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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**ON-TIME PERFORMANCE UNDER SECTION 213 OF THE
PASSENGER RAIL INVESTMENT AND IMPROVEMENT
ACT OF 2008**

**REPLY COMMENTS OF
NORFOLK SOUTHERN RAILWAY COMPANY**

James A. Hixon
John M. Scheib
Greg E. Summy
Garrett D. Urban
Norfolk Southern Railway Company
Three Commercial Place
Norfolk, VA 23510

*Counsel for Norfolk Southern Railway
Company*

Dated: March 30, 2016

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Norfolk Southern Railway Company (“Norfolk Southern”) hereby submits these reply comments in response to the Surface Transportation Board’s (“Board’s”) Notice of Proposed Rulemaking in *On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008*, Ex Parte 726 (STB served Dec. 28, 2015) (hereinafter the “Board’s Notice”) concerning the definition of the term “on-time performance” in Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”), as codified in 49 U.S.C. § 24308(f). In addition to submitting these comments, Norfolk Southern joins in the Reply Comments of the Association of American Railroads (“AAR”).

In its Opening Comments, Norfolk Southern demonstrated that many of Amtrak’s schedules are not capable of being met consistently over time. *See* Norfolk Southern Opening Comments at 10-22. In short, those schedules are unrealistic. As a result, defining on-time performance in the manner proposed in the Board’s Notice would do little to serve Section 213’s purpose, which is to focus Board investigations (and limited resources) on those services experiencing performance deviating from realistically achievable levels. Instead, Norfolk Southern proposed that the Board either: (1) measure on-time performance against a reasonable

and realistically achievable baseline; or (2) measure on-time performance for each service using tolerances from existing schedules based on readily available information on Amtrak historical performance. Additionally, Norfolk Southern proposed that the Board define on-time performance with respect to transit times over individual host railroads, rather than the entire route. In this way, the definition of on-time performance will serve its statutory purpose of being a jurisdictional gatekeeper.

I. Introduction

The comments by other parties on opening emphasize the importance of the Board crafting its definition of on-time performance based on a reasonable and realistic schedule. First, Amtrak's suggestion that uncritical use of the public schedules as the standard of performance is "fair" because the host railroads have agreed to those schedules is misleading at best. As detailed in the attached Verified Statement from Randall W. Hunt, Norfolk Southern's Director – Joint Facilities, Amtrak's and Norfolk Southern's operating agreement does not use Amtrak's public schedules at all to assess performance for incentive and penalty payments. Rather, use of those schedules to assess performance through this rulemaking would be a complete departure from the context in which Amtrak has requested that Norfolk Southern review minor schedule adjustments over the years. Certainly, Norfolk Southern has not agreed, and does not agree, that many Amtrak schedules are realistic in light of current conditions, a position confirmed by the historical data.

Second, the opening comments demonstrate recognition by a wide range of parties of the integral role of realistically achievable schedules in measuring on-time performance. This recognition supports the proposals by Norfolk Southern and others to define on-time

performance in a way that accounts for a realistically-achievable level of performance for individual trains, such that on-time performance will fulfill its intended gatekeeper function.

Finally, the calls from many commenters to measure on-time performance at intermediate stops in addition to endpoint are overblown and reinforce the importance of Amtrak's underlying schedules in defining on-time performance. Amtrak has constructed its schedules to prioritize performance at endpoints and certain other major stations, rather than performance at all intermediate stops. Therefore, discrepancies between endpoint and intermediate station on-time performance will tend to identify trains for which performance is driven by Amtrak's own distribution of time within the schedule rather than actual on-time performance over the entire route. Moreover, the data show that relatively few trains would be eligible for investigation under one metric but not the other, meaning that the Board's proposal to focus on endpoint is sufficient for purposes of the on-time performance trigger.

II. Amtrak Overstates the Nature of Host Railroad Agreement on Schedules

Amtrak blithely suggests on opening that "measuring performance against the public schedule is . . . fair to the parties" because "the public schedules are negotiated between, and agreed to by, both the host railroad and Amtrak." Amtrak Opening Comments at 6. Such a statement implies that the host railroads have negotiated and agreed to the existing public schedules in light of current conditions, and further that the host railroads have agreed to measure Amtrak performance against those current public schedules. Both of these implications are false with respect to Norfolk Southern.

Randall W. Hunt, Norfolk Southern's Director – Joint Facilities and the designated NRPC Operations Officer responsible for overseeing Norfolk Southern's contractual relationship with Amtrak, explains how schedule adjustment requests are handled in his Verified Statement,

attached hereto as Exhibit A and made a part hereof (hereinafter “Hunt V.S.”). That process starts with schedules that have remained largely unchanged for many years, with no established means by which Norfolk Southern can require Amtrak to review or negotiate schedule changes in light of changing conditions. *See* Hunt V.S. at 2. Norfolk Southern has consented to minor modifications of those public schedules when requested by Amtrak so long as the request does not impose operational concerns or {{

}}. *Id.* at 3. But Amtrak has

consistently rebuffed Norfolk Southern’s frequent requests in recent years to reexamine many of those schedules, even in the face of historical data showing that the schedules are unrealistic. *Id.*; *see also* Norfolk Southern Opening Comments at 17-18. In fact, the majority of Amtrak’s requests have been to shorten schedules, even for trains that already do not consistently meet their existing schedules. Hunt V.S. at 3.

