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Office of Proceedings
September 30, 2024
Part of
Public Record

September 30, 2024

VIA E-FILINGCynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001Re: Norfolk Southern Railway Company – Trackage Rights Exemption – CSXT Transportation, Inc., FD 36790

Dear Ms. Brown:

Pursuant to 49 C.F.R. § 1180.2(d)(7), Norfolk Southern Railway Company (“NSR”), hereby files in the above-captioned proceeding a verified notice of exemption (“Notice”) to allow NSR to acquire trackage rights over an approximately 95-mile rail line owned by CSXT Transportation, Inc. (“CSXT”) between Falls, PA at or near CP River, CSXT Milepost QA 2, and Baltimore, MD, including all necessary trackage within CSXT’s Bayview Yard and between the western end of CSXT’s Bayview Yard (MP BAL 0.0 ±) and a connection at MP BAL 0.5 ±.

In accordance with 49 C.F.R. § 1002.02(f)(40)(4), the filing fee in the amount of \$1,700 has been paid via Pay.gov. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by email: wmullins@mullinslawgroup.net.

Sincerely,

*/s/ William A. Mullins*William A. Mullins
Attorney for Norfolk Southern Railway CompanyFILED
September 30, 2024
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TRANSPORTATION BOARDFEE RECEIVED
September 30, 2024
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36790

**NORFOLK SOUTHERN RAILWAY COMPANY
– TRACKAGE RIGHTS EXEMPTION –
CSXT TRANSPORTATION, INC.**

**NOTICE OF EXEMPTION
EXPEDITED CONSIDERATION REQUESTED**

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*Counsel for Norfolk Southern
Railway Company*

Dated: September 30, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36790

**NORFOLK SOUTHERN RAILWAY COMPANY
– TRACKAGE RIGHTS EXEMPTION –
CSXT TRANSPORTATION, INC.**

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Norfolk Southern Railway Company (“NSR”) submits this Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7) and the procedures at 49 C.F.R. § 1180.4(g), to allow NSR to acquire trackage rights over an approximately 95-mile CSXT Transportation, Inc. (“CSXT”) rail line between Falls, PA at or near CP River, CSXT Milepost QA 2, and Baltimore, MD, including all necessary trackage within CSXT’s Bayview Yard and between the western end of CSXT’s Bayview Yard (MP BAL 0.0 ±) and a connection at MP BAL 0.5 ± (the “B&O Route”).

NSR and CSXT have agreed that NSR could re-route traffic over certain CSXT lines while CSXT’s Howard Street Tunnel in Baltimore, MD (the “HST”) is closed during the HST clearance project (“HST Project”). At certain times during the HST Project, CSXT will close the HST and will route traffic over an alternative route utilizing NSR’s Lines (the “HST Alternate Route”). NSR is also granting CSXT concurrent trackage rights over certain NSR routes, which NSR understands will be the subject of a separate CSXT request for Board authority. To account for the increased traffic on the HST Alternate Route during the HST closure resulting from CSXT’s re-routed traffic, CSXT has agreed to grant NSR the new overhead trackage rights,

which will allow NSR to re-route certain traffic away from the HST Alternate Route, thereby preserving the fluidity of that route for current NSR traffic and the re-routed CSXT traffic.

NSR has agreed with CSXT that the new overhead trackage rights that are the subject of this Notice will terminate when the HST Project is complete and the HST is reopened.¹ Because termination of NSR's trackage rights could occur more than one year from the effective date of this exemption, NSR is invoking the standard overhead trackage rights class exemption set forth in 49 C.F.R. § 1180.2(d)(7), instead of temporary trackage rights class exemption set forth in 49 C.F.R. § 1180.2(d)(8). To allow the trackage rights to terminate at the time agreed to by NSR and CSXT, without NSR separately obtaining discontinuance authority for that termination, NSR is concurrently filing a Petition for Partial Revocation of Trackage Rights Exemption in Docket No. FD 36790 (Sub-No. 1), *Norfolk Southern Railway -Trackage Rights Exemption- CSXT Transportation, Inc.* (the "Revocation").

NSR and CSXT have agreed to a Form A Trackage Rights Addendum to Master Trackage Rights Agreement for the overhead trackage rights, attached as Exhibit 1, which are not sought as a responsive application in a rail consolidation proceeding. Thus, the Section 1180.2(d)(7) class exemption is applicable.

