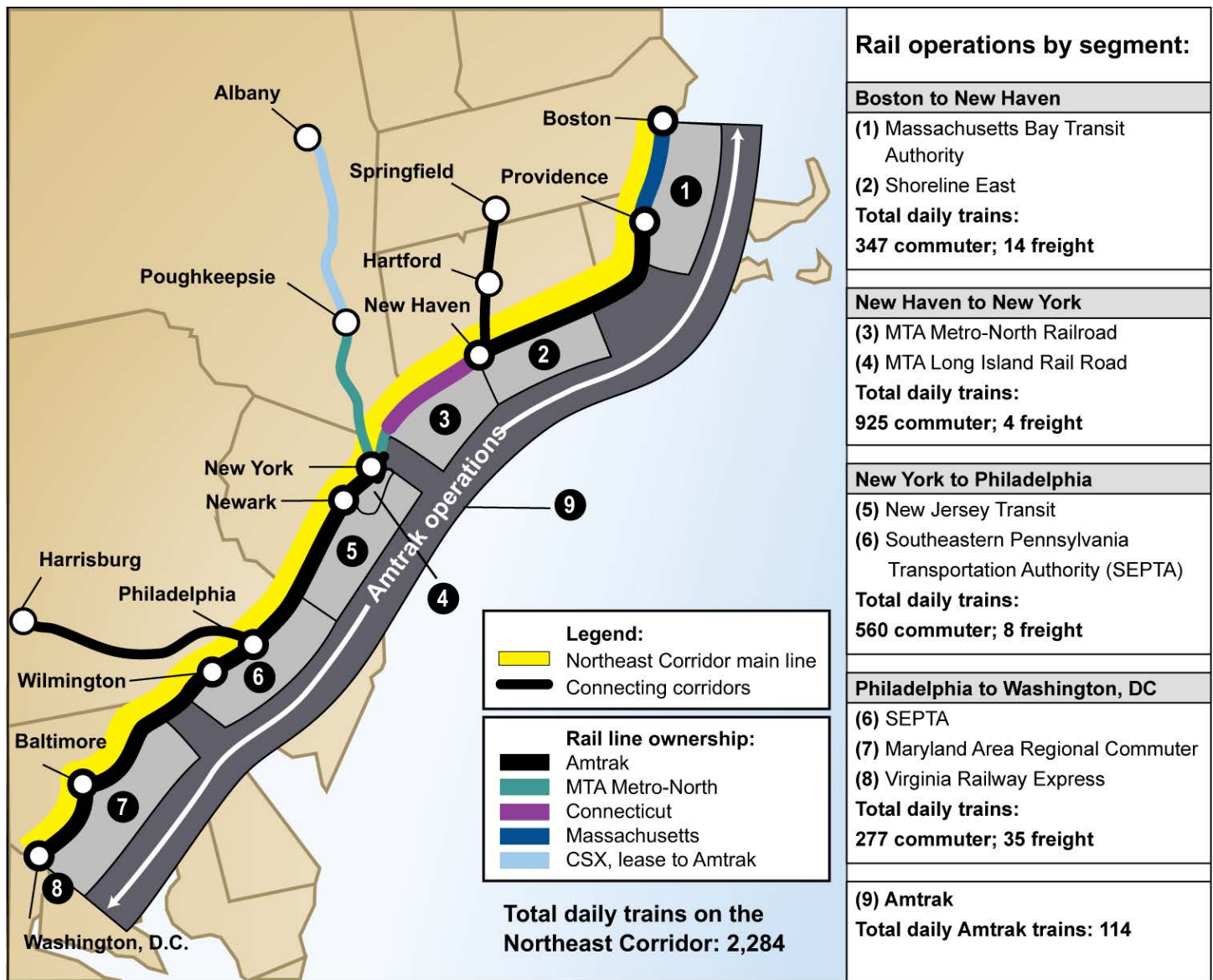
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<sup>11</sup>Amtrak acquired its ownership stake in 1976, as part of the disposition of assets previously owned by the Penn Central Transportation Company which, along with certain other Northeastern railroads, was in bankruptcy at that time. See GAO, *Intercity Passenger Rail: Amtrak's Management of Northeast Corridor Improvements Demonstrates Need for Applying Best Practices*, [GAO-04-94](#) (Washington, D.C.: Feb. 27, 2004).

<sup>12</sup>Pub. Law 110–432, div. B, § 212(a).

<sup>13</sup>In August 2015, FRA outlined several preliminary alternatives depicting different conceptual levels of rail service and future investments. In 2016, FRA plans to select a preferred alternative and develop a service development plan that would make the general business case for the selected alternative, including the overall benefits and costs of its implementation. FRA, *NEC FUTURE Tier 1 EIS Alternatives Report* (Washington, D.C.: August 2015).

Figure 4: Northeast Corridor Rail Network Ownership and Operations



Source: Amtrak data. | GAO-16-67

- **The state-supported business line** is responsible for operating 29 routes that carried almost 15-million passengers in 2014—about 48 percent of Amtrak’s annual ridership, according to Amtrak data. A total of 18 states provide financial support to Amtrak to operate the routes in their states—with several states supporting multiple routes, and

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some routes providing service to cities in more than one state. These routes range from about 65 to about 600 miles, with an average distance of about 275 miles.<sup>14</sup> The routes also vary widely in terms of ridership, revenues, and frequency of service. For example, according to Amtrak data, the Pacific Surfliner provides 12 daily round trips between Los Angeles and San Diego and carried nearly 2.7-million passengers in 2014. In contrast, the Hoosier State operates 4 days per week from Indianapolis to Chicago with return service the other 3 days (Amtrak's Cardinal route provides service between Indianapolis and Chicago when the Hoosier State does not run), and carried about 34,000 passengers in 2014. PRIIA required Amtrak and states to develop and implement a standardized methodology for allocating operating and capital costs for state-supported routes among states and Amtrak. This new methodology went into effect in fiscal year 2014.

