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September 23, 2014
Part of
Public Record

September 23, 2014

BY E-FILING

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0012

Re: *Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(a) – Canadian National Railway Company (Docket No. FD 35743)*

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find CN's Response to Amtrak's Reply to CN's Motion for Extension of Procedural Schedule. Please note that Attachment 2 to CN's Response has been redacted from the enclosed version and is being filed separately under seal, in accordance with the Protective Order in this proceeding.

Very truly yours,



David A. Hirsh

Counsel for Illinois Central Railroad Company and
Grand Trunk Western Railroad Company

Enclosures

cc: Linda J. Morgan, Esquire
William H. Herrmann, Esquire

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**CN'S RESPONSE TO AMTRAK'S REPLY TO CN'S
MOTION FOR EXTENSION OF PROCEDURAL SCHEDULE**

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EXPEDITED CONSIDERATION REQUESTED

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SURFACE TRANSPORTATION BOARD

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a) – CANADIAN NATIONAL RAILWAY COMPANY

**CN’S RESPONSE TO AMTRAK’S REPLY TO CN’S
MOTION FOR EXTENSION OF PROCEDURAL SCHEDULE**

CN hereby responds to Amtrak’s Reply in Opposition to CN’s Motion for Extension of the Procedural Schedule, filed yesterday afternoon, September 22 (“Amtrak’s Reply” or “Reply”).¹ Amtrak’s Reply essentially requests that CN be compelled, on short notice, to frame and support its opening evidentiary submissions without the discovery CN has diligently sought and expected from Amtrak for over 10 months. It seeks thereby to reward Amtrak and penalize CN for Amtrak’s failure to comply with its discovery obligations. Amtrak’s position is unfair, unreasonable, and contrary to the position heretofore taken by the parties and the Board throughout this proceeding. Amtrak’s Reply also lacks candor with respect to the timing and sufficiency of its document production.

¹ CN respectfully requests leave of the Board to file this Response to Amtrak’s Reply to the Motion. While 49 C.F.R. § 1104.13(c) generally prohibits replies to a reply, good cause exists for waiver of that prohibition in this instance. The procedural issue presented here goes to the heart of the integrity of the Board’s procedural schedule in this proceeding, and Amtrak’s Reply is less than candid. Allowing CN to file this short response less than one day after Amtrak’s Reply will not delay a Board decision, will not prejudice Amtrak, and will provide the Board a more complete understanding of the issues and a more complete record for decision. *Cf. Calif. High Speed Rail Auth. – Construction Exemption – In Fresno, Kings, Tulare, & Kern Counties, Cal.*, Docket No. FD 35724 (Sub-No. 1), slip op. at 8 (STB served Aug. 12, 2014); *El Expreso Group, LLC – Asset Acquisition – CUSA EE, LLC*, Docket No. MCF 21048, slip op. at 2 n.3 (STB served Sept. 7, 2012).

FACTUAL BACKGROUND

CN's Motion (filed on September 9, 2014, just two business days after learning definitively that despite Amtrak's failure to meet its document production obligations, Amtrak would not agree to another extension) explained, and Amtrak does not deny, that:

- On October 31, 2013, CN served its (only) discovery requests on Amtrak;
- The parties agreed that discovery should proceed on a rolling basis and be completed at least 30 days before opening submissions were due – under the current schedule, by August 27, 2014 – and the Board granted multiple jointly requested extensions on that basis;
- On May 19, 2014, Amtrak told the Board that it “is already in the process of providing hundreds of thousands of documents that relate to [CN's discovery requests]”;
- At the time of CN's Motion, Amtrak had produced fewer than 3,500 documents. Amtrak had also not answered most of CN's interrogatories, since it deferred to its barely-started document production for the answers; it had not provided information on relevant databases, despite having agreed to do so months earlier; and it had not addressed significant concerns CN raised with Amtrak's production to date. In addition, CN and Amtrak were awaiting two rulings from the Board on motions to compel documents and information Amtrak had refused to provide.

