

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

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**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

AMTRAK'S SUPPLEMENTAL INITIAL BRIEF

William H. Herrmann
Christine E. Lanzon
National Railroad Passenger Corporation
(Amtrak)
60 Massachusetts Avenue, N.E.
Washington, DC 20002

Neil K. Gilman
Perie Reiko Koyama
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, N.W.
Washington, DC 20037
ngilman@HuntonAK.com
pkoyama@HuntonAK.com
(202) 955-1500

Thomas R. Waskom
Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
twaskom@HuntonAK.com
(804) 788-8200

*Counsel for the National Railroad Passenger
Corporation (Amtrak)*

I. INTRODUCTION

The purpose of this proceeding is to resolve the dispute between Amtrak and Metra about the framework for Metra's ongoing use of Amtrak's services and property at Chicago Union Station (CUS). Federal law—specifically, 49 U.S.C. § 24903(c)(2)—requires Metra to fully compensate Amtrak for the benefits Metra receives at Chicago Union Station. This dispute arose in part from Metra's refusal to pay its fair share. But the dollars and cents are only half of the dispute. The terms of the agreement governing Metra's access to Chicago Union Station are just as important as the amount of compensation Metra owes, because the terms define what the compensation is *for*. Appropriate compensation cannot be decided in a vacuum. The Board must also decide the material terms for the parties' agreement, where those terms remain in dispute, in order for this proceeding to reach a final resolution.

II. BACKGROUND

On February 7, 2020, the parties jointly filed a list of issues for determination, which included (1) several legal issues, (2) compensation (including the categories of maintenance of way, train dispatching, policing, station operation and maintenance, and ground power), (3) capital expenditures, (4) other terms of the parties' agreement, and (5) the form of the agreement. On May 18, 2020, the parties filed a joint stipulation regarding compensation for maintenance of way and train dispatching, certain square footage allocations for station operations and maintenance compensation, and the use of an annual index factor. Consistent with the above-described issue list and joint stipulation, the parties filed their opening briefs on May 20, 2020, and their reply briefs on June 24, 2020.

On June 19, 2020, the parties filed a second joint stipulation, agreeing on an allocation factor for certain purposes (based on an equal weighting of train movements and ridership at Chicago Union Station), and agreeing that the parties would attempt to mediate issues 4 and 5 (the

terms in the parties' agreement, with the exception of liability, and the form of the agreement). The parties agreed that mediation and any subsequent negotiations would be completed by October 30, 2020 (which was later extended to December 4, 2020). On July 6, 2020, the Board initiated Board-sponsored mediation, declined the parties' request to adopt a procedural schedule for post-mediation filings, and held the proceedings in abeyance. Of note, the Board did not make a determination as to any of the issues raised in the opening and reply briefs, including issues 1 through 3.

Mediators from the Federal Mediation and Conciliation Service (FMCS) and the Board met with the parties on September 22, September 23, October 5, October 6, October 29, and October 30, 2020, for six full days of mediation. The mediation team met with the parties again on November 12, November 30, and December 2, 2020, for an additional three days of mediation. While the parties were able to agree on some issues (those indicated in the Stipulation filed on January 19, 2021), others remained unresolved. The parties provided notice to the Board that mediation had ended on December 7, 2020. The parties agreed that a list of unresolved issues would be filed on December 15, 2020, opening statements on those issues would be filed on January 22, 2021, and replies would be filed on February 1, 2021.

In addition to the (1) legal issues, (2) compensation, and (3) capital expenses previously briefed by the parties and ripe for decision by the Board, the parties also dispute issues relating to the terms and form of the parties' agreement. The parties' new list includes 16 issues. Amtrak believes 10 of those issues should be addressed by the Board and reflected in the parties' new agreement:

1. ***Dwell Time and Storage Time*** – The standards governing the presence of Metra equipment at CUS other than during boarding or detraining. (Section 2.1.4.1).
2. ***Schedules*** – The procedure and standards governing changes to Metra's train schedules. (Section 3).

