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BEFORE THE  
SURFACE TRANSPORTATION BOARD  
DOCKET NO. FD 36496

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

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**STATEMENT OF AMTRAK PRESIDENT AND CHIEF EXECUTIVE OFFICER  
STEPHEN J. GARDNER AT GULF COAST PUBLIC HEARING  
FEBRUARY 16, 2022**

Chairman Oberman, Vice Chairman Schultz, Board Members Fuchs, Primus and Hedlund:

I am Stephen Gardner, President and CEO of Amtrak and it is a pleasure to be here.

With my limited time, I'll focus my remarks on the issue in this case that the Board must decide: Have CSX and NS proven that restoring Amtrak service between New Orleans and Mobile would "impair unreasonably" their freight transportation – unless the public provides 440 million dollars for capacity investments before the first train even leaves the station?

**What Congress Intended**

As Congressman DeFazio and Administrator Bose discussed yesterday, the Rail Passenger Service Act of 1970 creating Amtrak represents what the Board and the Supreme Court have called a "bargain" between Congress and the private railroads. Under this law, Congress relieved the private railroads – who were then experiencing large financial losses which jeopardized their viability - of their common carrier obligation to provide intercity passenger rail service, in return for making their tracks available to Amtrak to carry out that obligation.

The railroads eagerly embraced that bargain, but not all lived up to it. Some quickly began to impede and delay Amtrak's efforts to add additional trains, and demanded what Congress called "inordinate capital improvements."

By 1980, Congress had had enough of what it characterized as the railroads' "intransigence." It enacted Section 24308(e) to create an "expedited procedure" to allow Amtrak to operate additional trains unless a railroad proved such trains would cause, quote, "serious adverse impacts" on freight operations.

**Why This Is an Exciting Time**

Since then, Amtrak has generally found a cooperative path for adding new or additional service with our host partners. But we have now encountered exactly the circumstances which led to the

creation of this law, and thus bring our first case under this Section to you to ensure, that after 6 years of delay, our hosts abide by their obligation to accommodate Amtrak's needs on their network.

As you heard yesterday, many communities and elected officials from both parties are clamoring for expanded Amtrak service. In response, Amtrak unveiled last April its preliminary vision, called Amtrak Connects US, for expansion of service across the nation. It would bring our route network, which has not materially grown since 1971 even though the nation has added 120 million people, into the 21<sup>st</sup> century, and expand mobility and economic opportunity, all helping to reduce highway and aviation congestion and greenhouse gas emissions.

As Senator Wicker and Administrator Bose described yesterday, Congress and the Administration have endorsed the vision of Amtrak expansion and provided historic levels of funding for it. The Infrastructure Investment and Jobs Act just enacted includes \$58 billion for FRA and Amtrak intercity passenger rail investments. Importantly, while crafting this bill, Congress did not alter the several statutory provisions that ensure Amtrak's access to host railroad-owned lines on reasonable terms.

A top priority as we implement the IJIA in partnership with FRA and the states is addressing the need for Amtrak service in the Southeast, the region most glaringly underserved by Amtrak today. Returning service to the Gulf Coast, which was suspended in 2005 following Hurricane Katrina, is both good transportation policy and a matter of regional equity.

### **Why Amtrak Finally Brought this Case**

You have heard from many speakers that expansion of passenger rail service requires collaboration among Amtrak, states and freight railroads. That is exactly what Congress intended when, in the FAST Act of 2015, it created the Gulf Coast Working Group, led by FRA, to plan restoration of this service. The other members of the Working Group included Amtrak, CSX, and the Southern Rail Commission.

However, as Administrator Bose and members of the SRC told you yesterday, CSX wasn't interested in collaboration, and did not participate in good faith. CSX ultimately refused to join in the Working Group's 2017 report to Congress, which concluded that Gulf Coast service could resume with just over 5 million dollars for station improvements, and identified additional investments, totaling 95 million dollars, that would benefit both Amtrak and freight service over time, which we generally support.

In stark contrast to the Working Group's approximately 100 million dollar estimate, CSX demanded over 1.1 billion dollars in upfront investments for operation of two daily round trips. NS, which owns less than four miles of the route on which there is one freight train per track mile every three hours, also insisted upon large capital investments.