Amtrak provided no further documents or information, and said nothing in response to CN's Motion, until yesterday afternoon. Then, at about 3:30 p.m. – 26 days after the parties' agreed date for completion of discovery and less than 100 hours before the current filing deadline for the parties' opening evidentiary submissions – Amtrak purportedly produced 49,322 documents – *i.e.*, 93% of its total production. CN will not have meaningful access to those documents – and therefore will be unable to verify their quantity, begin reviewing them, or determine the extent to which Amtrak will now have fulfilled its discovery obligations until just a few days before the filing deadline.²

² Amtrak made the documents available yesterday afternoon for CN to download from an FTP site. The documents must be downloaded and then transferred onto a document review platform, which takes substantial time for such a large quantity of documents.

Amtrak's e-mail yesterday afternoon also provided its first substantive response to the concerns CN had raised on August 28 – 25 days earlier – regarding Amtrak's earlier production. In that e-mail, Amtrak acknowledged that, as CN had complained: (1) Amtrak had not yet provided database information, (2) Amtrak had not – and still has not – produced attachments to what it concedes are relevant e-mails, and (3) Amtrak's production includes documents with inconsistent text and TIFF images. Nonetheless, Amtrak contended that, with the latest production, its discovery obligations were fulfilled. Reply, Ex. 1 (e-mail from G. Rollins to D. Hirsh, Sept. 22, 2014, 3:28 p.m.). CN immediately responded, explaining why it is evident even from the face of Amtrak's e-mail that its discovery remains non-compliant and materially incomplete. See Attachment 1 (e-mail string including e-mails from D. Hirsh to G. Rollins, Sept. 22, 2014, 4:17 p.m. & 4:50 p.m.); *infra*, Section II.

Less than two hours after it made 93% of its document production available for download, at 4:50 p.m. yesterday, Amtrak served on CN its Reply in opposition to CN's Motion for extension. Amtrak's Reply, relying on its production and e-mail of yesterday, claims its production is complete and makes CN's Motion "moot." Reply at 3.

ARGUMENT

I. AMTRAK IS ASKING THE BOARD TO COMPEL CN, ON SHORT NOTICE, TO FILE ITS EVIDENTIARY SUBMISSIONS WITHOUT THE BENEFIT OF THE DISCOVERY TO WHICH CN IS ENTITLED.

Amtrak's assertion that its production renders CN's Motion "moot" is frivolous. Three hundred and twenty-five days after CN served its discovery requests, and 26 days after the parties agreed rolling discovery should be completed, Amtrak had produced less than 7% of the documents Amtrak admits it was obliged to produce. Dumping 49,322 documents on CN so that CN cannot access them until shortly before opening evidentiary submissions are due does not fix the problem Amtrak created. Nor does it "moot" CN's right to a fair opportunity to frame and

support its evidentiary case with the benefit of discovery. As the parties and the Board have long recognized in establishing and extending the schedule in this proceeding, the point of discovery is not to dump documents just prior to evidentiary submissions; it is to provide information in such a manner and at such a time that it can be used to inform the fact-finding process. That is no longer possible on the current schedule, as CN could not possibly review and verify the sufficiency of Amtrak's production, much less detect and incorporate relevant documents into evidentiary submissions from among 49,322 documents, in three days.

Amtrak's position is that, after Amtrak undermined the agreed-upon schedule by failing to timely produce its discovery, CN should be forced to comply with that schedule and file its opening evidentiary submissions without the benefit of discovery. That position is patently unfair and unreasonable – it would punish CN, and reward Amtrak, for Amtrak's delinquency.³ CN has diligently sought discovery for over 10 months and has reasonably proceeded on the expectation that it will have the opportunity to frame and support its opening submissions with the benefit of discovery. Requiring CN to now make its evidentiary submissions without the benefit of substantial evidence available only through discovery would undermine due process and the public interest in a fair and complete fact-finding process.⁴