3. **Service Levels** – The procedure and standards under which Metra may request the right to increase the number of trains it operates to and from Chicago Union Station beyond what the parties have agreed to as the “Standard Schedule.” (Section 4.2).
4. **Policing** – Terms governing the policing services Amtrak provides at CUS. (Section 6.2).
5. **Dispatching Feed** – The features of any Dispatching Feed provided to Metra, the terms under which the Dispatching Feed is provided, and the compensation for the Dispatching Feed. (Sections 6.3 and 12.6).
6. **Recalculation of Base Costs** – The procedure for any periodic recalculation of the base costs incurred by Amtrak at CUS that must be allocated in part to Metra. (Section 12.10.3).
7. **Termination for Default** – Whether the agreement should include a provision governing termination for material default, and if so, the procedure for such a termination. (Sections 17.2 and 17.3).
8. **Dispute Resolution** – The procedure for resolving disputes regarding Metra’s use of CUS. (Section 18).
9. **Audit** – The procedure for, and scope of, any financial audit conducted by Metra of Amtrak CUS operations and services. (Section 23.1).
10. **Assignability** – The extent to which either Party may assign the agreement. (Section 25).

In Amtrak’s view, the other six need not be addressed in its initial supplemental brief, although Amtrak will address them in reply as necessary to respond to Metra.¹

The following supplemental brief summarizes and supports Amtrak’s position on each of these issues. Amtrak incorporates by reference its opening brief and reply brief, in which many of the above issues were addressed. To the extent a term is not addressed in this supplemental brief,

¹ Those six issues are:

1. Modification of ingress, egress, and square footage used by Metra and its customers at CUS. (Section 2.3).
2. The standard under which Amtrak must provide janitorial and maintenance services at CUS. (Section 4.2).
3. Funding for extraordinary maintenance and capital improvements for any areas of Chicago Union Station used by Metra alone, to the extent the extraordinary maintenance or capital improvement is necessary to address state-of-good-repair. (Section 2.4).
4. Whether Metra may assert control over emergency responses at Chicago Union Station under certain circumstances, and if so, the procedures governing that control. (Section 8.2).
5. The credits or charges available for material delays of passenger service relating to invocation of the Service Disruption Plan. (Section 8.3).
6. Whether Metra is entitled to any parking at CUS. (Section 14).

Amtrak refers to its prior briefing and the June 2019 Proposed Agreement (attached as Ex. 1 to Suchy V.S. in Amtrak’s Opening Statement, filed May 20, 2020).²

III. LEGAL STANDARD

49 U.S.C. § 24903(a)(6) authorizes Amtrak to “make agreements with other carriers and commuter authorities to ... make arrangements for ... commuter rail passenger transportation over, rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 *et seq.*) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801 *et seq.*).” With respect to such agreements, Section 24903(c) governs the compensation for transportation over these rights of way and facilities. If the parties cannot agree, Section 24903(c)(2) authorizes the Board to determine compensation:

The Board shall assign to a rail carrier obtaining transportation under this subsection the costs Amtrak incurs only for the benefit of the carrier, plus a proportionate share of all other costs of providing transportation under this paragraph incurred for the common benefit of Amtrak and the carrier. The proportionate share shall be based on relative measures of volume of car operations, tonnage, or other factors that reasonably reflect the relative use of rail property covered by this subsection.

§ 24903(c)(2).

The Board must not only determine appropriate compensation, but also the appropriate material terms for the agreement between Amtrak and Metra. Section 24903(c) contemplates that the Board will impose terms of operation on the parties, both while a proceeding is pending and in a final order. The Board’s interim order in this matter suggested as much, *see* July 26, 2019 Interim Order at 2 (ordering access to continue “under the ***terms*** of the 1984 Agreement”) (emphasis

² The June 2019 Agreement provided a helpful baseline for many issues and sections. However the mediation was helpful in clarifying for Amtrak certain areas where its original proposal required changes. Accordingly, Amtrak’s proposed agreement language for certain sections, including Sections 18 and 25, differ from its almost two-year old proposal.

added); and both parties agree that the Board must impose terms where necessary, *see* Issues for Determination (filed on February 7, 2020); Metra’s Answers to Amtrak’s Second Interrogatories (agreeing that the Board has the authority to impose terms of the Parties’ agreement) (attached as Ex. 4 to Amtrak’s Opening Statement). The purpose of Section 24903(c) is to provide parties who are unable to agree a framework for operations going forward. Compensation alone cannot provide that framework.

