

EXPEDITED TREATMENT REQUESTED

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March 25, 2022

304177

VIA E-FILING

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

ENTERED
Office of Proceedings
March 25, 2022
Part of
Public Record

Re: Application of the National Railroad Passenger Corp. Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern Railway Company, FD 36496

Dear Ms. Brown:

Norfolk Southern Railway Company (“NSR”), CSX Transportation, Inc. (“CSXT”), and the Port (together, the “Joint Parties”) hereby file, via e-filing, a “Joint Motion For Board Sponsored Mediation” seeking to order all parties to participate in Board-sponsored mediation. The Joint Parties continue to believe that an amicable resolution is possible but believe that Board sponsored mediation is the best means by which to facilitate a prompt and orderly commencement of Gulf Coast passenger service while protecting the customers and shipping partners that rely on quality freight rail service. In light of the scheduled upcoming hearing, expedited treatment is requested. If there are any questions concerning this e-filing, please contact me by telephone at (202) 663-7823 or by e-mail at wmullins@bakerandmiller.com.

Sincerely,

/s/ William A. Mullins

William A. Mullins
Attorney for Norfolk Southern Railway Company

Enclosures

cc: Parties of Record

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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 CORPORATION**

JOINT MOTION FOR BOARD-SPONSORED MEDIATION

CSX Transportation, Inc. (“CSXT”), Norfolk Southern Railway Company (“NSR”), and the Port¹ (together, the “Joint Parties”) respectfully move the Surface Transportation Board (“Board”) to order all parties to participate in Board-sponsored mediation. The Joint Parties continue to believe that an amicable resolution is possible—one that facilitates a prompt and orderly commencement of Gulf Coast passenger service while protecting the customers and shipping partners that rely on quality freight rail service.

BACKGROUND

The Board held a two-day public hearing on February 15 and 16, 2022 (the “February Hearing”), to allow stakeholders and other interested parties to express their views on the National Railroad Passenger Corporation’s (“Amtrak”) Application for Gulf Coast passenger service. This public hearing also included an opportunity for the Joint Parties and Amtrak to offer responsive remarks to the public comments. Multiple speakers on both sides of the case commented on how host railroads and Amtrak historically have been able to reach negotiated agreements for commencement of new or enhanced passenger service. At that time, all the parties expressed a willingness to engage in discussions to resolve the issues. Chairman Oberman

¹ The Port consists of the Alabama State Port Authority and its rail common carrier operating division, Terminal Railway Alabama State Docks.

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also articulated the Board's openness to facilitating mediation during the pre-hearing conference on February 16.²

Very recently, Amtrak has separately articulated to each of the Joint Parties its desire to pursue arrangements to address and resolve the railroad freight service concerns that each of the Joint Parties has expressed. In turn, CSXT, NSR, and the Port have each also expressed a willingness to discuss settlement and suggested use of Board-sponsored mediation. Amtrak has, however, thus far rejected Board-sponsored mediation. Considering all of the parties' willingness to discuss settlement, the Joint Parties request the Board to expeditiously direct the parties to participate in Board-sponsored mediation.³

ARGUMENT

The February Hearing made clear that there is an established process that parties consistently have followed in the past to add new passenger service to an active freight corridor: agree on the inputs into a Rail Traffic Controller ("RTC") study, perform the RTC study, and then build the infrastructure revealed by the model to be necessary to accommodate the passenger service. That process broke down in this case for reasons that are no longer relevant. The Joint Parties are confident that with the help of a Board-appointed mediator, and with technical support from Board staff on the RTC model, the parties can negotiate a settlement of this dispute collectively. A Board-selected mediator, guided by experienced Board staff, may succeed where previous efforts have not.

² February 16, 2022 Pre-Evidentiary Hearing Conference, *Application of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. and Norfolk S. Corp.*, STB Docket No. FD 36496 (posted Mar. 23, 2022), at 87:18–89:3.

³ The Board has previously ordered parties to take part in Board-sponsored mediation even over the objection of one of the parties. *Lake Providence Port Commission – Feeder Line Application – Line of Delta Southern Railroad Located in East Carroll and Madison Parishes, LA*, FD 36447 (STB served October 21, 2021).

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CONCLUSION

For the reasons set forth above, the Board should order the Joint Parties and Amtrak to engage in Board-sponsored mediation as soon as practicable.

Respectfully submitted,

/s/ Robert A. Wimbish

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*Counsel for Norfolk Southern Railway
Company*

Dated: March 25, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March 2022, a copy of the foregoing Joint Motion for Board-Sponsored Mediation was served by email or first-class mail on the service list for Finance Docket No. 36496.

/s/ William A. Mullins
William A. Mullins
BAKER & MILLER PLLC