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February 1, 2023

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: STB Docket No. NOR 42175, Complaint and Petition of the National Railroad Passenger Corp. under 49 U.S.C. § 24308(f) for Substandard Performance of Amtrak's Sunset Limited Trains 1 and 2

Dear Ms. Brown:

We represent Norfolk Southern Railway Company ("NSR"). While NSR is not a named defendant in this proceeding, NSR has reviewed the Complaint and Petition filed by the National Railroad Passenger Corporation ("Amtrak") requesting the Surface Transportation Board (the "STB" or "Board") to initiate an investigation into what Amtrak alleges is substandard customer on-time performance of Amtrak's Sunset Limited Service, including Sunset Limited Trains 1 and 2 (together, the "Sunset Limited Trains"). NSR has also reviewed the recent comments filed by Burlington Northern Railway Company ("BNSF"), Union Pacific Railroad Company ("UP"), and the Illinois Central Railroad Company ("CN") in response to the Complaint and Petition. NSR writes in support of the comments filed by BNSF, CN, and UP. NSR also requests that it be added to the service list for this proceeding and be treated as a party of record in this proceeding.¹

¹ While NSR is not a named defendant, NSR hosts numerous Amtrak services on its system. The principles established in this proceeding will have a direct impact on potential future proceedings involving Amtrak service over NSR. As there is no official procedural schedule yet adopted, NSR does not believe it needs to file an official petition to intervene pursuant to 49 CFR §1112.4. Nonetheless, if required, NSR more than meets the standards. NSR intervention at this

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NSR has a strong working relationship with Amtrak and supports Amtrak passenger service. Indeed, NSR has supported the institution of new and expanded passenger services on its network, including agreements to build out the necessary infrastructure necessary to support the passenger services. NSR has a dedicated passenger rail team that regularly collaborates with Amtrak while it operates on NSR hosted rail lines. NSR comments here are not directed at Amtrak service itself, but rather the process that Amtrak is proposing for how the STB should handle complaints under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”) (codified at 49 U.S.C. § 24308(f)).

Amtrak proposes that the Board be responsible for developing the record in this case, investigating the facts, and determining remedies – all apparently without the opportunity of the host railroads to present evidence and argument in defense. This approach is inconsistent with the the due process rights of host railroads and inconsistent with prior Board precedent. Indeed, the Board has already considered how to conduct proceedings under 49 U.S.C. § 24308(f) and there is no reason to depart from that precedent. In STB Docket No. NOR 42134, Amtrak sought an investigation regarding performance of Amtrak service on rail lines owned by CN. Both parties suggested procedural frameworks to govern the case. Both proposals were rejected. Instead, the Board decided that the “case should be adjudicated using the established procedures governing complaints and the encompassing discovery and motion practice guidelines set forth in Parts 1112 and 1114 of our rules.” Nat’l R.R. Passenger Corp.—Section 213 Investigation of Substandard Performance on Rail Lines of Can. Nat’l Ry., NOR 42134, slip op. at 3 (STB served Jan. 3, 2013) (“Amtrak – Section 213”).

As the Board noted:

These procedures have been thoroughly developed and interpreted through numerous litigations before the agency, and therefore provide a complete and ascertainable structure for the parties in moving forward in this type of litigation. This proceeding was begun by Amtrak, and the Board’s standard practice in complaint-type proceedings is to have the record built through party-directed discovery. Amtrak and CN are best positioned to know what information is relevant to the possible causes of delay. For that reason, it is appropriate to provide for the development of relevant information through the parties’ own discovery.

stage will not unduly disrupt the yet to be published procedural schedule. In addition, NSR’s intervention will not unduly broaden the issues raised in the proceeding, which are the same issues that any host railroad may face. NSR, as a host railroad, has a strong interest to ensure that the principles established in this proceeding do not adversely impact NSR’s rights in any potential future proceeding.

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Id. NSR believes the Board should follow this same process here and in future cases involving complaints under Section 213 of PRIIA.

Amtrak's proposal deprives the parties of the ability to develop their own record, which is ensured through an adversarial process, similar to the one applied in the Amtrak-Section 213 decision. The proposed procedure does not provide for adequate due process protections. In contrast, the Board's "established procedures" under 49 C.F.R. Parts 1111, 1112, and 1114 provide the necessary safeguards, including the right to be presented with adverse evidence, to confront and cross-examine adverse witnesses, the requirement that evidence be given under oath or the equivalent, and the right to obtain relevant information and documents through discovery from other participants in the proceeding.

NSR plans to follow this proceeding and participate as necessary to ensure that the processes and principles adopted in this proceeding do not adversely impact future complaint proceedings under Section 213 of the PRIIA that may involve NSR. NSR intends to participate as a party of record, and if necessary, will respond substantively.

If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com.

Sincerely,

/s/ William A. Mullins

William A. Mullins

cc: Parties of Record