- **The long-distance business line** operates 15 routes that are between about 750 to about 2,400 miles long and had about 4.5-million riders (about 15 percent of Amtrak's total ridership) in fiscal year 2014, according to Amtrak data. According to Amtrak, these routes provide essential transportation services to many rural areas across the country, as well as service for leisure travelers. The routes provide a degree of national connectivity and can feed customers into Amtrak's other routes as well.<sup>15</sup> However, they have much lower ridership than the Northeast Corridor or state-supported routes, and they generally operate less frequently than the other services, and operate on tracks owned by freight railroads.<sup>16</sup> (See fig. 5.) In 2006, we noted that the long-distance routes accounted for about 80 percent of Amtrak's financial losses, although they served 15 percent of

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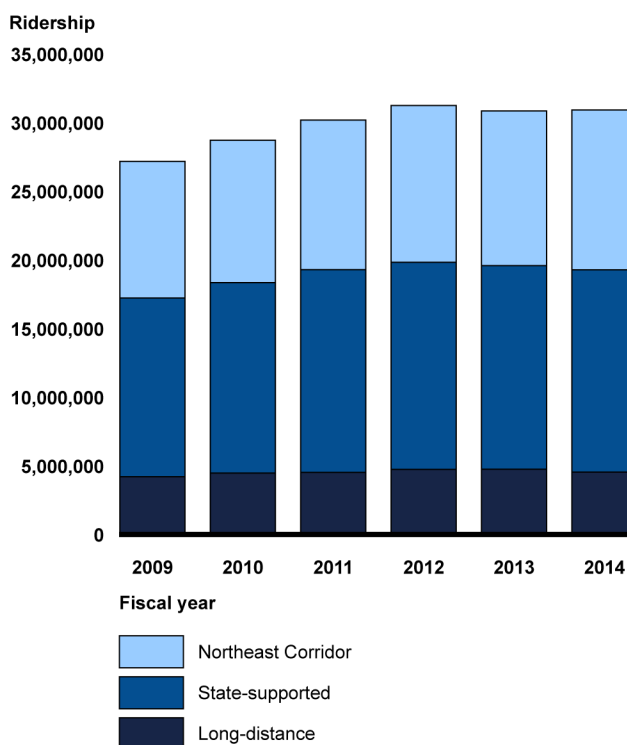
<sup>14</sup>In prior work, we noted that intercity rail services appear to be most competitive with automobile and air travel in markets between 100 and 300 miles. At distances less than 100 miles, cars and buses generally have a comparative advantage over intercity rail services due to the prevalence and convenience of car ownership and the lower costs of bus travel compared with rail fares. Intercity rail becomes less competitive with air travel over longer distances as rail travel time and prices increase.

<sup>15</sup>For example, Amtrak estimates that roughly \$10 million in annual ticket sales on the Empire Builder each year represent Chicago connections to the Capitol Limited to D.C. and state-supported routes.

<sup>16</sup>Federal law requires that freight railroads typically give Amtrak trains priority access and, in general, may request appropriate compensation associated with the use of their tracks. Pub. L. No. 93-146, § 10(2) (1973).

Amtrak's total ridership, and were characterized by poor on-time performance.<sup>17</sup> According to Amtrak's fiscal year 2014 data, Amtrak's long-distance routes accounted for the same percentages of losses and total ridership as we found in 2006.

**Figure 5: Amtrak Ridership by Business Line, Fiscal Years 2009–2014**



Source: GAO analysis of Amtrak Monthly Performance Reports 2009 through 2014. | GAO-16-67

Note: Amtrak reported that in fiscal year 2014, it began counting ridership for multi-ride tickets with eTicketing, which would result in a drop in reported ridership due to fewer trips taken on a typical pass (mostly with monthly passes) than was allocated in the old methodology.

In addition, the financial performance of each business line differs considerably. According to unaudited financial performance data, Amtrak's Northeast Corridor is the only business line that generates operating revenues in excess of its operating costs, and its reported operating revenue surplus has grown steadily from almost \$25 million in

<sup>17</sup>GAO-07-15.