IV. ARGUMENT

1. Dwell Time and Storage Time

The first material contractual term in dispute concerns the standards governing the presence of Metra equipment at Chicago Union Station other than during boarding or detraining. On that issue, Amtrak proposes the following language:

(Metra Equipment) Section 2.1.4.1: Metra shall have a limited right to store any Unit of Equipment at CUS, and shall not exceed the following limitations:

- Metra shall not store any equipment in CUS during overnight hours except for one protect locomotive. Metra may provide a written request for temporary right for additional overnight storage.
- Metra trains may dwell at platforms for boarding, detraining and other turnaround servicing as described in Section 2.1.4 above, for the following periods:
 - Weekday (Peak Hours): No more than 10 minutes.
 - Weekday (Off-Peak): No more than 1 hour.
 - Weekends/Holidays: No more than 5 hours.

It is not reasonable, safe, or feasible to allow Metra an unlimited right to store its equipment—which can include large pieces of machinery and vehicles such as locomotives—at Chicago Union Station. Amtrak grants Metra access to Chicago Union Station to provide commuter rail service to Metra customers. *See* Second Verified Statement of Paul O’Mara (“Second O’Mara V.S.”) at ¶ 24. The purpose of having Metra equipment on Amtrak’s Chicago Union Station property is to provide that service. *Id.* Metra should not use Chicago Union Station

as a storage facility. Metra does not have a contractual right to do so, and in the absence of Amtrak's agreement, the Board should not create a contractual right to do so. *See id.* at ¶ 25.

Equipment stored at platforms impedes Amtrak's ability to have maintenance and capital work performed. *Id.* at ¶ 26. Delays in work in areas where Metra has improperly stored equipment will also result in the cumulative effect of delays in work elsewhere. *See id.* Additionally, the use of platforms and tracks by Metra for storage exacerbates the effect of any service disruption, because it makes it more difficult for Amtrak to modify track use to resolve the disruption. *Id.* at ¶ 27. Metra currently stores some equipment at Chicago Union Station, both between rush hours and overnight. But Metra has its own storage yards, and it should store its equipment there, not on Amtrak property. *Id.* at ¶ 28.

At the same time, Amtrak recognizes that in order to provide service to its customers, Metra must, in certain circumstances, keep its equipment on Chicago Union Station property at times other than boardings and alightings. *Id.* at ¶ 29. For instance, Metra may have to perform minor maintenance on equipment at a platform, and keep limited equipment at Chicago Union Station overnight to address potential emergencies. *Id.* For this reason, Amtrak is amenable to allowing Metra a limited right to store its equipment at the Station, as outlined in the proposed language for Section 2.1.4.1 as described.

Amtrak's proposed Section 2.1.4.1 for the New Agreement is consistent with the principles and goals stated above, and strikes a balance between Amtrak's right to control its property and Metra's desire to keep equipment at Chicago Union Station longer than is necessary to provide direct services to customers.

2. Scheduling

The next material contractual term in dispute concerns the procedure and standards governing changes to Metra's train schedules. On that issue, Amtrak proposes the following language:

Section 3. Schedule of Metra Operations: Metra Commuter Rail Service schedules to and from CUS effective May 1, 2019 are attached hereto as Exhibit B (the "Standard Schedule"). Due to reduced Metra passenger levels resulting from COVID-19, Metra has elected to reduce service level to the schedule attached as Exhibit XX ("Reduced Schedule"). Amtrak shall advise Metra at the earliest possible date of anticipated changes in the schedules of Amtrak intercity passenger trains operated in and out of CUS if those changes will also affect Metra Commuter Rail Service schedules. Amtrak agrees that it shall not unnecessarily change the schedule of its operations in a way that requires a change in the schedule of a Metra commuter train without first considering reasonable alternatives to such a change. To the extent reasonably necessary to avoid conflicts with Amtrak's existing or future scheduled intercity rail passenger service, the schedules for Metra Commuter Rail Service shall be revised promptly after receipt of sixty (60) days written notice from Amtrak of a change that is to be made in accordance with the provisions of this Section 3.