After three more years of negotiation, Amtrak agreed in February of 2020 to CSX's and NS's demands for a capacity modeling analysis, using the Rail Traffic Controller, or RTC, Model. The agreement provided CSX's chosen consultant with a full year to complete the modeling.

Unfortunately, it quickly became apparent that the RTC modeling would serve no purpose other than to obfuscate and delay. CSX and NS instructed the consultant to use unilaterally determined assumptions and inputs which they refused to share – not only with Amtrak but with FRA, which was paying for the modeling! When the one-year agreement expired, Amtrak was told that completion of the flawed modeling was still many months away and FRA pledged to halt funding for it because it was essentially useless to them without transparency into the model inputs. Given the clear Congressional directive to re-establish service along the Gulf Coast, and realizing that only an STB order would make that happen, Amtrak saw no choice other than to initiate this proceeding last March.

### **When – and the Right Way - to Do Capacity Modeling**

To be clear, Amtrak agrees with the speakers who have characterized capacity modeling as a very useful tool for assessing the impacts of service changes on rail lines. We use RTC and I would argue have some of the best practitioners in the country. But contrary to the impression some have, modeling and capital investments aren't prerequisites to every increase in rail service. Amtrak hasn't required modeling, or costly infrastructure investments, each time a freight railroad or commuter authority wanted to add trains to our Northeast Corridor, the busiest rail line in North America. In many cases, additional trains can obviously be accommodated without the need for extensive analysis or infrastructure investments.

Amtrak didn't demand RTC modeling, or drag out negotiations for years, when NS wanted to operate four additional oil trains a day on the Northeast Corridor in 2013. We found a way to accommodate the additional trains amidst the hundreds of trains a day we already host without any capacity improvements.

NS and CSX don't always use RTC modeling either. CSX agreed last year to allow NS to operate two additional 9,000 foot doublestack trains a day between Albany, New York and Worcester, Massachusetts without any RTC modeling – or for that matter any capacity analysis.

Like any analytic tool, RTC produces useable outputs only when the inputs are accurate. Transparency in this process is critical. When Amtrak and its commuter partners do RTC modeling, they agree upon the inputs and assumptions, and all data used in the modeling are shared. As Ian Jeffries of the AAR and Wick Moorman have told you, that's also the standard practice in the freight railroad industry.

### **The Wrong Way to Do Capacity Modeling**

But, that's not what CSX and NS did here. They unilaterally selected inputs and assumptions and wouldn't tell Amtrak or FRA what they were. FRA has called their model an "opaque black box" with "meaningless" outputs.

To use an analogy, imagine for a moment if one football team got to make up new, special rules for the Super Bowl – and not tell the other team, or even the referees, what they were. Of course, that team would win the game.

That's exactly what happened here. The rules CSX and NS made up gave only their team eight downs on each possession, allowing them to run up the score in their favor. While CSX and NS refused to share with Amtrak and the FRA the data and assumptions they used in the model, thanks to this proceeding, they were required to provide that information to Amtrak's outside lawyers and experts. Here's what we found out about their model in this proceeding:

- They invented freight trains that didn't exist. Their modeling assumed 257% more freight trains than their own data shows actually operated during the period on which it was purportedly based.
- They assumed that Amtrak would have to mitigate every minute of aggregate freight train delays their flawed modeling attributed to Amtrak trains.
- They ignored operational efficiencies, decreeing that no freight or passenger schedules would be adjusted even slightly to minimize any conflicts.
- They assumed track capacity would be added until the projected on-time performance of Amtrak trains reached 95% -- a performance Amtrak trains achieve nowhere on their lines and never requested here.
- They decided that Amtrak trains would never be routed through a siding, artificially inflating delays which caused them to propose building more sidings.

But CSX and NS weren't done. They then added projections of large future freight traffic **increases** in 20 years, even though revenue ton-miles on Class I railroads are **decreasing**. This led them to demand even more infrastructure investments – which they insisted Amtrak should fund now – to accommodate their speculative 2039 freight traffic projections.

Even with all of those flawed and hyperbolic assumptions, the RTC model only showed that our service, if started without any capital investments, would cause average freight train speeds to decrease by just *seven tenths of a mile per hour*. That is what CSX and NS claim is “unreasonable impairment” of their freight operations.

