



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

General Counsel

1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

February 15, 2022

VIA ELECTRONIC FILING

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

ENTERED
Office of Proceedings
February 15, 2022
Part of
Public Record

**Re: Docket No. FD 36496 – *Application of the National Railroad Passenger Corporation
Under 49 U.S.C. § 24308(e) – CSX Transp., Inc. and Norfolk Southern Ry. Co.***

Dear Ms. Brown:

Please find enclosed for filing in the above-captioned proceeding the statement made to the Board by Administrator Amitabha Bose on behalf of the United States Department of Transportation (DOT) and the Federal Railroad Administration (FRA), an operating administration of DOT, at today's public hearing.

Thank you for your assistance. Please feel free to contact me with any questions.

Respectfully,

/s/ Christopher S. Perry

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36496

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(e) – CSX TRANSPORTATION, INC., AND
NORFOLK SOUTHERN RAILWAY COMPANY

**STATEMENT OF ADMINISTRATOR AMITABHA BOSE ON BEHALF OF
THE UNITED STATES DEPARTMENT OF TRANSPORTATION AND
THE FEDERAL RAILROAD ADMINISTRATION FOR PHASE ONE OF
THE BOARD'S PUBLIC HEARING**

Chairman Oberman and Members of the Board, thank you for the opportunity to appear here today. My name is Amit Bose, and I am the Administrator of the Federal Railroad Administration (FRA), an operating administration of the United States Department of Transportation (DOT). I am pleased to offer these remarks on behalf of DOT and FRA.

We appreciate the Board's consideration of Amtrak's application to re-start passenger service along the Gulf Coast by adding two daily round-trip trains between Mobile, Alabama and New Orleans. In DOT's view, the Board's decision here will have far-reaching implications beyond the Gulf Coast. The outcome of this proceeding will be pivotal to the future development of intercity passenger rail in this country. We believe it is imperative that the Board use its authority to ensure that host railroads fulfill their fundamental statutory obligations to allow the

expansion and improvement of intercity passenger rail services. As the Board knows, these statutory obligations are at the core of the balance that Congress struck when, over fifty years ago, it created Amtrak and relieved railroads of their common carrier obligation to provide intercity passenger rail service. It is the American public that suffers when these services are held up – here, the Gulf Coast region has been without Amtrak service for nearly two decades. In this case, service delayed is service denied.

As to our interests in this case, as you know, DOT is charged by statute with promoting “transportation policies and programs that contribute to providing fast, safe, efficient and convenient transportation,” consistent with “the public interest.”¹ DOT and FRA have participated in numerous proceedings before the Board involving matters of rail policy affecting both passenger and freight rail service. In doing so, we have consistently considered the interests of all affected parties, including host railroads, shippers, Amtrak, other passenger service providers, and the public. We have been particularly active in this proceeding, filing comments with the Board at an early stage to urge the Board to decide Amtrak’s petition on the merits, as well as a more recent *amicus* submission providing additional views.

¹ 49 U.S.C. § 101.

Consistent with our previous submissions, I believe it is necessary at the outset to highlight the importance that Congress, and the Biden-Harris administration, have placed on the expansion and enhancement of passenger rail service in this country. As we explained in our previous comments to the Board, the 2021 passage of the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law, reaffirms the importance of passenger rail, and provides unprecedented funding and authority to maintain, improve, and expand intercity passenger rail service throughout the United States. In total, the Bipartisan Infrastructure Law provides \$58 billion in dedicated, advanced appropriations for passenger rail. Congress also reimagined the Federal-State Partnership grant program by, among other things, expanding program eligibility to projects expanding or establishing new intercity passenger rail services beyond the Northeast Corridor. The overwhelming majority of services that would benefit are those that operate over host railroad-owned infrastructure. Likewise, the Bipartisan Infrastructure Law created a new Corridor Identification and Development Program to guide future intercity passenger rail development efforts throughout the country. The Law also calls on FRA to complete a major study to evaluate the restoration of daily Amtrak long-distance services that have been discontinued or that occur on a non-daily basis, all of which operated over infrastructure owned by host railroads.

The Bipartisan Infrastructure Law’s expansive vision for intercity passenger rail development rests largely on the ability to introduce, improve, and restore passenger rail services that operate over host railroads. Without that ability, Congress’s vision cannot become reality.

The host railroads here, CSX and Norfolk Southern, have argued that Amtrak’s two regularly scheduled daily round-trip trains will not just “unreasonably impair” freight transportation, but will cause “near catastrophic” consequences—at least without over \$400 million in additional capital improvements to their infrastructure. I would like to take this opportunity to highlight some key points. We respectfully ask the Board to take these points into account in establishing a framework to govern cases of this kind, which will embody Congress’s intent and, we hope, will help to encourage cooperative solutions in future cases.