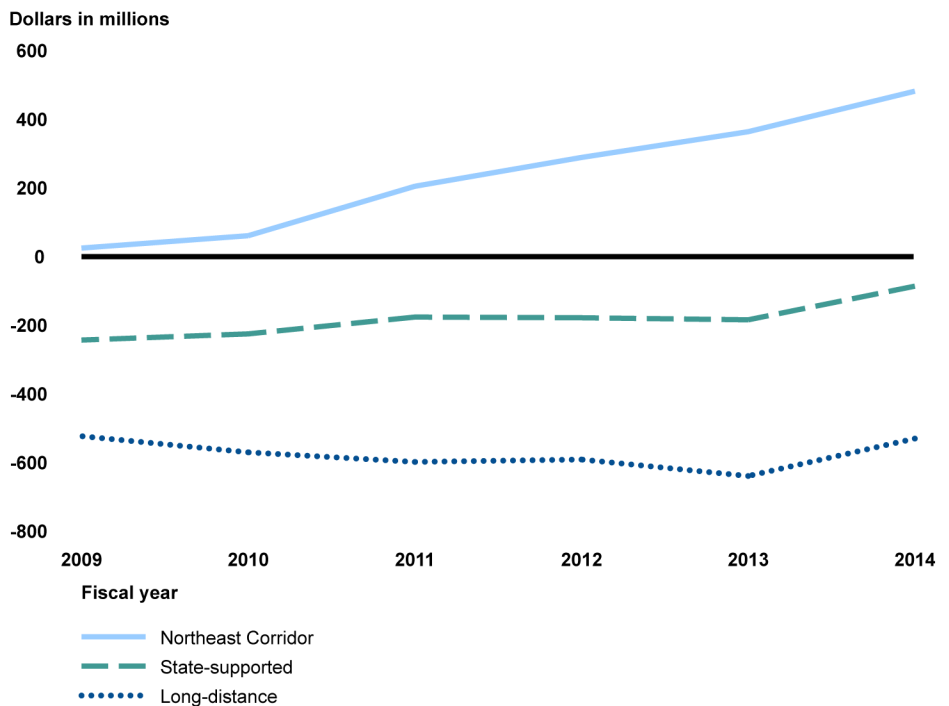
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fiscal year 2009 to \$482 million in fiscal year 2014. The state-supported and long-distance business lines, in contrast, have consistently operated at a financial loss over the 6-year period from 2009 through 2014 (see fig. 6). According to Amtrak, the operating success of the Northeast Corridor is due, in part, to the population density of the region and Amtrak's competitiveness with other modes based on travel-time and other factors. For example, in 2015 Amtrak reported that it transported three times as many passengers between Washington, D.C., and New York City as the airlines, and that overall ridership on the Northeast Corridor has increased by nearly 50 percent since 1998 to 2014. In prior work, we noted that transportation experts generally agree that intercity passenger rail services that serve large, relatively close population centers—and that are time- and cost-competitive with other transportation modes—represent the greatest potential markets for rail worldwide.<sup>18</sup>

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<sup>18</sup>[GAO-07-15](#).

**Figure 6: Amtrak's Reported Operating Contribution by Business Line, Fiscal Years 2009–2014**



Source: GAO analysis of Amtrak Monthly Performance Reports 2009 through 2014. | GAO-16-67

Note: Operating contribution is defined by Amtrak to be operating revenues minus operating expenses, which do not include off-sets for pension payments, depreciation or interest. As discussed in this report, we found that that Amtrak's financial information for its lines of business has limitations. We believe the data are reasonably sufficient to illustrate summary financial information and make general comparisons between lines of business for the purposes of this report.

## Reorganization Has Established a Structure to Improve Accountability, but Amtrak Lacks Tools and Data to Demonstrate Results

Amtrak's reorganization into separate business lines has created a structure to improve accountability for financial and operational results, but Amtrak has not yet demonstrated results of this reorganization. Most notably, Amtrak's new strategic management system reflects several leading performance management practices. However, not all of Amtrak's lines of business and functional departments have implemented this system to date, and Amtrak lacks a mechanism to externally report its results. Additionally, while FRA has not completed a PRIIA requirement that it engage an independent entity to create a methodology that Amtrak can use to evaluate its routes and services, recent legislation transferred this responsibility to Amtrak. Without this methodology, Amtrak lacks a key tool that could provide more information to make more substantial changes to its routes, such as contracting or adding service, to reduce its

# EXHIBIT 3

# TEXAS EAGLE®

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**SAN ANTONIO - LOS ANGELES** and intermediate stations