Even more importantly, Amtrak’s public schedules have no impact on the assessment of Norfolk Southern’s performance for purposes of awarding incentive or penalty payments under Amtrak’s and Norfolk Southern’s operating agreement. As Mr. Hunt explains, when the parties negotiated and restated their Off-Corridor Operating Agreement, dated February 1, 2006, the parties {{

}} “As a result, any change that Amtrak makes to its public schedule, whether shortening or lengthening the time allocated for the overall trip or a particular segment, has absolutely no impact on Norfolk Southern’s performance as measured by the contract.” *Id.* at 5.

In place of reliance on published schedules, Norfolk Southern agreed to a contractual measurement of performance only for the purposes of imposing the specific incentives and penalties covered by the agreement. {{

}} As a result, Mr. Hunt explains that Norfolk Southern's approval of any adjustments to Amtrak's schedules carry no financial implications for Norfolk Southern and certainly do not mean that Norfolk Southern agreed that the schedules are reasonable or set valid standards to measure performance. *Id.* at 5.

More fundamentally, Amtrak's argument in reliance on contractual behavior is misguided and contrary to public policy. Norfolk Southern's actions with respect to its contract, including agreeing to minor schedule changes, were taken only in the context of the terms of its private agreement. Using such actions as the justification for a completely different governmental regulatory scheme would deter future private agreements (in violation of 49 U.S.C. § 10101). To be clear, Norfolk Southern does not agree either that Amtrak's schedules are currently reasonable or realistic or that they provide an acceptable basis to assess host railroad performance in this regulatory setting.

III. Opening Comments Stress Importance of Accounting for Realistic Schedule in Defining On-Time Performance

Many commenters, from governmental agencies to individual Amtrak riders, highlighted the important role of realistic schedules in defining on-time performance. For example:

- **United States Department of Transportation (“DOT”):** “Finally, DOT recognizes that the Board may raise additional questions about Amtrak's schedules. Given the importance of this proceeding, it is appropriate for the Board to delve further into these questions and to obtain more information, with the understanding that simply lengthening schedules for the purpose of improving OTP may not be in the public interest.” DOT Opening Comments at 5 (emphasis added).
- **Commonwealth of Virginia Department of Rail and Public Transportation:** “Furthermore, STB should adopt a final rule only after the viability of Amtrak services schedules can be further assessed.” Commonwealth of Virginia Department of Rail and Public Transportation Opening Comments at 3.
- **North Carolina Department of Transportation (“NCDOT”):** “While NCDOT fully understands that the railroad environment is both dynamic and ever changing, both freight and passenger rail operations must maintain a competitive level of reliability to be commercially feasible. Developing specific metrics for on-time performance of passenger train and, ensuring preference where capacity permits, in addition to encouraging collaboration between stakeholders on capacity and schedules, is essential to ensure an adequate return on state and federal investments in both passenger and freight rail.” NCDOT Opening Comments at 3.
- **States for Passenger Rail Coalition:** “Consistent with defining OTP, standards should also be set for development of route schedules. While necessarily proprietary, capacity modeling tools used to develop route schedules need transparency and independent validation against which route schedules and OTP can be measured. . . . Many long distance trains frequently do not meet their schedules today nor come close to the proposed OTP definition.” States for Passenger Rail Coalition Opening Comments at 3.
- **Mark Corrison:** “If a trip could be completed in 3 hours under ideal circumstances but in actuality takes 4-5 hours due to factors including incidental track conditions, weather, interference or failure on the part of a host railroad, and other recurring delay factors, then the on-time measure should be so established to allow for such contingencies. In brief, do not establish an on-time metric of 3 hours, when it should really be 5 hours.” Mark Corrison Opening Comments at 1.

These comments recognize the importance of defining on-time performance in a way that requires or accounts for a realistically-achievable level of performance for individual trains. These and other comments also confirm the widely known fact that most Amtrak schedules are unrealistic, aspirational in nature, and divorced from current real world conditions. Norfolk Southern's Opening Comments offer two alternative ways for the Board to achieve this result. The Board should incorporate the historical performance of a train into either the underlying standard or individual tolerance when defining on-time performance. Either way, that use of historical performance will permit the Board to initiate investigations only when performance slips to substandard levels to ensure that the Board's efforts and resources are targeted at potential problems.

IV. Measuring On-Time Performance at Intermediate Stops Would Only Generate Additional Investigations Solely Attributable to Amtrak's Unrealistic Schedules

Amtrak and other commenters suggest that the Board should define on-time performance to include performance at intermediate stations, based on unsupported assertions that a large number of trains would meet endpoint metrics but fail at intermediate stations. *See, e.g.*, Amtrak Opening Comments at 8 ("On many routes 'on-time performance' would appear to be above 80% if only arrival at the endpoint is measured, although performance is significantly and chronically less than 80% at the stations all along the route."). Even if examining performance at intermediate stations did produce results significantly different from endpoint on-time performance, any discrepancies would be attributable to Amtrak's own approach to scheduling. Amtrak's schedules prioritize performance at endpoint and major stations over intermediate stops. In any event, data show that adding an All-Stations metric would complicate matters without meaningfully expanding the Board's investigational powers, because similar

measurements of endpoint and intermediate station performance are closely correlated. The Board should not define on-time performance in a way that facilitates additional investigations that are attributable primarily to Amtrak's approach to the internal allocation of schedule time.

A. Discrepancies Between Endpoint and Intermediate Station On-Time Performance Are Attributable to Amtrak's Schedule Construction

Many commenters justified their calls for evaluating on-time performance at intermediate stations by alleging that endpoint on-time performance frequently will overstate the performance of a train at intermediate stops, pointing to the fact that Amtrak's schedules contain significant padding in the last segment before the final destination.¹ Any such discrepancies are attributable to the way Amtrak constructs schedules. Amtrak, despite echoing the calls for metrics focused on intermediate stations in its opening comments,² did not even mention the integral role its scheduling plays in these issues.