As the owner and controlling operator of Chicago Union Station, Amtrak is responsible for coordinating train schedules, including service levels. Second O'Mara V.S. at ¶ 12. Because Amtrak controls Chicago Union Station, it must have final say over schedules and service levels at Chicago Union Station, within reasonable limits. *Id.* at ¶ 13. Amtrak has always worked cooperatively with Metra to ensure that Metra is able to provide its customers an adequate and appropriate level of commuter service while also maintaining and potentially expanding intercity passenger rail service. *Id.*

Coordination of train schedules at Chicago Union Station is critical, and a necessary component of a well-functioning, safe train station. *See id.* at ¶ 14. Coordination of scheduling is not limited to the operation of trains. Such coordination is also necessary for preventive and scheduled maintenance and capital work at the station, and protecting worker safety by adjusting train schedules. *See id.* Amtrak will continue to cooperate with Metra on scheduling issues. *See*

id. at ¶ 15. But ultimately, a single party must have final say over scheduling. *Id.* This is a reasonable manner of ensuring safe and efficient train schedules at the Station. Amtrak will not unnecessarily change its own schedule in a way that affects Metra's schedule without first considering reasonable alternatives. *Id.*

3. Service Levels

The next material contractual term in dispute concerns the procedure and standards under which Metra may request the right to increase the number of trains it operates to and from Chicago Union Station beyond what the parties have agreed to as the "Standard Schedule." On that issue, Amtrak proposes the following language:

(Planning and Service Level Changes) Section 4.2.1: If Metra desires to expand the number of trains above that permitted in the Standard Schedule, it must provide a written request for such expansion to Amtrak at least 30 days before the proposed introduction of such additional service, and demonstrate that the request is compliant with the service levels included in the most recent joint planning effort. Permanent changes to the Standard Schedule shall require an amendment to this Agreement.

As with scheduling, as the owner and controlling operator of Chicago Union Station, Amtrak has the responsibility to coordinate service levels among the users of the station. Second O'Mara V.S. at ¶ 17. This also requires Amtrak to have ultimate decision-making authority regarding service levels. *Id.* Due to the COVID-19 pandemic, both Amtrak's and Metra's ridership at Chicago Union Station have decreased significantly. *Id.* at ¶ 18. Before the pandemic, capacity was constrained. *Id.* In fact, *any* service disruption during peak commuter periods could immediately overtax the system, leaving service with no room for error. *Id.* Amtrak anticipates that ridership will regain its pre-pandemic level, at which time the same capacity constraints will limit Amtrak's and Metra's ability to provide superior service to their customers. *Id.* at ¶ 19.

For these reasons, Amtrak believes the parties should jointly develop a long-term solution to capacity constraints at Chicago Union Station. *Id.* at ¶ 20. This requires a formalized joint

planning process. *Id.* The New Agreement should formalize that joint planning process. *Id.* Amtrak does not anticipate any difficulty with the parties' restoring their service levels to those in place prior to the pandemic. *Id.* at ¶ 21. But any increases above that level will require significant coordination between the parties. *Id.* The New Agreement should formalize the process by which Metra requests increases in service levels above pre-pandemic levels. *Id.* at ¶ 22. In service of these objectives, Amtrak's proposed language on this term builds in a written notice provision.

4. Terms of Dispatching Feed

The next material contractual term in dispute concerns the features of any Dispatching Feed provided to Metra, the terms under which the Dispatching Feed is provided, and the compensation for the Dispatching Feed. On those issues, Amtrak proposes the following language:

Section 6.3. Dispatching Feed: Amtrak shall provide to Metra real-time access to view the movement of Metra Commuter Rail Service operations in and out of CUS from the "glass house" locations established at the track level adjacent to tracks 4 and 19. Train data from the Amtrak CUS Dispatch Operations Center shall also be made available to be fed directly to two off-site laptops assigned to Metra authorized personnel ("Dispatching Feed"). Metra recognizes that Dispatching Feed system outages may occur due to planned or unplanned work at CUS. Where feasible, Amtrak will endeavor to communicate to Metra in advance of any potential activities that may impact the Dispatching Feed. Section 12.6 compensation includes the Dispatching Feed, Amtrak-provided equipment exclusively used by Metra, repair, replacement, licenses, software upgrades, cabling, and installation.

Section 12.6. Dispatching Feed: Dispatching Feed. Metra shall pay Amtrak \$500 per month for access to the Dispatching Feed referred to in Section 6.3 above. The amount referred to in this Section 12.6 will be subject to annual indexing as set forth in Section 12.10.1 below.