For a railroad to qualify for an exemption, it must file a verified notice of the transaction with the Board at least 30 days before the transaction is consummated indicating the proposed consummation date, and the notice must include information required in 49 C.F.R. § 1180.6(a)(1)(i)-(iii), (a)(5)-(6), and (a)(7)(ii), indicate the level of labor protection to be imposed.²

¹ Any existing NSR trackage rights over CSXT would not be affected by this termination.

² See 49 C.F.R. § 1180.4(g).

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), NSR submits the following information:

SECTION 1180.6(a)(1)(i)
BRIEF SUMMARY OF PROPOSED TRANSACTION

NSR is acquiring overhead trackage rights from CSXT over an approximately 95-mile CSXT rail line between Falls, PA at or near CP River, CSXT Milepost QA 2, and Baltimore, MD, including all necessary trackage within CSXT's Bayview Yard and between the western end of CSXT's Bayview Yard (MP BAL 0.0 0.0 ±) and a connection at MP BAL 0.5 ±

The carriers involved in this transaction and their business addresses are:

Norfolk Southern Railway Company
650 West Peachtree Street, NW
Atlanta, GA 30308
(470)-463-6314

CSXT Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Questions regarding this transaction are to be addressed to Applicant's representatives:

William A. Mullins
Spencer M. Naake
Mullins Law Group PLLC
2001 L Street NW, Suite 720
Washington, DC 20036
Tel: (202) 663-7850
Fax: (202) 459-2115

SECTION 1180.6(a)(1)(ii)
PROPOSED TIME SCHEDULE FOR CONSUMMATION

NSR intends to consummate this transaction after the effective date of this exemption, and upon completion of certain infrastructure improvements and qualification of crews. NSR estimates this date as October 30, 2024.

SECTION 1180.6(a)(1)(iii)
PURPOSE SOUGHT TO BE ACCOMPLISHED BY TRANSACTION

The purpose of the trackage rights is to provide temporary alternate routes for the duration of the HST Project. The trackage rights will allow NSR to re-route certain NSR traffic from the HST Alternate Route to alleviate potential congestion resulting from the CSXT re-routed traffic during the HST closure.

The HST Project will clear the HST for double-stack rail passage, build additional resiliency into CSXT's rail network, enhance productivity at the Port of Baltimore, and improve freight rail performance and capability in the mid-Atlantic corridor. The Federal Railroad Administration ("FRA") is administering grant funding for the HST Project under the U.S. Department of Transportation's Infrastructure for Rebuilding America Grant Program ("INFRA") and is the lead Federal agency under the National Environmental Policy Act. The Maryland Department of Transportation ("MDOT") / Maryland Port Administration ("MPA") is the recipient of INFRA grant funding for the HST Project, and CSXT is the rail owner and operator conducting engineering design and acting in coordination with MDOT/MPA and FRA.

Once the HST Project is completed and the HST reopened, the trackage rights that are the subject of this Notice will terminate and CSXT will resume operating through the upgraded HST.

SECTION 1180.6(a)(5)
LIST OF STATES IN WHICH ANY PART OF THE PROPERTY OF
EACH APPLICANT CARRIER IS SITUATED

NSR and its consolidated railroad subsidiaries own and operate approximately 19,300 miles of railroad in the District of Columbia and the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New

Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.

CSXT owns and operates over approximately 20,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, the District of Columbia, and the Provinces of Ontario and Quebec.

The trackage rights involved in this proceeding are located in the State of Maryland.

SECTION 1180.6(a)(6)
MAP

A map of the B&O Route on the CSXT Line, which is the subject of this transaction, is attached hereto as Exhibit 2.

SECTION 1180.6(a)(7)(iii)
AGREEMENT

A copy of Agreement is attached as Exhibit 1. An unredacted version will be provided upon a relevant request and issuance of an appropriate protective order.

SECTION 1180.4(g)(1)(i)
LABOR PROTECTION

Any employees who are adversely affected by the trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. – Lease and Operate*, 360 I.C.C. 653 (1980).

SECTION 1180.4(g)(3)
ENVIRONMENTAL AND HISTORIC PRESERVATION MATTERS

Under 49 C.F.R. 1105.6(c)(3) and 1105.8(b)(3), NSR's proposed acquisition of trackage rights is exempt from environmental reporting requirements and historic preservation reporting requirements.