1. *Allocation of Recovery Time Reflects Amtrak's Decision to Prioritize Performance at Endpoint and Certain Other Major Stations*

Norfolk Southern explained in its Opening Comments that Amtrak's overall schedules are fundamentally flawed and unresponsive to actual conditions on the rail network. *See generally* Norfolk Southern Opening Comments at 10-22. Amtrak constructs its schedules from a baseline of station dwell and Pure Running Time, the amount of time it would take a passenger train to move uninhibited over a line at speed. *See id.* at 14-16. Rather than properly adding

¹ *See, e.g.,* Southern Rail Commission Opening Comments at 1 ("To access host railroad tracks, Amtrak is forced to pad schedules to provide the host railroads ample flexibility in hitting on-time performance metrics."); Virginia Rail Policy Institute Opening Comments at 2 ("As a matter of practice, the host railroads regularly use the padding built into Amtrak's scheduled endpoint arrival times to cover losses in time at other points along the route.").

² *See* Amtrak Opening Comments at 2 (arguing that endpoint on-time performance "leaves unaddressed the many routes where performance appears to be above 80% when measured only at the last station on the route, but is significantly and chronically less than 80% at stations all along the route").

recovery time in a way that reflects real world operating conditions,³ Amtrak adds arbitrary amounts of recovery time based on a percentage of the overall schedule. *See id.* at 14-15. Such a formulaic approach cannot reflect the real world differences in traffic volume, traffic mix, infrastructure, and other factors affecting train performance that vary between different rail lines.

Amtrak's schedules also suppress performance via their internal distribution of recovery time. Many commenters correctly observe that Amtrak typically allocates most of this recovery time unevenly to segments immediately prior to the final endpoint or other major station stops. This practice is reflected in the breakdown of Amtrak's schedules on Norfolk Southern.

- Amtrak's Pennsylvanian train #43 operates westbound from New York City, NY, to Pittsburgh, PA.
 - For the first 215 miles of the route on Norfolk Southern, beginning after the stop in Harrisburg, PA, Amtrak's schedule includes just {{ }} of padding. This stretch includes stops in Lewistown, PA, Huntingdon, PA, Tyrone, PA, Altoona, PA, Johnstown, PA, Latrobe, PA, and Greensburg, PA. By comparison, Amtrak's schedule includes {{ }} of padding for the final 31 miles into the endpoint of Pittsburgh, PA.
- Amtrak's Capitol Limited train #30 operates eastbound from Chicago, IL, to Washington, D.C.
 - For the first 341 miles of its journey, Amtrak's schedule includes just {{ }} of padding, covering a stretch that includes stops in South Bend, IN, Elkhart, IN, Waterloo, IN, Toledo, OH, Sandusky, OH, Elyria, OH, and Cleveland, OH. By comparison, Amtrak's schedule includes {{ }} of padding for just 83 miles between Alliance, OH, and the final major station stop on Norfolk Southern in Pittsburgh, PA.

³ When starting from a theoretical calculation of ideal performance, FRA has indicated that recovery time must be added to schedules to reflect real world operating conditions: "Projected schedules for proposed corridor operations are typically prepared from computerized train performance calculators (TPC). These TPC systems simulate perfect train operations that almost never occur in the real world. All trains schedules prepared from TPC runs must have pads added to reflect real world operating conditions as outlined in section V(E) of this document." Office of Railroad Development, FRA, "Railroad Corridor Transportation Plans: A Guidance Manual," at 6 (July 8, 2005), *available at* <http://www.fra.dot.gov/eLib/Details/L04161>.

- Amtrak’s Crescent train #19 operates southbound from New York City, NY, to New Orleans, LA.
 - After leaving Washington, D.C., Amtrak’s schedule includes just {{ }} of padding for the first 324 miles on Norfolk Southern, including stops in Manassas, VA, Culpeper, VA, Charlottesville, VA, Lynchburg, VA, Danville, VA, Greensboro, NC, High Point, NC, and Salisbury, NC. By comparison, Amtrak’s schedule includes {{ }} of padding for the 43 mile segment leading into Charlotte, NC.
 - The Crescent’s schedule then has just {{ }} of padding over the next 208 miles on Norfolk Southern, including stops in Gastonia, NC, Spartanburg, NC, Greenville, SC, Clemson, SC, Toccoa, GA, and Gainesville, GA. By comparison, Amtrak’s schedule includes {{ }} of padding during the following 49 miles leading into Atlanta, GA.
 - Finally, Amtrak’s schedule contains just {{ }} of padding over the 319 miles between Birmingham, AL, and Slidell, LA, including stops in Tuscaloosa, AL, Meridian, MS, Laurel, MS, Hattiesburg, MS, Picayune, MS, and Slidell. By comparison, Amtrak’s schedule includes {{ }} of padding over the final 35 miles into the endpoint destination of New Orleans.

These examples demonstrate that Amtrak’s unrealistic schedules do not treat all segments and stations equally. Amtrak has made the conscious choice to distribute recovery time in a way that prioritizes schedule performance at endpoint and certain other stations while leaving unrealistically little amounts of flexibility for other segments and stations. This practice has been noted and critiqued by others:

Many contemporary intercity passenger rail services use a fixed percentage of minimum run time applied as slack time to the end terminal to help enhance reliability of train services. Slack time is not typically adjusted for expected rail traffic or even infrastructure characteristics. It is possible there are better methods of enhancing train reliability through schedule slack based on specific rail traffic conflicts or track configurations expected for the passenger service. In addition, distributing slack time to different points in the schedule based delay statistics could help make for a more robust schedule. Investigating these different methods and developing a model that could be applied to existing and future service would serve to increase the reliability of passenger services.