Effective March 10, 2019

Amtrak.com  
1-800-USA-RAIL

| 21/421                                                                                                                                                              | ◀ Train Number ▶             |    |                                                                      |    | 22/422                                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|----|----------------------------------------------------------------------|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| As indicated in column                                                                                                                                              | ◀ Normal Days of Operation ▶ |    |                                                                      |    | As indicated in column                                                                                                                                              |
|   | ◀ On Board Service ▶         |    |                                                                      |    |   |
| Read Down                                                                                                                                                           | Mile                         | ▼  | Symbol                                                               | ▲  | Read Up                                                                                                                                                             |
|  1 45P Daily                                                                       | 0                            | Dp | Chicago, IL—Union Station (CT)<br>Madison—see page 2                 | ●● |  1 52P Daily                                                                       |
|  R2 40P Daily                                                                      | 37                           | ↓  | Joliet, IL                                                           | ●● |  D12 56P Daily                                                                     |
|  3 27P Daily                                                                       | 92                           | ↓  | Pontiac, IL                                                          | ○● |  11 39A Daily                                                                      |
|  4 04P Daily                                                                       | 124                          | ↓  | Bloomington-Normal, IL<br>Davenport, Indianapolis—see page 2         | ●● |  11 08A Daily                                                                      |
|  4 37P Daily                                                                       | 156                          | ↓  | Lincoln, IL                                                          | ○● |  10 25A Daily                                                                      |
|  7 14P Daily                                                                       | 185                          | ↓  | Springfield, IL                                                      | ●● |  9 55A Daily                                                                       |
|  5 49P Daily                                                                       | 224                          | ↓  | Carlinville, IL                                                      | ○● |  9 15A Daily                                                                       |
|  6 20P Daily                                                                       | 257                          | ↓  | Alton, IL                                                            | ●● |  8 45A Daily                                                                       |
|  7 21P Daily                                                                       | 284                          | Ar | St. Louis, MO                                                        | ●● |  7 55A Daily                                                                       |
|  7 55P                                                                             |                              | Dp |                                                                      | Ar |  7 24A                                                                             |
|  10 02P Daily                                                                      | 376                          | ↓  | Arcadia, MO—Arcadia Valley Station                                   | ○● |  4 19A Daily                                                                       |
|  11 42P Daily                                                                     | 453                          | ↓  | Poplar Bluff, MO                                                     | ○● |  2 44A Daily                                                                      |
|  12 37A Daily                                                                    | 513                          | ↓  | Walnut Ridge, AR (Jonesboro)                                         | ○● |  1 41A Daily                                                                     |
|  3 10A Daily                                                                     | 634                          | ↓  | Little Rock, AR                                                      | ●● |  11 39P Daily                                                                    |
|  3 55A Daily                                                                     | 677                          | ↓  | Malvern, AR (Hot Springs Natl. Park)                                 | ○● |  10 26P Daily                                                                    |
|  4 20A Daily                                                                     | 694                          | ↓  | Arkadelphia, AR                                                      | ○● |  10 02P Daily                                                                    |
|  5 09A Daily                                                                     | 741                          | ↓  | Hope, AR                                                             | ○● |  9 18P Daily                                                                     |
|  5 58A Daily                                                                     | 774                          | ↓  | Texarkana, AR/TX                                                     | ○● |  8 43P Daily                                                                     |
|  7 50A Daily                                                                     | 840                          | ↓  | Marshall, TX                                                         | ●● |  7 31P Daily                                                                     |
|  8 28A Daily                                                                     | 864                          | ↓  | Longview, TX (Tyler)<br>Shreveport, Houston—see pg. 2                | ●● |  6 15P Daily                                                                     |
|  9 25A Daily                                                                     | 912                          | Dp | Mineola, TX (Canton)                                                 | ○● |  5 15P Daily                                                                     |
|  11 30A Daily                                                                    | 991                          | Ar | Dallas, TX                                                           | ●● |  3 40P Daily                                                                     |
|  11 50A                                                                          |                              | Dp | Jackson, Meridian—see page 3                                         | Ar |  3 20P                                                                           |
|  1 25P Daily                                                                     | 1022                         | Ar | Fort Worth, TX                                                       | ●● |  2 20P Daily                                                                     |
|  2 10P                                                                           |                              | Dp | Waco, Houston—see page 3                                             | Ar |  1 58P                                                                           |
|  2 52P Daily                                                                     | 1050                         | ↓  | Cleburne, TX                                                         | ○● |  1 00P Daily                                                                     |
|  4 00P Daily                                                                     | 1125                         | ↓  | McGregor, TX (Waco, Crawford)                                        | ○● |  11 51A Daily                                                                    |
|  4 43P Daily                                                                     | 1150                         | ↓  | Temple, TX<br>Ft. Hood, Killeen—see page 3                           | ●● |  11 25A Daily                                                                    |
|  5 36P Daily                                                                     | 1188                         | ↓  | Taylor, TX                                                           | ○● |  10 22A Daily                                                                    |
|  6 30P Daily                                                                     | 1223                         | ↓  | Austin, TX                                                           | ●● |  9 31A Daily                                                                     |
|  7 12P Daily                                                                     | 1253                         | ↓  | San Marcos, TX                                                       | ○● |  8 32A Daily                                                                     |
|  9 55P Daily                                                                     | 1305                         | Ar | San Antonio, TX                                                      | ●● |  7 00A Daily                                                                     |
|  2 45A TuThSu                                                                    |                              | Dp |                                                                      | Ar |  4 50A TuFrSu                                                                    |
|  5 49A TuThSu                                                                    | 1475                         | ↓  | Del Rio, TX                                                          | ○● |  1 02A TuFrSu                                                                    |
|  8 24A TuThSu                                                                    | 1600                         | ↓  | Sanderson, TX                                                        | ○● |  10 36P MoThSa                                                                   |
|  10 38A TuThSu                                                                   | 1692                         | ↓  | Alpine, TX (Big Bend Nat'l. Park)(CT)                                | ○● |  8 45P MoThSa                                                                    |
|  1 22P TuThSu                                                                    | 1910                         | Ar | El Paso, TX Las Cruces, Albuquerque—see page 3 (Ciudad Juarez, Mex.) | ●● |  3 35P MoThSa                                                                    |
|  1 47P TuThSu                                                                    |                              | Dp |                                                                      | Ar |  3 10P MoThSa                                                                    |
|  3 18P TuThSu                                                                    | 1998                         | ↓  | Deming, NM                                                           | ○● |  1 10P MoThSa                                                                    |
|  4 13P TuThSu                                                                    | 2058                         | ↓  | Lordsburg, NM (MT)                                                   | ○● |  12 15P MoThSa                                                                   |
|  5 18P TuThSu                                                                    | 2176                         | ↓  | Benson, AZ (MST)                                                     | ○● |  9 15A MoThSa                                                                    |
|  6 45P TuThSu                                                                    | 2226                         | Ar | Tucson, AZ                                                           | ●● |  8 15A MoThSa                                                                    |
|  7 35P TuThSu                                                                    |                              | Dp |                                                                      | Ar |  7 28A MoThSa                                                                    |
|  8 52P TuThSu                                                                    | 2312                         | Ar | Maricopa, AZ                                                         | ○● |  5 40A MoThSa                                                                    |
|  9 02P TuThSu                                                                    |                              | Dp | Phoenix—see page 3                                                   | Ar |  5 30A MoThSa                                                                    |
|  11 49P TuThSu                                                                   | 2477                         | ↓  | Yuma, AZ (MST)                                                       | ○● |  2 47A MoThSa                                                                    |
|  2 02A WeFrMo                                                                    | 2622                         | ↓  | Palm Springs, CA (PT)                                                | ○● |  12 36A MoThSa                                                                   |
|  D3 54A WeFrMo                                                                   | 2690                         | ↓  | Ontario, CA                                                          | ○● |  10 54P SuWeFr                                                                   |
|  D4 04A WeFrMo                                                                   | 2696                         | ↓  | Pomona, CA                                                           | ○● |  10 41P SuWeFr                                                                   |
|  5 35A WeFrMo                                                                    | 2728                         | Ar | Los Angeles, CA ✈ (PT)                                               | ●● |  10 00P SuWeFr                                                                   |