Based on that, CSX and NS are now demanding 440 million dollars in publicly funded infrastructure investments before we can run a single train. That is exactly the sort of host railroad “intransigence” and “inordinate capital demands” that Congress intended the STB to “expeditiously” curtail when it enacted 24308(e).

### **The Way the Amtrak-Host Railroad Relationship Should Work**

Amtrak agrees with the speakers who have told you that adding Amtrak service on host freight railroads is best accomplished through agreements and that it will often require investments in freight railroads' infrastructure. In recent years, Amtrak and its state partners have entered into numerous agreements with freight railroads that have funded billions of dollars in infrastructure

investments. And, just recently, we reached agreement with Canadian Pacific to add new trains, some without additional capacity investments.

Amtrak and its state partners stand ready to fund reasonable infrastructure improvements along the Gulf Coast Corridor to improve Amtrak service and address legitimate areas of concern. There is already more than 60 million dollars in federal and state funds committed or secured for that purpose. However, the 440 million dollars CSX and NS are seeking today is orders of magnitude different from any measure of reasonableness.

### **Dispensing with a Few Red Herrings**

I'd like to address a few other issues speakers have raised:

- The railroad industry is hardly the only industry in which Congress has required that those who have a control over critical assets to provide access to those assets for the public good. For example, cable television companies must make available channels on their cable systems for public access channels, commercial leased access channels, and broadcast stations. And telephone companies are subject to universal service requirements that have made telephone service ubiquitous, even in remote rural areas.
- Some have suggested that, given the IJA funding, Amtrak should simply acquiesce in CSX's and NS's unreasonable demands. But Congress did not enact the IJA to fund the gold-plating of freight railroad lines in order for them to live up to their legal obligations to Amtrak.
- Finally, let me debunk the myth you've heard that there is something "unique" about this route that triggers a need for massive capacity investments to restore Amtrak service. Most of the route is single-track – but so is the vast majority of Amtrak's route network. It has drawbridges – but not as many per mile as Amtrak's NEC in Connecticut, where we accommodate 68 trains a day. Mobile has an important port – but so does Miami, where 34 recently-added Brightline passenger trains a day travel over the very rail line serving it.

### **The Reason this Case Is Important**

I will conclude by discussing one issue on which everyone agrees: this is an important case.

But let me first note what is **not** at stake here. Shippers along the Gulf Coast, or elsewhere in the United States, have no reason for concern with this restoration of this service. As we addressed in our filing, our short station stop in Mobile will not block traffic to and from the Port. In fact, the New Orleans-to-Mobile line was able to accommodate three Amtrak trains a day 25 years ago when it had nearly twice as many freight trains as today.

Nationwide, Amtrak accounts for only about four percent of the train miles on Class I railroads and they have managed to flourish despite this. Even if we could implement the entire Amtrak Connects US vision, our percentage of total rail traffic on host lines would increase only slightly

and such service expansion would be accompanied by billions of dollars in public investments in host infrastructure.

However, what is really at stake here is the question of the carriers' obligations to continue to help us serve the traveling public and whether Amtrak, USDOT and our state partners will be able to carry out the Administration's and Congress's direction to significantly expand Amtrak service on the U.S. rail network.

CSX's and NS's position is, in essence, that they should be able to decide where and on what terms Amtrak may add additional trains on their lines. But that is not what Congress said in 1970, in 1980, or in the recently enacted IIJA. It is not for CSX and NS to determine that Norfolk may have Amtrak service but Mobile and Mississippi should be left behind.

The Board's decision will send an important message to the railroad industry. The problem that led Congress to enact Section 24308(e) in 1980 has not gone away. Amtrak hopes the Board will issue a decision that encourages railroads to fulfill their obligations under the Act, and to work collaboratively when Amtrak seeks to exercise its right to add service over their lines.

If so, we believe this should be the last case the Board must decide under Section 24308(e) and we can all get back to working together to grow the important role of rail – both passenger and freight – in our transportation system.

**CERTIFICATE OF SERVICE**

I, Jessica Ring Amunson, certify that I have this day served copies of this document upon all parties of record in this proceeding, by email on the service list to Finance Docket No. 36496.

February 16, 2022

/s/ Jessica Ring Amunson  
Jessica Ring Amunson