³ CN has already acknowledged that Amtrak also has not had the benefit of rolling production concluding 30 days before the current opening evidentiary submissions deadline, as the parties intended. Motion at 4. However, Amtrak's and CN's situations are far from symmetrical. Amtrak received 20% of CN's production in May and almost 40% more before the intended discovery deadline on August 27, and the remainder more than three weeks before the current opening submissions deadline, and Amtrak has found nothing in CN's discovery compliance to complain about. By contrast, CN received barely 1% of Amtrak's production before mid-August, barely 5% in August, and over 93% this week. *See* Motion at 4. Thus, denying an extension, as Amtrak proposes, would mean that Amtrak has some opportunity to make use of CN's discovery, but CN has no meaningful opportunity to make use of Amtrak's discovery. In any event, CN's need, expectation, and right to have the opportunity to present its case with the benefit of discovery does not depend on whether Amtrak chooses to make use of the discovery it has compelled CN to provide.

⁴ The parties are also awaiting decisions from the Board on two motions to compel. Amtrak claims that CN should be required to file its evidentiary submissions before those

Amtrak's position is contrary to the premises on which the parties and the Board have proceeded throughout this proceeding. As detailed in CN's Motion, the parties agreed to a joint discovery protocol, the Board has supervised discovery, and the Board has acceded to multiple joint requests of the parties to delay the date for evidentiary submissions, all on the premise that discovery should occur in time to inform evidentiary submissions. Amtrak admits as much: "Given the complexity and volume of discovery processed by the parties, Amtrak and CN agreed that" it was "necessary" to postpone the date for opening submissions. Reply at 3.

Amtrak offers no justification for its self-serving eleventh-hour reversal of that agreed position. Pursuant to the Board's order of August 9, 2013, the parties continue to conduct their business relationship under terms agreed to in 2011, and the Board has power to order retroactive relief as appropriate, so there is no emergency that would justify rushing ahead with an unfair process. Amtrak says that an extension will entail "delay." *Id.* at 4. That is obviously true, but Amtrak has no cause to complain. It is Amtrak itself that created the need for an extension due to its failure to comply with its discovery obligations. In any event, there is no other fair or efficient way to proceed at this point.⁵

motions have been resolved. Reply at 4.

⁵ Amtrak proposes no viable alternative. It says that "the parties can use the remaining time under the existing schedule to review the material that has been produced and adjust or update its [*sic*] arguments accordingly." Reply at 6. It is unclear what that means, but at this point it would not be possible for CN to file a meaningful opening evidentiary submission on Friday. And even if it were, any process in which opening submissions would be subject to major "adjust[ment] or updat[ing]" is apt to produce arguments about what adjustment and updating is allowed when, to create confusion about the extent to which a party can rely on the opening submission to which it is replying, and to necessitate further replies and further delays. It makes no sense to provide for the parties to file uninformed opening submissions and then allow them to re-do their submissions after they have critical information; instead, the Board should require real opening submissions after the parties have the full benefit of discovery.

II. AMTRAK’S REPLY IS NOT CANDID REGARDING ITS DELAYS OR THE INSUFFICIENCY OF ITS DOCUMENT PRODUCTION.

Amtrak’s Reply is less than candid, and its actions yesterday appear to have been timed to prevent a response that would provide the Board with the other side of the story. Amtrak did not communicate with CN for 13 days after CN’s Motion, then, within two hours, produced 93% of its long-overdue discovery, responded to CN’s long-standing concerns about its discovery in an e-mail claiming its discovery was complete, and filed its Reply claiming that, on the strength of that production and e-mail, CN should be required to file its opening evidentiary submissions four days later. In fact, several of Amtrak’s statements that form the basis for its opposition to CN’s motion for extension are less than candid and potentially misleading.