EFFECTIVE 3/10/19

## Service on the Texas Eagle®

-  **Coaches:** Reservations required.
-  **Sleeping cars:** Superliner sleeping accommodations. Amtrak Metropolitan Lounge available in Chicago and Los Angeles, and a private waiting area available in St. Louis for Sleeping car passengers.
-  **Dining:** Full meal service.
-  **Sightseer Lounge:** Sandwiches, snacks and beverages.
-  Checked baggage at select stations.
-  Trains 21/421 and 22/422: trainside checked bicycle service offered between staffed locations handling checked baggage. Customers will check in with the station agent, get a claim check/baggage tag for their bike, and hand up to a crew member inside the baggage car. Visit Amtrak.com/bikes for more information.
-  This location does not observe Daylight Saving Time. Time will be ONE HOUR LATER beginning with the fall time change on November 3, 2019.
-  Executive Transportation operates Thruway van service from Springfield, IL for connections from Train 22 to Trains 3 and 5 at Galesburg, IL and from Galesburg, IL for connections from Trains 4 and 6 to Train 21 at Springfield, IL. Passengers with disabilities must provide advance notification of needs. For additional information call (217) 523-5466.

All Amtrak services and stations are non-smoking.

See page 2-3 for Route Map, Symbols Key, Thruway Bus Connections and Connecting Local Services. Visit Amtrak.com for our corresponding timetables for additional service on the Heartland Flyer.

## SHADING KEY

Overnight train

## Possible Texas Eagle Schedule Change

The Texas Eagle schedule is subject to change between Chicago and San Antonio. Visit Amtrak.com or call 1-800-USA-RAIL to confirm schedules for your anticipated travel date.

## Service between Chicago and San Antonio

The Texas Eagle serves all stations between Chicago and San Antonio daily. Through service west of San Antonio operates tri-weekly, departing Chicago, Poplar Bluff and intermediate stations on Sundays, Tuesdays and Fridays. Eastbound trains departing Los Angeles on Sunday, Wednesday and Friday arrive stations San Antonio-Little Rock on Tuesday, Friday and Sunday, and stations Walnut Ridge-Chicago on Wednesday, Saturday and Monday.

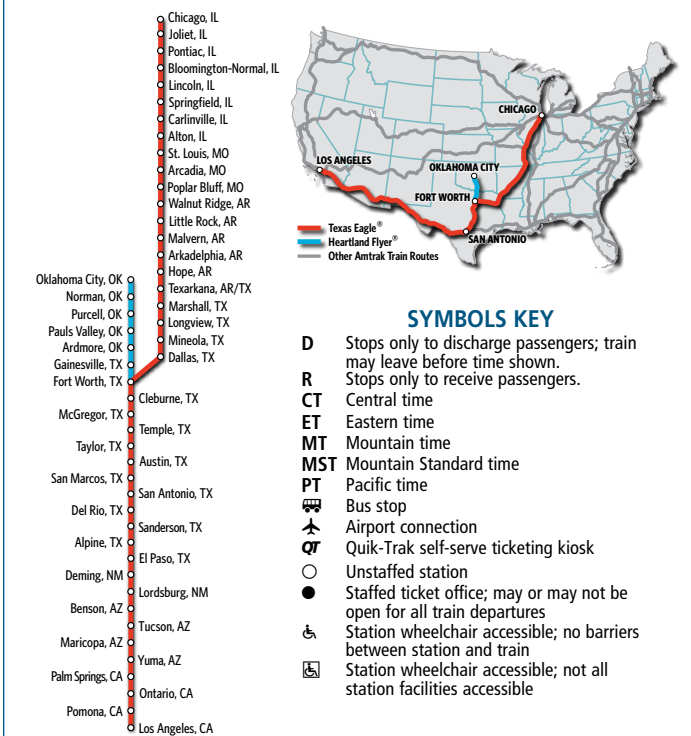
# TEXAS EAGLE®

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Effective March 10, 2019

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## TEXAS EAGLE and HEARTLAND FLYER ROUTE MAP and SYMBOLS



## Connecting Local Services

### Dallas-Fort Worth Metroplex

Dallas Area Rapid Transit (DART) operates bus and light rail service in Dallas, with a light rail hub at Dallas Union Station. (214) 979-1111, [www.dart.org](http://www.dart.org).