Respectfully submitted,

/s/ William A. Mullins

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2001 L Street NW, Suite 720
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wmullins@mullinslawgroup.net

Counsel for Norfolk Southern Railway Company

Dated: September 30, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FD 36790

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– TRACKAGE RIGHTS EXEMPTION –
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**EXHIBIT 1
AGREEMENT**

FORM A TRACKAGE RIGHTS ADDENDUM

To Master Trackage Rights Agreement

Dated June 1, 2002 Between

Norfolk Southern Railway Company

And

CSX Transportation, Inc.

Covering

Trackage Rights over CSXT between Philadelphia, PA and Baltimore, MD

This Form A Trackage Rights Addendum dated the 20th day of September, 2024, by and between CSX TRANSPORTATION, INC., a Virginia corporation, hereinafter referred to as “Owner”, and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, hereinafter referred to as “User”, constitutes a Form A Trackage Rights Addendum as referenced in Article 1 of the Master Trackage Rights Agreement among the Parties dated June 1, 2002 (“Master”).

SECTION 1: DESCRIPTION

Owner hereby grants to User, subject to the terms of the Master, and as further governed herein below, the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as “Trackage Rights”) over the following segment of railroad owned or operated by Owner (hereinafter referred to as “Subject Trackage”):

Over Owner’s trackage between the connection with User at Falls, PA at or near CP River, CSXT Milepost QA2, and Baltimore, MD, including all necessary trackage within CSXT’s Bayview Yard and between the western end of CSXT’s Bayview Yard (MP BAL 0.0 ±) and a connection at MP BAL 0.5 ±, approximately 95 miles. (Attachment 1)

The aforesaid grant shall for the purposes of this Addendum, be considered a portion of the Reciprocal Directional Running Rights covered in Reciprocal Directional Rights Agreement of June 18, 2003, as amended, between the parties hereto, and the trackage used in connection therewith known as the Directional Running Trackage. To the extent the provisions of said Reciprocal Directional Rights Agreement may conflict with the provisions of the Master, the provisions of the Reciprocal Directional Rights Agreement shall govern.

SECTION 2: RESTRICTIONS ON USE

- A. The Trackage rights herein granted are granted for the sole purpose of User using same for overhead traffic only, and User shall not perform any local freight service whatsoever at any point located on the Subject Trackage, nor shall User enter or exit the Subject Trackage except at the end points.
- B. User shall move no more than four (4) trains per day (two in each direction), across the Subject Trackage. User shall not move dimensional or toxic by inhalation/ poisonous by inhalation (“TIH/PIH”) traffic over the Subject Trackage without prior approval of Owner.
- C. Owner agrees to consider User’s request to operate additional overhead trains on the Subject Trackage on a case by case basis.

SECTION 3: COMPENSATION

- A. [REDACTED]
- B. [REDACTED]
- C. [REDACTED]

D.



SECTION 4. TERM AND TERMINATION

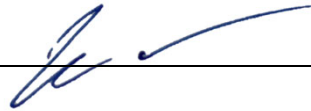
- A. This Form A Trackage Rights Addendum shall become effective on the later of the occurrence of (i) when regulatory approval is received, the date of such approval following the expiration of any time periods required by the issuance of labor notices by Owner, and (ii) completion of certain improvements to the existing line in Hagerstown, MD allowing CSXT to operate through CP Town at a planned speed of 25 MPH, or as otherwise authorized (“Effective Date”), and shall remain in effect until first to occur of (i) completion of the Howard Street Tunnel Project, as determined by Owner on at least ninety (90) days’ notice to User; ~~(ii) termination of the Master; or~~ (iii) until termination of the Reciprocal Directional Rights Agreement. In the event the parties mutually agree to extend the Reciprocal Directional Rights Agreement, the parties shall enter into a Form A Trackage Rights Addendum for the same term.
- B. Termination of this Form A Trackage Rights Addendum shall not relieve or release any party hereto from any obligations assumed or any liability which may have arisen or been incurred by such party under the terms of this Form A Trackage Rights Addendum prior to termination hereof.
- C. Upon termination of this Form A Trackage Rights Addendum for any reason, User shall exercise the revocation of these trackage rights as granted by the Surface Transportation Board.

(Signatures page to follow)

SECTION 5. SIGNATURES

The signatures below confirm the mutual agreement of Owner and User representatives to the provisions of this Form A Trackage Rights Addendum.


CSX TRANSPORTATION, INC.