Brennan M. Caughron, et al., “Identifying and Prioritizing Shared Rail Corridor Technical Challenges,” 2012 Annual AREMA Conference, at 12 (2012), *available at* <http://railtec.illinois.edu/articles/Files/Conference%20Proceedings/2012/Caughron%20et%20al%202012.pdf>.

2. *Any Discrepancies Between Endpoint and Intermediate Station On-Time Performance Are a Consequence of Amtrak's Scheduling Decisions*

As a result of Amtrak's scheduling practices, any discrepancy whereby endpoint on-time performance measures would be better than on-time performance measured at intermediate stations likely would reflect Amtrak's own choices about how to allocate schedule time across different route segments. After all, if the train is exceeding the 80 percent threshold for endpoint on-time performance, it means that the overall transit time expectation – however that is ultimately calculated by the Board – is being reliably met. The only explanation for concurrent substandard performance at intermediate stations is that Amtrak has not distributed sufficient time throughout the schedule to allow for satisfactory on-time performance at intermediate stations.

In certain cases there may be valid reasons for such an approach. For example, including too much recovery time on certain segments on some routes might result in Amtrak frequently arriving early to the following station, which would be undesirable from both a safety and operations perspective if that station is on mainline track. Additionally, any excess recovery time will be lost if the train must wait for the scheduled departure time to leave the station; that time will not be available to compensate for delays that may arise later along the route, meaning more total recovery time will be needed. In other cases, the schedule simply may be unrealistically constructed. Either way, the Board should not define on-time performance in a

way that facilitates additional investigations that are attributable to Amtrak's approach to scheduling.

B. Concerns About Widespread Discrepancies Between Endpoint and Intermediate Station On-Time Performance Are Overblown

A decision to focus on endpoint performance is also appropriate because the concerns expressed on opening about widespread discrepancies between endpoint on-time performance and on-time performance at intermediate stations are dispelled by examining the data. Defining on-time performance with respect to a train's endpoint already would permit investigations of most trains that experience reduced on-time performance at intermediate stations, because endpoint on-time performance is highly correlated with on-time performance at intermediate stations when measured using similar methodologies. This fact should be unsurprising – a train that arrives late to its endpoint is likely to have been late to earlier stops, and a train that arrives on time at its endpoint is likely to have been on time at most earlier stops.⁴

To demonstrate, Norfolk Southern compared FRA's and Amtrak's measurement of endpoint on-time performance for Amtrak services operating over host railroads nationwide⁵ with Amtrak's proposed All-Stations on-time performance metric. *See* Amtrak Opening Comments at 1.⁶ The metrics were correlated (meaning both metrics were either above 80

⁴ Unless, of course, the schedule is unrealistically constructed. *See supra* Section II.A.

⁵ As Norfolk Southern explained on opening, the endpoint on-time performance statistics reported by FRA and Amtrak vary slightly from the Board's proposal, but the methodology is the closest available dataset to approximate the investigations that could result from the Board's proposal. *See* Norfolk Southern Opening Comments at 20 n.13 ("Generally speaking, the tolerances reported by FRA and Amtrak are slightly more forgiving than the Board's proposal for routes under 100 miles, slightly more restrictive for some routes between 150 and 550 miles, and identical for routes over 550 miles. In no case is the difference greater than 5 minutes.").

⁶ All-Stations on-time performance uses a similar methodology to FRA's and Amtrak's measurement of endpoint on-time performance by examining arrival compared to the public

percent or below 80 percent for a specific train in a given quarter) approximately 83 percent of the time.⁷ Even that percentage understates the overlap for the Board's purposes, because investigations can only result from two quarters of below 80 percent performance and many times All-Stations on-time performance exceeds endpoint on-time performance:

- During Amtrak's 2015 Fiscal Year, all of the trains that would have been eligible for investigation using All-Stations on-time performance (meaning that the metric fell below 80 percent for at least two consecutive calendar quarters) also would have been eligible using FRA's and Amtrak's measurement of endpoint on-time performance.⁸
- Endpoint on-time performance during 2015 would have permitted investigations of three trains that would not have been subject to investigation under an All Station metric.
- Fiscal Year 2014 reveals a similar story – no train would have been eligible for investigation using All-Stations on-time performance that would not have been eligible for investigation using FRA's and Amtrak's measurement of endpoint on-time performance,⁹ and again several additional trains would have been eligible for investigation using just endpoint on-time performance.
- Over the last five fiscal years, the two metrics would have only resulted in a five percent difference in the number of services eligible for investigations.¹⁰

schedule, although All-Stations on-time performance uses a single 15 minute tolerance rather than variable tolerances based on route length. *See supra* note 5.

⁷ Compare Exhibit B (listing All-Stations on-time performance figures), *with* Norfolk Southern Opening Comments Ex. C (listing endpoint on-time performance figures).

⁸ Compare Ex. B (showing that the Capital Corridor, New York Albany, Hiawatha, Carl Sandburg/Illinois Zephyr, Kansas City - St. Louis, Pacific Surfliner, Pennsylvanian, and Piedmont would have been eligible for investigation using All-Stations on-time performance in Fiscal Year 2015), *with* Norfolk Southern Opening Comments Ex. C (showing that the Capital Corridor, Hiawatha, Carl Sandburg/Illinois Zephyr, Kansas City - St. Louis, and Pacific Surfliner were the only services that would not have been eligible for investigation using endpoint on-time performance in Fiscal Year 2015).