Fort Worth Transportation Authority (Trinity Metro) operates bus service from its hub at Fort Worth Central Station (Amtrak station). (817) 215-8600, [ridetrinitymetro.org](http://ridetrinitymetro.org).

TEXRail operates daily, hourly, local train service from Fort Worth Central station to Dallas-Fort Worth International Airport (Terminal B). (817) 215-8600, [ridetrinitymetro.org](http://ridetrinitymetro.org).

Trinity Railway Express is a cooperative effort of DART and Trinity Metro, providing commuter rail service, Monday through Saturday, between Fort Worth and Dallas Amtrak stations. Intermediate stations include Richland Hills, Irving and a free shuttle bus from CentrePort station to Dallas - Ft. Worth International Airport.

Extend your trip on the *Heartland Flyer* to Oklahoma City! Call DART or Trinity Metro for more information or visit [trinityrailwayexpress.org](http://trinityrailwayexpress.org).

### San Antonio-McAllen Harlingen-Brownsville

Connecting intercity bus service by Valley Transit is available between San Antonio (Greyhound Station) to McAllen, Harlingen and Brownsville.

### St. Louis Metrolink

Metrolink operates light rail local service with branches serving St. Louis, East Saint Louis and Belleville, Illinois, and Lambert-St. Louis International Airport. Board at Civic Center Station, adjacent to Amtrak. For information call (314) 982-1400 or visit [www.metrostlouis.org](http://www.metrostlouis.org).

## Thruway Connections

### Madison • Rockford • Chicago

(Van Galder-en route transfers may be necessary)

| 8970   | Mile | ▼  | Thruway Number                    | Symbol | ▲  | 8965  |
|--------|------|----|-----------------------------------|--------|----|-------|
| 8 30A  | 0    | Dp | Madison, WI (CT)                  | ○      | Ar | 8 45P |
| 8 45A  | 6    | ↓  | —Univ. of Wisconsin/Chazen Museum | ○      | ↑  | 8 30P |
| 9 30A  | 35   |    | —Dutchmill Park & Ride            | ○      |    | 7 55P |
| 9 55A  | 48   |    | Janesville, WI                    | ○      |    | 7 35P |
| 10 20A | 65   | Dp | South Beloit, IL                  | ○      | Ar | 7 15P |
| 12 30P | 140  | Ar | Rockford, IL                      | ○      | Ar | 5 00P |
|        |      |    | Chicago, IL—Union Station (CT)    | ●♿QT   | Dp |       |

### Davenport • Galesburg • Peoria • Bloomington • Champaign • Indianapolis (Burlington Trailways)

| 8890  | 8892   | Mile | Thruway Number         | Symbol | 8893  | 8895   |
|-------|--------|------|------------------------|--------|-------|--------|
| Daily | Daily  |      | Days of Operation      |        | Daily | Daily  |
| 4 00P | 0      | Dp   | Davenport, IA (CT)     | ○      | Ar    | 6 40P  |
| 4 10P | 2      | Ar   | Rock Island, IL        | ○      | Ar    | 6 35P  |
|       |        |      | -Augustana College     |        |       |        |
| 4 20P | 9      | Ar   | Moline, IL             | ○      | Ar    | 6 30P  |
| 1 35P | 5 05P  | 45   | Galesburg, IL          | ●♿QT   | Ar    | 11 35A |
|       |        |      | -Amtrak Station        |        |       |        |
| 2 40P | 6 15P  | 94   | Peoria, IL             | ○      | Dp    | 10 40A |
| 3 30P | 7 15P  | 133  | Bloomington-Normal, IL | ●♿QT   | Dp    | 9 45A  |
| 4 20P | 8 15P  | 187  | Champaign-Urbana, IL   | ●♿QT   | Dp    | 8 30A  |
| 4 30P | 8 20P  | Ar   |                        | Ar     | 8 20A | 2 10P  |
|       | 9 05P  | 221  | Danville, IL (CT)      | ○      | Ar    | 7 35A  |
| 7 35P | 11 25P | 314  | Indianapolis, IN (ET)  | ●♿QT   | Dp    | 7 15A  |

The Thruway Services above connect with Amtrak trains at Champaign-Urbana.

### Galesburg • Springfield (Executive Limo)

| 5521  | Mile   | Thruway Number                      | Symbol | 5522 |        |
|-------|--------|-------------------------------------|--------|------|--------|
| 2 15P | 0 Dp   | Galesburg, IL—Amtrak Station (CT)   | ●♿QT   | Ar   | 1 30P  |
| 3 10P | 49 Dp  | Peoria, IL                          | ○♿     | Dp   | 12 30P |
| 4 30P | 119 Ar | Springfield, IL—Amtrak Station (CT) | ●♿QT   | Dp   | 11 15A |