By:  _____

Name: Joshua Brown

Title: Director Joint Facilities

NORFOLK SOUTHERN RAILWAY COMPANY

By:  _____

Name: _____

Title: _____

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

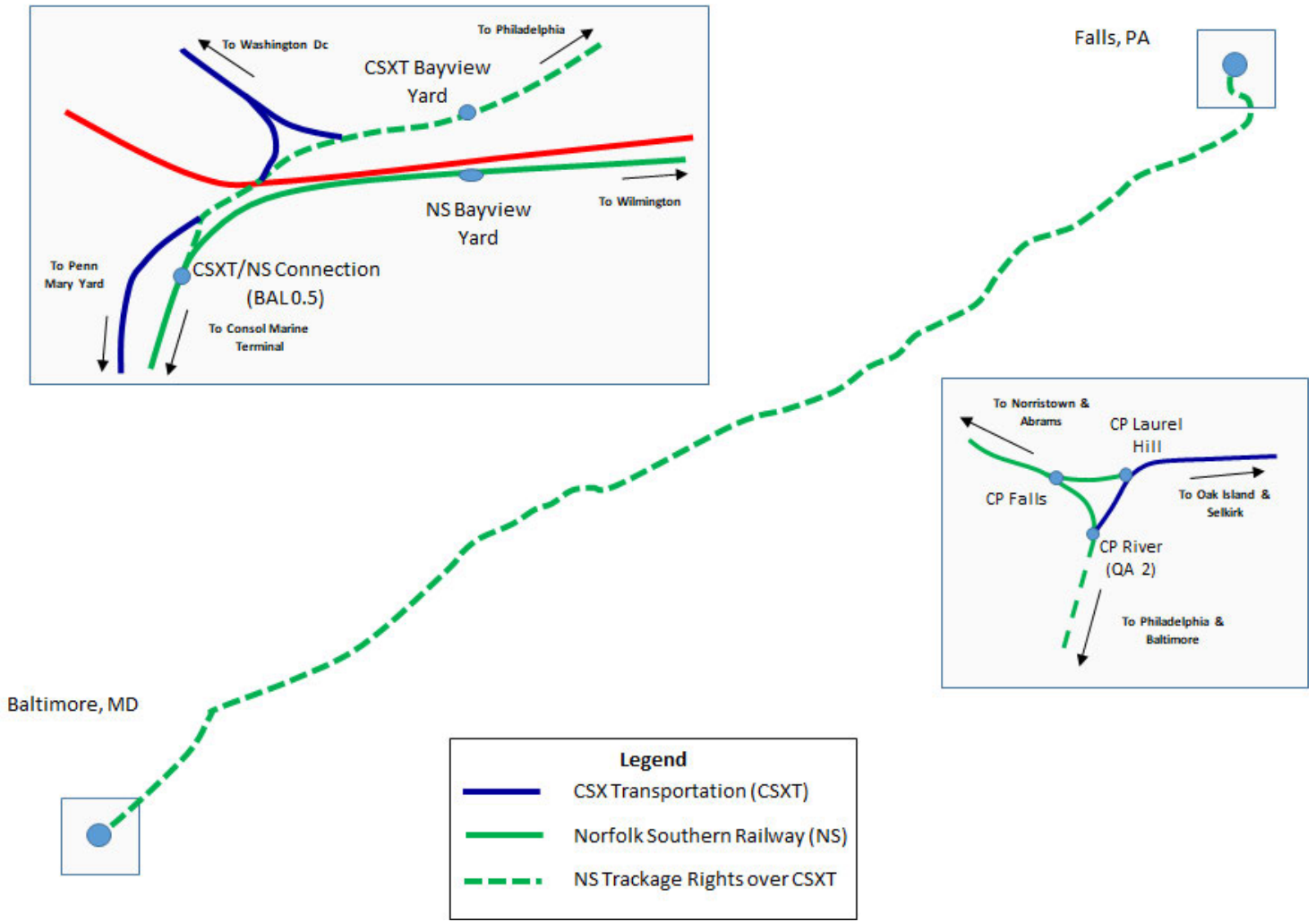
FD 36790

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**EXHIBIT 2
MAP**

Attachment 1 (Map)



VERIFICATION

State of Georgia)
)
Fulton County)

I, Jacob R. Elium, Vice President, Network Planning and Optimization, of Norfolk Southern Railway Company, hereby verify under penalty of perjury that to the best of my knowledge the foregoing trackage rights notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of NSR in connection with this proceeding before the Surface Transportation Board.

Executed this 26th day of September 2024.

Jacob R. Elium