⁹ The Capital Corridor, Hiawatha, Kansas City - St. Louis, and Pennsylvanian would have been eligible under both metrics. *See* Ex. B; Norfolk Southern Opening Comments Ex. C.

¹⁰ Either metric could have resulted in more than 470 investigations during that time period. Compare Ex. B (identifying 496 possible investigations using All-Stations on-time performance) *with* Norfolk Southern Opening Comments Ex. C (identifying 472 possible investigations using endpoint on-time performance). These numbers reinforce Norfolk Southern's position that Amtrak's schedules are unrealistic and using them as the baseline to define on-time performance

Additionally, the correlation might be even higher if not for minor methodological differences between the two metrics. *See supra* notes 5 and 6.

In short, the evidence does not provide any justification for the Board to alter its proposal. Relatively few trains would be ineligible for investigation solely due to the Board's focus on an endpoint on-time performance metric. After all, endpoint on-time performance measures the cumulative performance of the train in transiting the entire route. And for those trains with discrepancies, adding a measure of intermediate on-time performance will only result in investigations of trains that perform well overall but have internal distributions of runtime that do not reflect actual performance.

Of course, once an investigation is triggered, the Board has indicated that it will look broadly at all causes of delay as part of a "comprehensive and impartial on-time performance investigation." *See Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, Ex Parte 728, at 6 (STB served Dec. 28, 2015). Therefore, any assertion that using endpoint on-time performance as the statutory trigger somehow would not address performance in certain states or for certain passengers is nothing more than grandstanding.¹¹ The Board obviously will review such matters if raised in an investigation. Indeed, the more proper role for All-Stations on-time performance

produces results that do not filter investigations to address only periods of abnormal service performance. *See* Norfolk Southern Opening Comments at 20-22.

¹¹ *See, e.g.*, Amtrak Opening Comments at 2 ("Measuring performance only at the endpoints of Amtrak routes takes into account performance at only 10% of all Amtrak stations; leaves performance within 24 states unmeasured altogether since those states have intermediate stations but no endpoint stations; and leaves unaddressed the many routes where performance appears to be above 80% when measured only at the last station on the route, but is significantly and chronically less than 80% at stations all along the route."); Southern Rail Commission at 2 ("Broadening the rule to include all-stations on-time performance to end point on-time performance . . . ensures all 16 of our states' stops are accounted for rather than one.").

is as a potential piece of evidence during an investigation, to assist in identifying particular segments influencing overall performance and/or how Amtrak's schedule contributes to delays.

V. Conclusion

In the end, this rulemaking inevitably turns on the Board's treatment Amtrak's unreasonable and unrealistic schedules. Norfolk Southern demonstrated on opening that many Amtrak schedules are flawed. Other parties acknowledge the vital role that a realistic schedule serves in constructing a valid on-time performance metric. If the Board accepts Amtrak's schedules uncritically as the standard for defining on-time performance, an overwhelming number of Amtrak trains will be eligible for investigation at any time regardless of whether the trains are actually experiencing specific periods of substandard performance. The Board should define on-time performance in a way that serves that statutory gatekeeping role and focuses resources and investigations only on those trains failing to meet realistic standards of performance.

Respectfully submitted,



James A. Hixon
John M. Scheib
Greg E. Summy
Garrett D. Urban
Norfolk Southern Corporation
Three Commercial Place
Norfolk, VA 23510

*Counsel for Norfolk Southern Railway
Company*

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EXHIBIT A

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VERIFIED STATEMENT OF RANDALL W. HUNT

My name is Randall W. Hunt. I am employed by Norfolk Southern Corporation (“Norfolk Southern”) in the capacity of Director – Joint Facilities. My office is in Atlanta, Georgia. I have been employed by Norfolk Southern since 2004 and have occupied my present position since 2014. I hold two bachelor’s degrees from Duke University. The responsibilities of my present position include serving as Norfolk Southern’s” NRPC Operations Officer, a position designated by the Amended and Restated Off-Corridor Operating Agreement between Norfolk Southern and Amtrak, dated February 1, 2006 (the “Off-Corridor Agreement”), as responsible for Norfolk Southern’s performance of its contractual obligations. Prior to assuming my present position, I reported to Mark M. Owens, Norfolk Southern’s previous Director – Joint Facilities and NRPC Operations Officer, from 2011 to 2014, and my responsibilities included involvement in Amtrak matters.

Amtrak’s statement that “measuring performance against the public schedule is . . . fair to the parties” because “the public schedules are negotiated between, and agreed to by, both the host railroad and Amtrak,” Amtrak Opening Comments at 6, mischaracterizes the nature of Norfolk Southern and Amtrak’s contractual relationship. First, I describe the limited input that

Norfolk Southern has into Amtrak’s scheduling process, and the context in which Norfolk Southern has considered Amtrak requests for minor adjustments to such schedules prior to this rulemaking. Second, I explain how the Off-Corridor Agreement assesses incentive and penalty payments for performance using a {{ }} methodology that is entirely independent from Amtrak’s published schedules. Taken together, these two points demonstrate that Norfolk Southern has not provided any affirmation that Amtrak’s current schedules are a proper or realistic basis with which to assess host railroad performance.

I. Amtrak – Norfolk Southern Schedule Negotiation Process

The Off-Corridor Agreement {{

}}

As a consequence, Amtrak’s statement that the host railroads have “agreed to” the public schedules is true with respect to Norfolk Southern only in the narrowest possible sense. Norfolk Southern does not agree that many of Amtrak’s existing schedules are realistic or reasonable today. The operating and market conditions affecting the railroad, including but not limited to capacity, traffic volumes, traffic mix, and maintenance needs, are constantly in flux. Amtrak does not take these factors into account when constructing their schedules and does not adjust the schedules in response to changes in these factors. Therefore, Amtrak’s schedules cannot possibly be expected to be realistic years (or decades) after they are first published.