### Longview • Houston • Galveston (Lone Star Coach)

| 6021   | Mile   | Thruway Number                   | Symbol | 6022 |        |
|--------|--------|----------------------------------|--------|------|--------|
| 8 40A  | 0 Dp   | Longview, TX—Amtrak Station (CT) | ●♿     | Ar   | 5 40P  |
| 10 05A | 70 Ar  | Nacogdoches, TX                  | ○      | Dp   | 4 25P  |
| 1 15P  | 214 Ar | Houston, TX—Amtrak Station       | ●♿     | Dp   | 1 05P  |
| 2 45P  | 266 Ar | Galveston, TX—123 Rosenberg (CT) | ○♿     | Dp   | 11 30A |

**NOTE**—Reservations must be made at least 24 hours in advance departing Galveston.

### Shreveport • Longview (Lone Star Coach)

| 6421   | Mile  | Thruway Number              | Symbol | 6422 |       |
|--------|-------|-----------------------------|--------|------|-------|
| 6 30A  | 0 Dp  | Shreveport, LA (CT)         | ○      | Ar   | 7 45P |
| 8 00A  | 62 Ar | Longview, TX—Amtrak Station | ●♿     | Dp   | 6 25P |
| 6121   | Mile  | Thruway Number              | Symbol | 6122 |       |
| 8 40A  | 0 Dp  | Longview, TX—Amtrak Station | ●♿     | Ar   | 5 45P |
| 10 00A | 62 Ar | Shreveport, LA (CT)         | ○      | Dp   | 4 15P |

## Possible Texas Eagle Schedule Change

The *Texas Eagle* schedule is subject to change between Chicago and San Antonio. Visit [Amtrak.com](http://Amtrak.com) or call 1-800-USA-RAIL to confirm schedules for your anticipated travel date.

## SHADING KEY

Thruway and connecting services

See page 3 for additional Thruway Bus Connections. Visit [Amtrak.com](http://Amtrak.com) for our corresponding timetables for additional service on the *Heartland Flyer*.

# TEXAS EAGLE®

serving **CHICAGO - ST. LOUIS - LITTLE ROCK - DALLAS - FORT WORTH - SAN ANTONIO - LOS ANGELES** and intermediate stations

Effective March 10, 2019

Amtrak.com  
1-800-USA-RAIL

## Thruway Connections

### Dallas • Jackson • Meridian (Greyhound Lines)

| 8520   | 8220   | Thruway Number |    |                                   |        | 8959 | 8219   |
|--------|--------|----------------|----|-----------------------------------|--------|------|--------|
| Daily  | Daily  | Mile           | ▼  | Days of Operation                 | Symbol | ▲    | Daily  |
| 3 20A  | 7 30P  | 0              | Dp | Dallas, TX—Greyhound Station (CT) | ○      | Ar   | 10 50P |
|        | 7 55P  | 12             | Dp | Mesquite, TX                      | ○      | Ar   | 6 20A  |
|        | 9 50P  | 99             | Dp | Tyler, TX                         | ○      | Ar   | 9 05P  |
|        | 11 59P | 196            | Ar | Shreveport, LA                    | ○      | Dp   | 4 30A  |
| 7 10A  | 12 35A |                |    |                                   |        | Ar   | 6 40P  |
| 10 45A |        | 369            | Dp | Vicksburg, MS                     | ○      | Ar   | 2 30P  |
| 11 40A | 4 05A  | 413            | Ar | Jackson, MS—Amtrak Station        | ●      | Dp   | 1 25P  |
| 12 55P | 5 05A  |                | Dp |                                   | ○      | Ar   | 10 25P |
| 2 25P  | 6 35A  | 507            | Ar | Meridian, MS—Union Station (CT)   | ○      | Dp   | 9 30P  |
|        |        |                |    |                                   |        |      | 8 00P  |

#### SHADING KEY

Thruway and connecting services

See page 2 for additional Thruway Bus Connections. Visit Amtrak.com for our corresponding timetables for additional service on the Heartland Flyer.

### Fort Hood • Killeen • Temple (Arrow Trailways)

| 8821  | Mile  | ▼  | Thruway Number               | Symbol | ▲  | 8722   |
|-------|-------|----|------------------------------|--------|----|--------|
| Daily | Daily |    | Days of Operation            |        |    | Daily  |
| 3 15P | 0     | Dp | Fort Hood, TX—Bldg. 108 (CT) | ○      | Ar | 12 45P |
| 3 45P | 4     | Dp | Killeen, TX                  | ○      | Ar | 12 30P |
| 4 15P | 33    | Ar | Temple, TX—Amtrak Station    | ●      | Dp | 11 45A |
| 8721  | Mile  | ▼  | Thruway Number               | Symbol | ▲  | 8822   |
| Daily | Daily |    | Days of Operation            |        |    | Daily  |
| 5 15P | 0     | Dp | Temple, TX—Amtrak Station    | ●      | Ar | 10 45A |
| 6 00P | 29    | Ar | Killeen, TX                  | ○      | Dp | 10 00A |
| 6 15P | 33    | Ar | Fort Hood, TX—Bldg. 108 (CT) | ○      | Dp | 9 45A  |

#### Possible Texas Eagle Schedule Change

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### Fort Worth • Waco • Houston (Greyhound Lines)

| 8221   | Thruway Number |    |                                 |        | 8222 |
|--------|----------------|----|---------------------------------|--------|------|
| Daily  | Mile           | ▼  | Days of Operation               | Symbol | ▲    |
| 1 55P  | 0              | Dp | Fort Worth, TX—Amtrak Sta. (CT) | ●      | Ar   |
| D3 45P | 89             | Ar | Waco, TX                        | ○      | Dp   |
| D5 35P | 172            | Ar | Bryan, TX (College Station)     | ○      | Dp   |
| D6 50P | 226            | Ar | Prairie View, TX                | ○      | Dp   |
| 7 50P  | 275            | Ar | Houston, TX—Greyhound Sta. (CT) | ○      | Dp   |