First, Amtrak states that it “has been providing documents in production sets since the beginning of the discovery process” and “has produced 6 document production sets that total over 50,000 documents.” Reply at 5 n.7. Only from Exhibit 1 to Amtrak’s Reply can one discern the truth that 49,322 (93%) of those documents were produced less than two hours before filing its Reply.⁶

Second, Amtrak tries to shift the blame for its delays to CN by complaining that “CN raised its concerns about missing attachments and texts less than a month ago” and that that was a significant cause of Amtrak’s delay in producing its documents. Reply at 5 & n.9. That excuse does not hold water. Even before CN raised its concerns, Amtrak had passed the agreed-upon deadline for completion of rolling production, August 27, having produced less than 7% of its documents. In any event, CN raised its concerns about Amtrak’s mid-August document production the week after that production was first processed and available to counsel. CN was not dilatory; Amtrak’s production was late. In any event, Amtrak fails to explain why issues CN

⁶ As noted in CN’s Motion (at 4), Amtrak had produced just 613 documents – barely 1% of its production – before August 15.

raised regarding its prior production should have delayed its final production. Amtrak claims that CN's concerns were unfounded. *See* Reply, Ex. 1 at 1-2. If that were true, CN's concerns would provide no reason for altering and delaying for a further 25 days Amtrak's final production.

Third, Amtrak concedes that it did not produce attachments to various e-mails. Reply, Ex. 1, at 1. It claims that it was justified in excluding those attachments from production based on relevance. *Id.*; Reply at 4. However, based on their titles, the missing attachments CN identified appear to relate to relevant subjects such as Amtrak delays, ridership, and revenues. *See* Attachment 1.

Moreover, it is unreasonable, contrary to case law, and improper discovery practice to pick and choose e-mail attachments to admittedly relevant documents based on counsel's judgment as to whether the attachment is independently relevant. Documents are to be produced in complete form, as they are maintained in the ordinary course of business, including their attachments.⁷ Documents that form part of a "family" of documents (*e.g.*, e-mails and their attachments) are often critical to understanding the context of the other documents in the family, and Amtrak should produce them (as CN has done) regardless of its view of their independent relevance. *See generally* Attachment 1. Amtrak should be able to do so quickly and easily.⁸

⁷ *See, e.g., Flame S.A. v. Indus. Carriers, Inc.*, 2014 U.S. Dist. Lexis 109954, *31-32 (E.D. Va. Aug. 8, 2014) ("to the extent responsive emails originally included attachments, those attachments should have been produced, absent some privilege"; imposing sanctions for failure to do so); *Skepnek v. Roper & Twardowsky, LLC*, 2014 U.S. Dist. Lexis 11894, *4-*5 (D. Kan. Jan. 27, 2014) (granting a motion to "compel defendants to produce all attachments to e-mails that defendants have already produced" because "[d]efendants do not have the leisure of picking and choosing what responsive documents to produce."); *U & I Corp. v. Advanced Med. Design, Inc.*, 251 F.R.D. 667, 675 n.14 (M.D. Fla. 2008) ("The dubious practice of producing emails without attachments in federal discovery has not gone unnoticed by the courts.") (citation omitted).

⁸ Amtrak's e-mail states that it attaches a list of the "documents that have one or more attachments withheld as non-relevant from Amtrak's [August] production," and that it will later provide such a list for its September 22 production. *Id.* However, no such list accompanied

Fourth, as discussed in CN’s Motion (at 5), CN has been waiting since late April for Amtrak’s detailed information concerning its revenue and ridership databases. Instead of providing that information as agreed by the parties in their discovery protocol, and as CN did for Amtrak at the meet and confer on April 23, 2014, which was specifically for the purposes of exchanging such information, Amtrak confirms that such databases exist, but it has not listed or described the data fields, has not addressed methods of producing information from the databases, and has not discussed with CN what CN might want from those databases.⁹ Its proffer of monthly reports is no substitute, as it would deny CN the ability to understand the data that Amtrak collects and that is available for use beyond that Amtrak has unilaterally decided to provide. Just as importantly, Amtrak’s approach would leave CN with a collection of separate monthly reports rather than a data set drawn from a database that CN can format and manipulate for use. *See generally* Attachment 1.