Amtrak is responsible for providing dispatching services at Chicago Union Station. Second O'Mara V.S. at ¶ 5. Amtrak's dispatchers are responsible for managing track use, ensuring that trains are routed safely and efficiently, and ensuring the safety of personnel working on and around the track. *See id.* Amtrak performs its dispatching function at Chicago Union Station from the Chicago Union Station Dispatch Operations Center. *Id.* at ¶ 6. Within the Dispatch Operations

Center, Amtrak personnel analyze current track states via computer feed (the “Dispatching Feed”), communicate via radio with various personnel such as train engineers, and balance multiple demands placed on track use. *Id.*

Amtrak currently provides the Dispatching Feed to Metra personnel located in the “Glass House” locations established at the track level adjacent to Tracks 4 and 19. *Second O’Mara V.S. at ¶ 7.* Amtrak also provides the Dispatching Feed to two off-site Metra laptops assigned to Metra personnel. *Id.*

Amtrak installed the cabling and hardware used to provide the Dispatching Feed to the Glass House, and incurred the costs related to such installation. *See id. at ¶ 8.* Amtrak also incurs costs for the licenses, software, upgrades, repairs, and replacements for Metra’s Dispatching Feed. *Id.* Provision of the Dispatching Feed to Metra does not benefit Amtrak; it solely benefits Metra. *Id. at ¶ 9.* The costs Amtrak incurs associated with the provision of the Dispatching Feed to Metra are not included in the Dispatching costs stipulated to by Amtrak and Metra. *Id. at ¶ 10; see also* June 2019 Proposal (including separate \$500 per month payment for Dispatching Feed).

Amtrak’s proposed Section 6.3 accurately describes the Dispatching Feed services that Amtrak currently provides to Metra and that Amtrak should—in Amtrak’s view—continue to provide. *Id. at ¶ 11.* Amtrak’s proposed Section 12.6, which requires Metra to pay a monthly fee of \$500 for the Dispatching Feed, would compensate Amtrak for the costs it incurs for Metra’s sole benefit in providing Metra the Dispatching Feed. *Id.*

5. Policing

The next material contractual term in dispute concerns the policing services Amtrak provides at Chicago Union Station. On that issue, Amtrak proposes the following language:

Section 6.2.1. Policing: Amtrak police shall patrol CUS and any other areas that are jointly used by Amtrak intercity passenger rail service and Metra Commuter Rail Service. Metra’s police force may patrol and monitor areas used by Metra

passengers and Metra Commuter Rail Service trains at Metra's discretion. The Parties agree that their respective police and security forces shall work cooperatively. This shall include direct assistance by Metra Police Officers for crowd control during service disruptions and major crowd surge events.

The Amtrak Police Department ("APD") is responsible for providing policing services at Chicago Union Station. Amtrak is empowered under 49 U.S.C. § 24305(e) to "directly employ or contract with rail police to provide security for rail passengers and property of Amtrak." APD officers have the same police authority as local or state law enforcement officials within their jurisdiction. See First Verified Statement of Deputy Chief Joe Patterson at ¶ 5 (filed with Amtrak's Opening Statement on May 20, 2020). APD officers fulfill traditional policing functions at Chicago Union Station. *Id.* at ¶ 14. They patrol and secure the Station, respond to calls for service, maintain order, assist passengers and other members of the public at the Station, and otherwise seek to ensure the safety of those using the Station and the security of the Station itself. *Id.* The roles and duties of APD are explained fully in the First and Second Verified Statements of Deputy Chief Joe Patterson, and Amtrak's opening and reply briefs.

While Metra Police do not regularly patrol Chicago Union Station, Metra Police periodically assist APD with crowd control, as the majority of passengers at Chicago Union Station are Metra passengers. Under the CUS Service Disruption Plan, Metra Police work with APD to provide crowd control at Chicago Union Station during service disruptions and major crowd surge events. Crowd control is an important security function necessary to keep all passengers and persons at Chicago Union Station safe. Particularly with major crowd surge events, more officers are needed to effectively manage and support passengers. For these reasons, cooperation between APD and Metra Police and direct assistance by Metra Police is reasonable and necessary to ensure safety and security at the Station.

6. Termination for Default

The next material contractual term in dispute concerns whether the agreement should include a provision governing termination for material default, and if so, the procedure for such a termination. On those issues, Amtrak proposes the following language:

Section 17.2 Termination for Default: In the event that Metra fails to make two consecutive monthly payments, not otherwise disputed, by the due dates required under this Agreement, or otherwise fails to meet its material obligations under this Agreement, including those violations or failures described in Sections 2 or 20, Amtrak may elect to terminate this Agreement for default. If Amtrak elects to terminate this Agreement for default, it shall notify Metra of its election and the basis for that action. The termination shall be effective ninety (90) days after the date of notice, except that a termination for default shall not become effective if Metra (1) cures the default within fourteen (14) days of the date of notice for failure to make payments in accordance with Section 12; (2) commences to address the cause within thirty (30) days of the date of notice and diligently complete thereafter for all other failures; or (3) initiates the dispute resolution process in accordance with Section 18.