### El Paso • Las Cruces • Albuquerque (Greyhound Lines)

| 8101  | Thruway Number |    |                                     |        | 8102 |
|-------|----------------|----|-------------------------------------|--------|------|
| Daily | Mile           | ▼  | Days of Operation                   | Symbol | ▲    |
| 8 55P | 0              | Dp | El Paso, TX—Greyhound Station (MT)  | ○      | Ar   |
| 9 55P | 50             | Ar | Las Cruces, NM—Chucky's Conv. Store | ○      | Dp   |
| 1 25A | 266            | Ar | Albuquerque, NM—Amtrak Sta. (MT)    | ●      | Dp   |

### Phoenix • Maricopa (Stagecoach Express)

| 8601   | Thruway Bus Number |    |                                |        | 8902 |
|--------|--------------------|----|--------------------------------|--------|------|
| SuTuTh | Mile               | ▼  | Days of Operation              | Symbol | ▲    |
| 6 30P  | 0                  | Dp | Phoenix, AZ—Metro Center       | ○      | Ar   |
| 7 00P  | 18                 | Dp | —Sky Harbor Airport            | ○      | Ar   |
| 7 15P  | 21                 | Dp | Tempe, AZ                      | ○      | Ar   |
| 8 00P  | 47                 | Ar | Maricopa, AZ                   | ○      | Dp   |
| 8901   | Thruway Bus Number |    |                                |        | 8602 |
| SuTuTh | Mile               | ▼  | Days of Operation              | Symbol | ▲    |
| 9 15P  | 0                  | Dp | Maricopa, AZ                   | ○      | Ar   |
| 10 00P | 31                 | Ar | Tempe, AZ                      | ○      | Dp   |
| 10 15P | 34                 | Ar | Phoenix, AZ—Sky Harbor Airport | ○      | Dp   |
| 10 45P | 47                 | Ar | —Metro Center                  | ○      | Dp   |

Ⓜ This location does not observe Daylight Saving Time. Time will be ONE HOUR LATER beginning with the fall time change on November 3, 2019.

## Connecting Local Services

#### Dallas–Fort Worth Metroplex

Dallas Area Rapid Transit (DART) operates bus and light rail service in Dallas, with a light rail hub at Dallas Union Station. (214) 979-1111, www.dart.org.

Fort Worth Transportation Authority (Trinity Metro) operates bus service from its hub at Fort Worth Central Station (Amtrak station). (817) 215-8600, ridetrinitymetro.org.

TEXRail operates daily, hourly, local train service from Fort Worth Central station to Dallas-Fort Worth International Airport (Terminal B), (817) 215-8600, ridetrinitymetro.org.

Trinity Railway Express is a cooperative effort of DART and Trinity Metro, providing commuter rail service, Monday through Saturday, between Fort Worth and Dallas Amtrak stations. Intermediate stations include Richland Hills, Irving and a free shuttle bus from CentrePort station to Dallas – Ft. Worth International Airport.

Extend your trip on the Heartland Flyer to Oklahoma City! Call DART or Trinity Metro for more information or visit trinityrailwayexpress.org.

#### San Antonio–McAllen Harlingen–Brownsville

Connecting intercity bus service by Valley Transit is available between San Antonio (Greyhound Station) to McAllen, Harlingen and Brownsville.

#### St. Louis Metrolink

Metrolink operates light rail local service with branches serving St. Louis, East Saint Louis and Belleville, Illinois, and Lambert-St. Louis International Airport. Board at Civic Center Station, adjacent to Amtrak. For information call (314) 982-1400 or visit www.metrostlouis.org.

# EXHIBIT 4

Marshall, TX to Houston, TX — Amtrak Station

October 15, 2019 | 1 Adult

Dollars

Points

SAVER



VALUE



FLEXIBLE

**ADD TO CART****5h 25m TOTAL TRAVEL TIME**☐ \$32.00☐ \$40.00☐ \$77.00

7:50 am → 8:28 am (0h 38m)

21 Texas Eagle**1 Reserved Coach Seat**☒ Upper Level☐ Lower Level**1 Reserved Coach Seat**☒ Upper Level☐ Lower Level**1 Reserved Coach Seat**☒ Upper Level☐ Lower Level**TRANSFER** - Longview, TX | 0h 12m

8:40 am → 1:15 pm (4h 35m)

6021 Thruway Bus

# EXHIBIT 5

Marshall, TX to Dallas, TX — Eddie Bernice Johnson Union Sta

October 15, 2019 | 1 Adult

Dollars

Points

SAVER



VALUE



FLEXIBLE



ADD TO CART

3h 40m TOTAL TRAVEL TIME

☐ \$20.00

☐ \$25.00

☐ \$48.00

7:50 am → 11:30 am (3h 40m)

[21 Texas Eagle](#)

1 Reserved Coach Seat

☒ Upper Level

☐ Lower Level

1 Reserved Coach Seat

☒ Upper Level

☐ Lower Level

1 Reserved Coach Seat

☒ Upper Level

☐ Lower Level