Finally, with respect to the issue of mismatches between image and text files, Amtrak tries to evade the point when it states “the text CN was claiming to be missing was not missing at all.” Reply at 5 n.9. The question, however, was not whether the text was in the text file, the point – which Amtrak must concede¹⁰ – is that it is not reflected in the image file. Amtrak agrees in its e-mail to provide correctly matching images in its future production,¹¹ and it should likewise correct its prior production.¹²

Amtrak’s e-mail. But given that Amtrak apparently has lists of such documents, it should take little time for Amtrak to comply with its obligations to produce their missing attachments.

⁹ CN long ago met these obligations regarding its databases. *See, e.g.*, Attachment 2 (filed separately under seal) (materials CN provided to Amtrak counsel at the meet and confer on April 23, 2014). There is no excuse for Amtrak’s failure to do the same.

¹⁰ *See* Reply Ex. 1 at 2 (the extracted text “provides more information than is visible on the TIFF”).

¹¹ *Id.*

¹² Amtrak also erects a straw-man when it complains that CN’s reference to “initial discovery” could herald further delays. Reply at 6 n.11. CN’s Motion requests only that the

III. THE EXTENSION SOUGHT BY CN – 60 DAYS FROM FULL AND SATISFACTORY COMPLETION OF DISCOVERY – SHOULD BE GRANTED

Amtrak's Reply underscores the soundness of CN's proposal that the period between completion of discovery to opening submissions run from certification or determination that discovery is truly complete. Less than two hours after producing 93% of its documents, Amtrak asks the Board to take its word that its discovery is complete (with the exception of whatever the Board orders in response to CN's pending motions). While counsel does not yet have access to that production, as explained in Section II, it is evident from Amtrak's own description of it that substantial gaps remain.

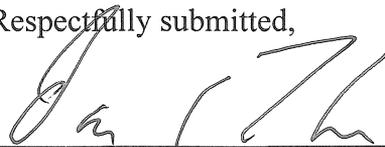
Amtrak's Reply also underscores the soundness of CN's proposal to allow 60 days between full completion of discovery and opening evidentiary submissions. The premise of that proposal was that while the parties agreed that 30 days would be reasonable if rolling production occurred as agreed in the joint discovery protocol, rolling production has not, in fact, occurred. Amtrak's Reply confirms that. Amtrak has not made a rolling production; it claims to have produced 49,322 documents – 93% of its production – yesterday. Thirty days is not enough time to review 49,322 documents, plus attachments yet to be produced, plus database data yet to be produced, plus whatever additional documents may be produced after the Board rules on CN's pending motions, and to frame and support evidentiary submissions in light of those documents.

schedule be extended to accommodate "initial discovery," Motion at 8, and CN has not propounded any additional discovery requests since October 2013. Consistent with the parties' agreement in the joint discovery protocol, CN anticipates that limited further discovery may be appropriate insofar as further issues are raised by the parties' opening submissions. Apparently, so does Amtrak, which refers to potential "future productions" in its own e-mail (Reply, Ex. 1, at 2). If and when that issue arises, the Board can decide whether to allow further discovery, how to limit it, and how it should fit into or affect the schedule. But those issues have no bearing on the present Motion.

CONCLUSION

CN's motion for extension should be granted.

Respectfully submitted,



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*Counsel for Grand Trunk Western Railroad Company
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September 23, 2014

ATTACHMENT 1

From: "Rollins, Graham" <grollins@morganlewis.com>
To: "dhirsh@harkinscunningham.com" <dhirsh@harkinscunningham.com>, "lmorgan@nossaman.com" <lmorgan@nossaman.com>
Cc: "nkling@harkinscunningham.com" <nkling@harkinscunningham.com>
Date: 09/22/2014 05:25 PM
Subject: RE: Amtrak/CN - Amtrak's Production ATK006 and Revised ATK005

Good afternoon David,

Thank you for your emails below. We will review your comments and get back to you. We will also review any examples you send.