First, in DOT’s view, the host railroads in this proceeding have not met their statutorily mandated burden of demonstrating that reintroducing the Gulf Coast passenger service would unreasonably impair freight transportation, as the Board is directed to consider in conducting a hearing under the governing statute, 49 U.S.C. § 24308(e). The concept of “impair unreasonably” must be a meaningful one. Neither this language, nor the other terms of section 24308, indicate that Congress intended for passenger rail service simply to accommodate freight railroad

operations or growth plans for freight service. That approach turns the statute on its head. Congress established a preference for passenger rail operations over host railroad lines, and the presumption is that passenger service will, in fact, operate. This case, involving the proposed addition of two daily round-trip trains, helps to illustrate the point. The Board's decision should ensure that freight railroads cannot effectively "crowd out" passenger service by claiming that it conflicts with their existing or planned railroad operations. That is not what was meant by "unreasonable impairment."

Second, the host railroads have not presented a transparent analysis of what, if any, challenges may arise from Amtrak's proposed operation. In so doing, they have deprived the Board of a clear-eyed view of railroad operations. DOT believes that any operations analysis used to assess the operational effects of changes to intercity passenger rail services, or which is used to identify capital improvements required to support such changes, must be conducted in an appropriately transparent manner. Transparency is a basic prerequisite to meaningful collaboration between Amtrak and host railroads. Transparency is also essential given that the host railroads here have called for costly capital improvements as a prerequisite to adding the Amtrak trains, and such improvements would likely be publicly funded. The public has a right to know why such improvements are being made, why they are necessary, how much they cost, and what other options may

have been considered. In DOT's view, these considerations are even more pronounced in cases like this one, where the publicly funded capital improvements would be made to privately owned and controlled infrastructure.

Third, while the Board should give appropriate confidentiality protection to proprietary commercial information regarding the railroads' operations and customers, in FRA's view, operational analysis can be conducted based on information that steers well clear of data that would compromise the commercial interests of either host railroads or shippers. In fact, railroads in the past have voluntarily participated in collaborative passenger rail planning efforts with FRA and Amtrak that involved both the sharing of these same types of information and their publication in public reports to Congress.² FRA believes it would be beneficial for the Board to clearly establish the need for transparency in operations analysis undertaken as part of passenger rail development efforts, and to address the types of information that would need to be openly shared to achieve that required transparency. These types of information are captured succinctly in the August 3, 2020 letter sent by Amtrak to the host railroads, in which Amtrak addresses the "minimum data requirements" associated with the FRA grant that

² *Potential Improvements to the Washington-Richmond Railroad Corridor* in May 1999, and *Transportation Planning for the Richmond-Charlotte Corridor* in January 2004.

funded the 2020 “Gulf Coast RTC Study.”³ FRA stands ready to assist the Board in determining the types of information that would need to be shared from our perspective as the Federal agency that would likely provide funding for capital improvements that may be identified as necessary to support a change in passenger rail operations over a host railroad.

Finally, DOT appreciates the Board’s willingness to act expeditiously in this case in the interest of reaching a prompt resolution. DOT is concerned with the vitality of the rail network as a whole. Both freight and passenger service are critically important, and we have no interest in undermining freight operations or impeding the efficient movement of goods. Quite the contrary; we are taking numerous steps to help to improve supply chains and fluidity throughout the rail network and other modes of transportation. However, the people of the Gulf Coast region have been without Amtrak service since Hurricane Katrina in 2005. That is too long.

Should the Board grant Amtrak’s application, DOT and FRA remain committed to assisting the Board and the parties in helping to make the requested passenger service a reality. FRA would closely monitor the startup of the operation of the passenger service, and we are fully prepared both to provide technical assistance should any operational challenges arise, and to report regularly

³ See Exhibit L in Amtrak’s Response in Opposition to the Motion to Dismiss.

to the Board on the status of these efforts. On behalf of DOT and FRA, thank you for the opportunity to address the Board and for your consideration of our submissions in this proceeding.

February 15, 2022

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*United States Department of
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Respectfully,

/s/ Amitabha Bose
Amitabha Bose
Administrator
Allison Ishihara Fultz
Chief Counsel

Federal Railroad Administration

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2022, I have filed the foregoing document via the Board's electronic filing system, and have caused a copy to be served via electronic mail upon Parties of Record in this proceeding.

/s/ Christopher S. Perry
Christopher S. Perry

United States Department of Transportation