Section 17.2.1. Termination Costs: In the event this Agreement is terminated for default, Metra shall pay to Amtrak all fees compensable under Section 12 for Metra Commuter Rail Service and Contract Services performed prior to the effective date of termination, plus Amtrak's reasonable costs of termination and removal of Metra's personal property.

Section 17.3. Effect of Termination: Upon termination of the Agreement, all rights and obligations of the Parties hereunder will terminate except for rights and obligations, whether liquidated, determined, contingent or otherwise, which had arisen prior to or as a result of such termination. To the extent that certain costs are incurred by Amtrak prior to or as a result of the termination pursuant to this Section 17, Metra shall be obligated to pay Amtrak costs of termination incurred thereafter which are directly attributable to the orderly cessation of Metra Commuter Rail Service and removal of Metra's personal property.

Amtrak does not anticipate that the New Agreement would ever be terminated (although the Parties agree it will expire in 10 or 20 years). *See* Verified Statement of Thomas Moritz ("Second Moritz V.S.") at ¶ 13. But Amtrak believes that the New Agreement should still plan for the unlikely possibility that one party would materially default. *Id.* If one party materially defaults, the other party should not be required to continue performing its obligations. *Id.* Most

importantly, Amtrak believes that Metra should not be able simply to refrain from paying or that Amtrak's remedy in that event should be limited to seeking payment from Metra. *Id.* In addition, Amtrak should not be required to continue providing service under the agreement if Metra fails to make payment. *Id.*

Amtrak has proposed Sections 17.2 and 17.3 to specify the circumstances under which a party can terminate for cause. Second Moritz V.S. at ¶ 14. Amtrak's proposal provides multiple opportunities and significant time for the breaching party to cure before termination. *Id.* Amtrak's proposal is also favorable to Metra in that it expressly states that failure to make a timely payment due under the New Agreement will not constitute a material default until two payments are missed, and the payments are not the subject of a dispute proceeding. *Id.* Even then, Metra has a chance to cure before termination is permitted. *Id.*

Amtrak's proposal is consistent with the 1984 Agreement, which outlined similar procedures upon Metra's default in payment. *See id.* at ¶ 15; 1984 Agreement, Section Nine (attached as Ex. A to Amtrak's Initial Petition, filed July 22, 2019). Amtrak's proposal includes a cure provision that is more favorable to the breaching party than the 1984 Agreement. *Id.*

7. Recalculation of Base Costs

The next material contractual term in dispute concerns the procedure for any periodic recalculation of the base costs incurred by Amtrak at Chicago Union Station that must be allocated in part to Metra. Amtrak and Metra have negotiated and reached an agreement on several terms in the New Agreement, including the types of base costs incurred (maintenance of way, dispatching, policing, station operations and maintenance, and ground power), the amount of maintenance of way and dispatching base costs, and the parties' relative shares of certain of these costs. Second Moritz V.S. at ¶ 8; 5/18/2020 Joint Stipulation at 3–4. One of the terms, Section 12.1.1, permits either party to request recalculation of the parties' relative shares of the base costs

incurred by Amtrak for operation of Chicago Union Station. Second Moritz V.S. at ¶ 8. Section 12.1.1 does not address periodic recalculation of the base costs themselves. *Id.* On that issue, Amtrak proposes the following language:

Section 12.10.3.: In order to reflect current cost levels and any applicable operational changes, the Base CUS Usage Fee may be recalculated every seven fiscal years (the “Discretionary Recalculation”) and shall be recalculated at least every 10 fiscal years (the “Mandatory Recalculation”), and at no other time. Requests for Discretionary Recalculations must be made by January 31 of the preceding year. The first fiscal year shall be deemed to have ended on September 30, 2019. The first permissible Discretionary Recalculation must be requested by January 31, 2026. The methodology that will be used to perform such recalculation will be consistent with (i) the parties’ May 18, 2020 stipulation as to costs associated with Maintenance of Way and Dispatching; and (ii) the Board’s determination of compensation for Policing and Station Operations and Maintenance in the proceeding Docket No. FD 36322. Any recalculated Base CUS Usage Fee shall be effective as of October 1 of the year of the recalculation’s commencement. In the event the recalculation is not completed by October 1, the recalculation will be retroactive to that date. Following any recalculation, the recalculated Base CUS Usage Fee shall be subject to annual indexing pursuant to Section 12.10. Throughout the full life of the Agreement, including any extensions, in no event will the Base CUS Usage Fee be recalculated more than once every seven years, or less than once every ten years.