In the meantime, per my email, here is the list of documents that contain the monthly Ridership and Ticket Revenue reports generated from the enterprise data warehouse.

Month	Bates Number
April 2011	ATK0000071363
May 2011	ATK0000071395
June 2011	ATK0000071396
July 2011	ATK0000070412
August 2011	ATK0000141270
September 2011	ATK0000073831
October 2011	ATK0000071388
November 2011	ATK0000071389
December 2011	ATK0000141262
January 2012	ATK0000155475
February 2012	ATK0000073388
March 2012	ATK0000067213
April 2012	ATK0000067486
May 2012	ATK0000069237
June 2012	ATK0000069795
July 2012	ATK0000067593
August 2012	ATK0000178470
September 2012	ATK0000072633
October 2012	ATK0000086142
November 2012	ATK0000069196
December 2012	ATK0000155475
January 2013	ATK0000034981
February 2013	ATK0000069384
March 2013	ATK0000175161
April 2013	ATK0000037100
May 2013	ATK0000067313
June 2013	ATK0000055582
July 2013	ATK0000126740
August 2013	ATK0000048255
September 2013	ATK0000067857
October 2013	ATK0000154731

Regards,

Graham Rollins

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grollins@morganlewis.com | www.morganlewis.com

From: dhirsh@harkinscunningham.com [mailto:dhirsh@harkinscunningham.com]
Sent: Monday, September 22, 2014 4:50 PM
To: Rollins, Graham; lmorgan@nossaman.com
Cc: nkling@harkinscunningham.com
Subject: Fw: Amtrak/CN - Amtrak's Production ATK006 and Revised ATK005

Graham and Linda,

On the incomplete family issue below, note also that some of the documents we observed missing even from Amtrak's relatively small prior productions appear clearly relevant as involving delays or ridership and revenues. Therefore, your explanation below would not seem to cover such missing documents. We will provide you with some examples, most likely tomorrow.

David

----- Forwarded by David A. Hirsh/Harkins Cunningham/US on 09/22/2014 04:46 PM -----

From: David A. Hirsh/Harkins Cunningham/US
To: "Rollins, Graham" <grollins@morganlewis.com>, lmorgan@nossaman.com
Cc: "nkling@harkinscunningham.com" <nkling@harkinscunningham.com>
Date: 09/22/2014 04:17 PM
Subject: Re: Amtrak/CN - Amtrak's Production ATK006 and Revised ATK005

Graham and Linda,

Thank you for your email. We look forward to receiving this further production.

Based on even a cursory review of your email, however, we do not agree that this can constitute Amtrak's final production.

After waiting five months for information on Amtrak's ridership and ticketing revenue databases, your representation and production concerning it are hardly sufficient and do not comply with our prior agreements. You are to provide information concerning the data in the database -- so we can agree on the method and format for production of relevant, responsive information. Amtrak came unprepared to our meet and confer on the subject last April. We presented detailed information on the fields and layouts of our own databases at that time and we expect the same from Amtrak so we may determine the data we want and its format. Please provide this detailed information as soon as possible so we may proceed.

I will review the issue further, but I am also greatly concerned with your representation that you have removed elements of the family documents you have provided. Documents you deem not relevant may provide critical context for documents you agree are relevant, and it is no answer to ask us to guess where and when that is or laboriously to review the production based on traces of other documents to look for such instances. I do not believe this represents typical or best practices, but as noted, I will review the issue with my team.

