

EXPEDITED CONSIDERATION REQUESTED

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March 28, 2022
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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD
DOCKET NO. FD 36496

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

**AMTRAK'S RESPONSE TO MOTION FROM CSX, NS, AND THE PORT FOR
BOARD-SPONSORED MEDIATION**

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The National Passenger Railroad Corporation (“Amtrak”) respectfully offers this response to the motion Amtrak received at 9:27 p.m. on Friday evening, March 25, 2022, in which CSX Transportation, Inc. (“CSX”), Norfolk Southern Railway Co. (“NS”), and the Alabama State Port Authority and Terminal Railway Alabama State Docks (“the Port”), requested that the Surface Transportation Board (“the Board”), order the parties to engage in Board-sponsored mediation. Although Amtrak believes an amicable resolution of this matter may be possible, Amtrak opposes the motion for Board-sponsored mediation as yet another attempt to further delay a process that has already been delayed far too long. At the very least the motion is premature in as much as it presumes that the building of infrastructure is necessary for Amtrak to resume the *Gulf Coast* service, and therefore necessary for the parties to negotiate over. Accordingly, should the Board not deny the motion outright, it should hold the motion until after the conclusion of the evidentiary hearing.

Amtrak’s position throughout its years-long effort to restore intercity passenger service to the people of the Gulf Coast has been consistent. Amtrak is committed to restoring the *Gulf Coast* service while working with its host railroad partners and the Port over time to address the need for

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capital improvements to enhance safety, improve reliability, and reduce trip times. Amtrak has engaged and continues to engage with its host railroad partners and with the Port on whether the parties can reach a negotiated resolution consistent with these goals. However, the parties remain very far apart. Indeed, the host railroads and the Port have not even agreed among themselves on the infrastructure they consider necessary to withdraw their opposition to restoring the *Gulf Coast* service. And although Amtrak appreciates that CSX and NS have reduced the demand they made in 2017 that Amtrak must make \$1.1 billion in capital improvements before even a single *Gulf Coast* service train can run, the parties are not in the same ballpark with respect to the magnitude and timing of what is required for service to be restored. Accordingly, while Amtrak remains open to attempting to reach a negotiated resolution, Amtrak believes that the appropriate path forward is to continue direct discussions between the parties while proceeding to a prompt resolution of this proceeding. Amtrak therefore objects to being ordered to engage in Board-sponsored mediation.

As CSX, NS, and the Port point out, the Board's regulations do provide the Board with authority to order mediation over Amtrak's objection. 49 C.F.R. 1109.2(b); *accord Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Maddison Parishes, LA*, FD 36447 (STB served October 21, 2021). However, if the Board does so, the Board should not hold these proceeding in abeyance and should continue to move forward. *See* 49 C.F.R. 1109.3(e); *cf. Cent. Valley Ag Grinding, Inc. & Cent. Valley Ag Transp. Inc.*, FD 42159, 2018 WL 3588734, at *5 (STB served July 24, 2018) (when a party conditions its consent to mediate on not holding the proceeding in abeyance, the proceeding will not be held in abeyance); *accord The Metro. Council petition for Declaratory Ord.*, FD 36178, 2018 WL 2460201, at *2 (STB served June 1, 2018); *BNSF Railway Company F Terminal*

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Trackage Rights Kansas City Southern Railway and Union Pacific Railroad Company, FD 32760, 2019 WL 2880858, at *2 (May 15, 2018).

Although CSX, NS, and the Port may argue that an abeyance of 30 days for a mediation would not be a material delay, it is hard to imagine how such a mediation could be complete in 30 days given their suggestion that the mediation proceeding would involve “technical support from Board staff on the RTC model.” Mot. at 3. As the Board is aware, the parties attempted for a *year* to complete a joint RTC study and were unable to do so. CSX and NS claim that this RTC study “process broke down in this case for reasons that are no longer relevant,” *id.*, but those reasons continue to be quite relevant because they are likely to recur. CSX and NS repeatedly delayed the process, refused to share underlying data and assumptions with Amtrak, and made sure that the RTC study agreements were designed such that neither Amtrak nor the Federal Railroad Administration [REDACTED] the freights.¹ There is no reason to believe this process would be any different, and certainly no reason to believe it could be complete in 30 days.

Amtrak therefore requests that the Board move forward with these proceedings. To be clear, the evidentiary hearing scheduled to begin on April 4, 2022, is a hearing that *CSX and NS argued was necessary*, over Amtrak’s objection. At the request of CSX, Amtrak has already agreed to a month-long delay to this evidentiary hearing. Amtrak does not want to delay this hearing, or these proceedings in general, any further. Amtrak believes that the Board’s guidance on the appropriate legal framework is critical and that the hearing will elucidate the dispositive issues, which should in turn inform the parties’ positions for any potential negotiated resolution after the hearing. For example, the Board’s decision setting the standard for the host railroads’

¹ [REDACTED]

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burden to show unreasonable impairment of freight transportation, as well as what the Board decides about the need for any infrastructure improvements, now or in the future, will permit the parties to have a more informed discussion.

CSX and NS have had years to reach a resolution with Amtrak. To file this motion on the eve of an evidentiary hearing that they insisted upon having is yet another delay in a long line of delays. Amtrak therefore respectfully requests that the Board deny the motion for Board-ordered mediation and bring these proceedings to a prompt resolution. In the alternative, Amtrak requests that the Board proceed with the scheduled and prepared-for evidentiary hearing and, if necessary, consider the host railroads' and Port's last-minute motion after the hearing. If the Board finds—as Amtrak contends and believes that the Board will find—that the host railroads have failed to prove unreasonable impairment, no Board-mediated discussions regarding infrastructure would be necessary. Should the Board find otherwise, its legal rulings would be key to the parties' resolution of follow-on issues and Board mediation may be helpful in that context.

March 28, 2022

Respectfully submitted:

/s/ Jessica Ring Amunson

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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.

March 28, 2022

/s/ Jessica Ring Amunson
Jessica Ring Amunson

EXHIBIT A

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REDACTED

CONTAINS CONFIDENTIAL INFORMATION