I personally have requested that Amtrak reconsider many of its current schedules on Norfolk Southern because Amtrak's own data shows that those schedules are not and cannot be consistently met. Most of those requests have been made in person or over the phone. *But see* Norfolk Southern Opening Comments Ex. B (attaching examples of written requests). Amtrak has rejected those requests and refused to negotiate any substantive changes in its longstanding schedules. Instead, Amtrak frequently has requested my consent to remove time from existing Amtrak schedules, often on those same trains that are already performing poorly. And all of the schedules for Amtrak's long distance trains over Norfolk Southern, such as the Capitol Limited and the Crescent, have had identical or nearly identical scheduled runtimes dating back to before I joined Norfolk Southern's Joint Facilities department in 2011, despite major changes in operating conditions on the railroad during that timeframe.

To be sure, Amtrak has made minor adjustments to some of its public schedules in the last few years, such as shifting the entire schedule to an earlier or later departure time or tweaking the distribution of time between certain segments. I (and my predecessor) have had a practice of approving such minor scheduling adjustments in good faith so long as those changes did not adversely affect operations or also {{

}}. But such approvals were not provided or intended to be evidence that Norfolk Southern agreed that Amtrak's overall schedule was reasonable or realistic, let alone that the public schedule provided a valid basis to assess Norfolk Southern's performance in handling those trains. Rather, as explained below, any such approvals were given in the context of a contractual relationship in which Amtrak's published schedules had no impact whatsoever on the assessment of incentive or penalty payments under our Off-Corridor Agreement.

II. Performance Payments and Penalties under Norfolk Southern and Amtrak's Off-Corridor Agreement Are Unrelated to Amtrak's Public Schedules

The Off-Corridor Agreement provides that Norfolk Southern may earn performance payments or incur penalty payments to Amtrak depending on the performance of Amtrak trains on Norfolk Southern. {{

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As a result, any changes that Amtrak makes to its public schedules, whether shortening or lengthening the time allocated for overall trips or particular segments, has absolutely no impact on Norfolk Southern's performance as measured by the contract. If Amtrak adds thirty minutes to one of its public schedules, whether through additional recovery time or dwell, Norfolk Southern receives no contractual benefits, even if train performance improves relative to the public schedule. Similarly, if Amtrak removes 15 minutes from one of its public schedules, Norfolk Southern is not affected under the Off-Corridor Agreement, even if the train is more frequently late due to the schedule change.

Instead, the only contractual factors relevant to Norfolk Southern are {{

}}

It is worth noting that {{

}}. Norfolk Southern agreed to the methodology while recognizing that the approach has limitations. For example, Norfolk Southern {{

}} when in fact the root causes of such delays are not attributable to Norfolk Southern at all. Norfolk Southern accepted the possibility of such inaccuracies and other limitations in exchange for ease in administration – conducting daily root-cause analyses of every delay of every Amtrak train would be excessive and simply unworkable in the context of a long-term

contract – and given the context of the {{ }}. All of this is to say that the Off-Corridor Agreement was the result of a negotiation. Norfolk Southern lives with the advantages and disadvantages of its contract, and Amtrak should too.

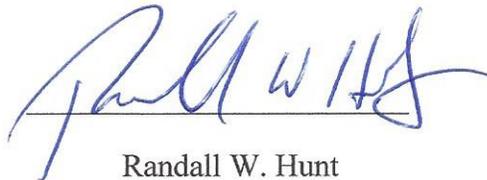
III. Conclusion

If Amtrak had wanted to prioritize the on-time performance of its trains in its contractual relationship with Norfolk Southern, it could have done so in negotiating the Off-Corridor Agreement. Instead, Amtrak is attempting to take Norfolk Southern’s actions under that contract, pursuant to which public schedules and schedule changes are not relevant to assessing contractual performance, and use them to justify the Board imposing a completely different measurement of on-time performance on Norfolk Southern that revolves entirely around Amtrak’s unrealistic schedules. For Amtrak to now assert that it is “fair” to impose an entirely different on-time performance scheme on Norfolk Southern based on our consent to minor schedule adjustments under our contract is a gross mischaracterization of our relationship.

Verification

I, Randall W. Hunt, verify under penalty of perjury that I am Director – Joint Facilities of Norfolk Southern Corporation, that I have read the foregoing document and know its contents, and that the same is true and correct to the best of my knowledge and belief.

Executed on March 30, 2016

A handwritten signature in blue ink, appearing to read "Randall W. Hunt", is written over a horizontal line. The signature is stylized and cursive.