David

From: "Rollins, Graham" <grollins@morganlewis.com>
To: "dirsh@harkinscunningham.com" <dirsh@harkinscunningham.com>
Cc: "Morgan, Linda J." <lmorgan@nossaman.com>, "nkling@harkinscunningham.com" <nkling@harkinscunningham.com>
Date: 09/22/2014 03:27 PM
Subject: Amtrak/CN - Amtrak's Production ATK006 and Revised ATK005

Good afternoon David,

I am transmitting Amtrak's production ATK006 to Neill King via electronic transfer. This is Amtrak's final production in response to CN's requests for production. It contains 49,322 documents. In addition, I am sending Neill a revised copy of ATK005 with a slipsheet in place of document ATK0000032723 per your email of September 9th. Lastly, we are providing supplemental information to Amtrak's response to CN's Request for Admission #4.

Production Issues

With respect to the issues you have raised in previous correspondence re: Amtrak's productions:

1. Ridership and Ticketing Revenue Data

Amtrak maintains and uses an enterprise data warehouse built on an Oracle database that stores ridership and ticketing revenue data. In Amtrak's production ATK006, Amtrak has produced reports from this database that are created and distributed to Amtrak personnel in the ordinary course of business. These reports are generated monthly, and one is included for each month from April 2011 to October 2013. I will send you a list of Bates numbers that identify these reports. Amtrak believes these reports provide the information CN seeks regarding ridership and ticketing revenue requests for production 16 and 17 with respect to data contained in Amtrak's data warehouse.

2. Incomplete Document Families

Amtrak's document production includes emails where one or more documents attached to that email have not been produced. Amtrak has withheld those documents from production because they are not responsive to CN's document requests. I have attached a report that lists the documents that have one or more attachments withheld as non-relevant from Amtrak's production ATK005. I will send a further report for ATK006. If you have any questions or concerns about specific documents on this log, please let us know.

3. Word Documents with Mismatched Text

The documents you identified with mismatched text contain Track Changes information. The differences between the extracted text and the information visible on the TIFF image of the document are the result of this Track Changes metadata. The text is not incorrect or mismatched and, in fact, provides more information than is visible on the TIFF. Amtrak does not intend to reproduce prior productions as the versions produced are usable and do not contain incorrect information. However, we have made changes to our process for ATK006 to accommodate your request that the TIFF images and searchable text match by re-OCR'ing the TIFF images. ATK006 and any future productions will reflect this change, which is consistent with CN's productions to date.

Response to Request for Admission #4

CN's Request for Admission #4 is reproduced here for reference:

Admit Amtrak has increased the number of trains it operates on IC's and GTW's lines from 8 trains per day on IC and none on GTW in 1971, to 16 trains per day on IC and 8 trains per day on GTW at present.

We responded with:

Amtrak objects to this RFA on the grounds it's compound. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak admits that the number of trains operated on GTW's lines increased from none in 1971 to 8 trains per day at

present. Except as expressly admitted herein, Amtrak denies RFA #4.

A revised response with additional information is below:

Amtrak objects to this RFA on the grounds it's compound. Subject to and without waiving Amtrak's foregoing general and specific objections, Amtrak admits that the number of trains operated on GTW's lines increased from none in 1971 to 8 trains per day at present. Amtrak further admits that the number of trains operated on IC's lines increased from 12 trains per day in 1971 (not 8 trains per day as stated in the request) to 16 trains per day at present. Except as expressly admitted herein, Amtrak denies RFA #4.

Please let me know if you have any issues with the production sets for ATK006 or the revised ATK005. Please also send confirmation that you have deleted all copies of ATK0000032723.

Regards,

Graham Rollins

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW | Washington DC 20004

Direct: 202.739.5865 | Main: 202.739.3000 | Fax: 202.739.3001

grollins@morganlewis.com | www.morganlewis.com

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ATTACHMENT 2
(filed separately under seal)

CERTIFICATE OF SERVICE

I certify that I have this 23d day of September, 2014, caused a true copy of the foregoing CN'S Response to Amtrak's Reply to CN's Motion for Extension of Procedural Schedule to be served by e-mail upon:

Linda J. Morgan
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Marissa A. Robertson