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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

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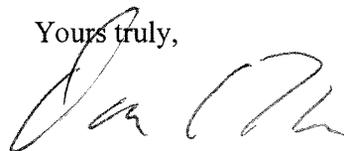
Re: *National Railroad Passenger Corporation – Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company (Docket No. NOR 42134)*

Dear Ms. Brown:

The attached corrects a typographic error in CN's Response to Amtrak's Proposed Procedural Framework ("Response"), filed December 12, 2012, which inadvertently omitted the word "not" in footnote 9 of page 12. Attached is a corrected page 12.

We regret any inconvenience caused by this error.

Yours truly,



David A. Hirsh

Enclosure

cc: David W. Ogden, Esquire
William Herrmann, Esquire

49 U.S.C. § 24308(f)(1) (emphasis added). Amtrak, however, only selectively quotes Congress's language setting the scope of investigation: "the Board 'shall initiate' an investigation 'to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by [the host railroad].'" Amtrak Framework at 5 (brackets in original).

Amtrak's selectivity is mirrored in its proposed procedure. Amtrak provides no opportunity for CN or other parties to address "the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays." It provides no opportunity for CN to develop and present evidence that delays could be "reasonably addressed by Amtrak." And, in rejecting third-party participation, *id.*, it would deprive the Board of "information from all parties involved" in, for example, situations where delays occur at an interlocking controlled by a third party or on parts of an Amtrak route hosted by other railroads.

Subsection (f)(3) provides that in considering ordering any binding relief against the host carrier, the Board "shall consider . . . the extent to which Amtrak suffers financial loss" and any need for deterrence. Amtrak states that it seeks "damages against CN to remedy Amtrak's financial loss and adequately deter future actions" ⁹ Amtrak Framework at 6. But Amtrak's proposal ends fact-finding before any finding of violations (*see id.* at 3-4), and it provides no procedure for the parties to develop evidence relevant to damages if and when actions are found to amount to preference violations.

⁹ Based on Amtrak's Petition, however, the only potential basis for damages is deterrence. Amtrak did not allege any financial losses in its Petition and it did not seek damages based on financial losses in its prayer for relief (Petition ¶ 119).