Randall W. Hunt

EXHIBIT B

	Amtrak All-Stations OTP						
	Q1 Fiscal Year 2011	Q2 Fiscal Year 2011	Q3 Fiscal Year 2011	Q4 Fiscal Year 2011	Q1 Fiscal Year 2012	Q2 Fiscal Year 2012	Q3 Fiscal Year 2012
Capitol Corridor	97	96.6	95.9	96.1	95.3	95.7	95.1
Carolinian	57.5	69.9	59.5	62.9	71.1	77.8	65.3
Cascades	78.9	68.2	76	77.5	80.3	75.8	81.4
Downeaster	93.6	88.2	92	83.1	91.3	95.6	95.6
Andirondack	65.3	61	50.2	43.5	61.4	73.3	59.8
Ethan Allan Express	78.4	74.1	81	68.5	85.4	95.3	85.9
Maple Leaf	64.6	58.6	57.4	50.6	75.6	80.5	63.7
New York - Albany	92.1	92.8	94	89.4	96	98	95
New York - Niagara Falls	75.7	70.7	74.6	71.7	87.1	90.5	76.6
Heartland Flyer	88.6	88.2	85.7	65.8	86.8	84.9	77.2
Hiawatha	92.7	92.9	95.2	94.1	95.7	96.2	96.2
Hoosier State	76.5	74.4	63.9	71.9	72.9	75.6	79
Carl Sandburg / Illinois Zephyr	86.6	91.7	89.2	80.7	87.5	92.4	94.6
Illini / Saluki	43.1	52.1	45.7	54.3	59.4	58.6	56.6
Lincoln Service	69.7	71.3	67.8	60.2	73.9	87.3	72.6
Blue Water	81	75.5	65.4	63.1	74.5	84.7	86.3
Pere Marquette	77.3	81.6	70.5	72.4	76.2	78.9	75.6
Wolverine	54	43.2	37.1	33.4	50.7	58.5	59
Kansas City - St. Louis	90.4	88.2	89.4	73.2	87.8	94.5	88.4
Pacific Surfliner	86.2	88.6	88.2	83	84.9	83	89
Pennsylvanian	81.3	84.2	69.6	73.2	87.7	93.3	86.1
Piedmont	89	87.9	91.1	90.9	89.1	90.5	87.7
San Joaquin	89.8	90.4	87.3	86.4	87.3	89.2	88.1
Vermonteer	83.8	74.9	77.7	67.5	76.5	92	68.4
Auto Train	92.4	94.7	88.7	88.8	94	85.7	82.9
California Zephyr	51.2	48.4	40.7	20.7	41.2	51.9	43.6
Capitol Limited	51.7	52.1	35	33.5	42	65.8	55.3
Cardinal	37.9	42.2	29.9	30.2	46.9	43.3	31.1
City of New Orleans	50.7	62.2	46.3	59.2	59.7	65.5	65.4
Coast Starlight	68.1	55	57.9	61.5	71.8	61	61.7
Crescent	67.9	68.4	60.8	63.6	77.5	78.3	73.3
Empire Builder	35.4	24.1	36.5	24.3	43.9	62.6	45.4
Lake Shore Ltd	50.4	39.3	45.6	27.6	50.9	67.3	50.8
Palmetto	66.4	79.3	72.3	60.7	77.8	77.3	67.2
Silver Meteor	66.2	73.4	66.8	54.3	68.2	55.7	55.1
Silver Star	67.4	58.8	64.1	63	67.1	59.6	61.3
Southwest Chief	65.2	61.2	55.8	38.3	52.7	66.7	44.9
Sunset Limited	62.3	58.1	58.1	43.1	52.9	39.7	44.2
Texas Eagle	59.2	62.1	41.6	27.6	55.4	63.4	42.4
Total Investigations Per Quarter	25	24	25	27	24	20	20
Data drawn from Federal Railroad Administration, Rail Service Metrics and Performance Reports, http://www.fra.dot.gov/Page/P0532 (last accessed Feb. 1, 2016).							
Amtrak's Fiscal Year runs from October through September.							
Red = All-Stations OTP Below 80% During that Quarter							
Highlighted = 2 Consecutive Quarters of All-Stations OTP Below 80%, Eligible for Investigation							

	Amtrak All-Stations OTP						
	Q4 Fiscal Year 2012	Q1 Fiscal Year 2013	Q2 Fiscal Year 2013	Q3 Fiscal Year 2013	Q4 Fiscal Year 2013	Q1 Fiscal Year 2014	Q2 Fiscal Year 2014
Capitol Corridor	95.2	94.6	95.8	97	96.5	97.6	95.1
Carolinian	67.1	70.7	70.2	60.7	59.4	67.1	68.8
Cascades	77.4	81.3	77.6	84.8	80.9	81.6	66.9
Downeaster	92.8	92.5	93.8	90.1	83.5	89.4	90.1
Andirondack	49.8	54.5	64	57.9	40.8	61.7	54
Ethan Allan Express	80.3	85.3	89.4	87.2	80.3	82.3	79.4
Maple Leaf	52.8	72.9	68.7	59.9	56	59	47.8
New York - Albany	91.6	95.5	96.5	96.1	93	91.5	90
New York - Niagara Falls	68.8	84	81.8	76.8	66.4	73.3	53.6
Heartland Flyer	57	79.9	90.2	59.6	63.2	82.8	87.3
Hiawatha	92.8	88.4	94.5	94.2	95.7	94.7	87.3
Hoosier State	78.5	86.3	88.6	79.2	76.9	69.3	50.9
Carl Sandburg / Illinois Zephyr	84.8	93	90.8	88	87.1	70.2	64
Illini / Saluki	48.7	54.8	61.4	60.5	55.7	55.7	42.1
Lincoln Service	67.3	82.5	88.8	83.3	77.7	69.3	56.2
Blue Water	82.8	81.9	83.4	74	70	58.7	49
Pere Marquette	60.5	82.6	85.2	71.8	68.7	75	58.2
Wolverine	60.1	62.9	57.5	42	41.3	47.1	46
Kansas City - St. Louis	80.3	91.3	94.2	91	95.2	91.5	87.5
Pacific Surfliner	83.4	91.2	92.4	90.1	87.9	85.7	89.1
Pennsylvanian	88.1	90.2	91.3	90.4	86.9	88.6	82.4
Piedmont	87.4	91	92.3	88.8	89.9	87.7	89.2
San Joaquin	86.2	85.7	83.4	65.6	78.5	81.6	80.1
Vermont	80.2	89.1	88.9	77	60.6	71	67.1
Auto Train	92.3	83.7	79.9	84.6	91.3	87	66.4
California Zephyr	48.2	62.2	68.8	49.9	48.7	53.3	37.1
Capitol Limited	45.7	65.2	66.8	53.2	44.1	55.3	40
Cardinal	40.1	51.3	62.4	44.6	37	44.3	41.3
City of New Orleans	69.7	63.9	76.2	76.7	67.1	62.7	41.4
Coast Starlight	50.7	53.3	69.3	67.4	61.7	60.3	58.1
Crescent	68.1	77.7	71.3	66	56.6	63.3	56.5
Empire Builder	24.5	39.9	50.4	43.3	24.1	23	16
Lake Shore Ltd	40.9	59.9	54.6	46.4	35.4	36.8	24.5
Palmetto	70	76.7	72.9	68.4	67	65.1	64.5
Silver Meteor	46.5	51	47.7	51	47.1	47.7	38
Silver Star	51.7	55.3	52.5	57.8	55.2	48.4	50.3
Southwest Chief	53.4	70.2	71.3	53.3	47.1	53.2	53.3
Sunset Limited	53.2	65.2	54.3	55.1	54.7	56.1	48.5
Texas Eagle	36.8	56.6	54.4	47.1	44.8	36.4	36.5
Total Investigations Per Quarter	24	20	19	20	26	25	26
Data drawn from Federal Railroad Administration, Rail Service Metrics and Performance Reports, http://www.fra.dot.gov/Page/P0532 (last accessed Feb. 1, 2016).							
Amtrak's Fiscal Year runs from October through September.							
Red = All-Stations OTP Below 80% During that Quarter							
Highlighted = 2 Consecutive Quarters of All-Stations OTP Below 80%, Eligible for Investigation							

	Amtrak All-Stations OTP					
	Q3 Fiscal Year 2014	Q4 Fiscal Year 2014	Q1 Fiscal Year 2015	Q2 Fiscal Year 2015	Q3 Fiscal Year 2015	Q4 Fiscal Year 2015
Capitol Corridor	96.8	96.4	94.9	95.2	94.8	95.3
Carolinian	58.9	60.9	55.4	65.8	50.4	49.1
Cascades	71.7	71.5	67.6	70.3	76.1	73.4
Downeaster	63.9	80.8	68.8	58.8	49.1	79
Andirondack	47.2	54.2	64.1	66	54.6	40.8
Ethan Allan Express	81.1	79.7	81.8	75.5	75.7	67.6
Maple Leaf	48.5	47.7	46.3	45.4	45.6	42.6
New York - Albany	92.3	90.9	92.9	88.6	88.7	85.1
New York - Niagara Falls	51.8	57.2	51.6	50.4	43.6	42.7
Heartland Flyer	60	71.6	87.7	65.1	51.9	70.7
Hiawatha	96.5	94.1	92.2	92.3	90.5	96.7
Hoosier State	69.2	62.7	69.8	73.9	72.2	73.7
Carl Sandburg / Illinois Zephyr	77.2	73.1	82.7	89.4	94.5	91.4
Illini / Saluki	49.2	48.7	29.8	37.1	33.3	35.4
Lincoln Service	63.7	60.7	68.8	73.1	54.6	56.2
Blue Water	60.8	55.6	63.3	70.9	70.2	67.2
Pere Marquette	71.2	66.1	64.7	72.8	77.7	81.7
Wolverine	56.8	49.9	46	53.4	60	54.1
Kansas City - St. Louis	70.2	82.9	79.4	89.6	82.7	86.3
Pacific Surfliner	87.5	87.1	84.4	90.4	89	88.4
Pennsylvanian	83	84.4	80.5	83.1	79.6	81.8
Piedmont	88.5	86.8	85.7	87.3	77.9	83.7
San Joaquin	73.5	77.4	72	77.9	75.3	81.5
Vermont	79	71.7	70.9	75.6	87.3	84.1
Auto Train	66.4	76.3	87.5	78.9	69	73.4
California Zephyr	26.5	33.6	41.8	58.2	34	37.2
Capitol Limited	27.8	35.9	36.1	38.2	33.4	31.3
Cardinal	42.8	40.4	30.8	49.1	46	43.5
City of New Orleans	53.4	52.7	44.7	41.7	63.1	64.2
Coast Starlight	54.8	55.7	49.3	72.4	62.2	48.2
Crescent	52.1	56	55.6	55.5	45.5	48.5
Empire Builder	20.5	20.6	28	46.9	34.3	32
Lake Shore Ltd	28	26.1	36.6	32.7	40.1	33.9
Palmetto	66.5	64.9	71.2	66.4	61.5	63.5
Silver Meteor	48	45.1	60.1	50.6	48	43.3
Silver Star	46.2	48.7	57.3	46.8	41	46.5
Southwest Chief	44.3	44.8	31.6	36.5	33.3	37.1
Sunset Limited	42.9	48.5	46.8	47.4	34.4	51.3
Texas Eagle	30.8	33.3	38.8	30.4	18.9	20.3
Total Investigations Per Quarter	28	30	27	28	30	28
Data drawn from Federal Railroad Administration, Rail Service Metrics and Performance Reports, http://www.fra.dot.gov/Page/P0532 (last accessed Feb. 1, 2016).						
Amtrak's Fiscal Year runs from October through September.						
Red = All-Stations OTP Below 80% During that Quarter						
Highlighted = 2 Consecutive Quarters of All-Stations OTP Below 80%, Eligible for Investigation						