The New Agreement will have a term of either 10 or 20 years. Second Moritz V.S. at ¶ 9. At the start of the term, the amount of compensation Metra owes Amtrak will be based on Amtrak’s costs incurred in Fiscal Years 2016 and 2017. *Id.* The New Agreement will include an index to adjust the base costs to account for inflation. *Id.* While the present day costs will be adjusted for inflation, it is not possible to anticipate all types of costs Amtrak will incur at Chicago Union Station in 10, 15, or 20 years for Metra’s benefit. *Id.* Inflation adjustment will not account for cost increase or decreases caused by, for instance, changes in technology, federal regulations, or safety standards. *Id.*

Because inflation adjustments alone are unlikely to adequately adjust base costs over the term of the New Agreement, Amtrak has proposed a mechanism by which the parties can seek to

recalculate the base costs. *Id.* at ¶ 10. Amtrak believes the base costs should be recalculated often enough that Metra does not materially over- or under-compensate Amtrak over the term of the New Agreement. *Id.* At the same time, the recalculation process itself is costly and time-consuming, so the parties should not recalculate too often. *Id.*

Amtrak's proposed Section 12.10.3 provides that either party can request a recalculation after seven years since the last calculation of base costs. *Id.* at ¶ 11. And if neither party requests a recalculation after seven years, then the base costs must be recalculated after 10 years. *Id.* Amtrak's proposed language in Section 12.10.3 strikes a balance between ensuring up-to-date cost data and not overburdening the parties. *Id.*

8. Dispute Resolution

The next material contractual term in dispute concerns the procedure for resolving disputes regarding Metra's use of Chicago Union Station. On that issue, Amtrak proposes the following language:

Section 18. Dispute Resolution.

Section 18.1. The Parties agree that all disputes arising under or related to this Agreement are subject to mandatory arbitration under this Section 18. In the event of a dispute by the Parties over any issue arising under or related to this Agreement, the Parties shall first make every reasonable effort to resolve the dispute by initiating discussions between individuals designated by each Party as appropriate. If discussions between the individuals designated by each Party do not lead to resolution of the dispute within ninety (90) days of the date the matter is first presented as a dispute, either Party may proceed with binding arbitration in the following manner:

Section 18.1.1. The Party wishing to initiate arbitration shall notify the other in writing of its desire to submit the matter to arbitration no later than six (6) months after the date that it learns of the circumstances that give rise to the dispute. Such notice shall contain a statement of the issues and shall designate one arbitrator.

Section 18.1.2. Within fifteen (15) business days of such notice, the other Party shall respond in writing by designating a second arbitrator.

Section 18.1.3. Within thirty (30) business days of designation of the second arbitrator, the two arbitrators designated as aforesaid shall appoint a third arbitrator to serve as chairman. If the two arbitrators so designated fail to appoint a third arbitrator within the time provided herein, or if a Party fails to appoint an arbitrator within the time provided for herein, either Party may request the Chief Judge of the United States District Court for the Northern District of Illinois to appoint an additional arbitrator.

Section 18.1.4. The arbitrators shall promptly hear and decide the issues submitted to them in accordance with the rules for commercial arbitration of JAMS, giving to both Parties reasonable notice of the time and place of hearing.

Section 18.1.5. The arbitrators, or a majority of them, shall promptly render their decision and award in writing to the Parties.

Section 18.1.6. Any arbitration award rendered hereunder shall be final and binding upon the Parties. Judgment upon any such arbitration award may be entered in the United States District Court for the Northern District of Illinois.

Section 18.1.7. Each Party shall bear its own costs and expenses of arbitration, including the cost of any expenses of the arbitrator designated by it. The fees of the chairman and any other remaining expenses of the arbitrators shall be borne equally by the Parties.

Section 18.1.8. The Parties agree that every reasonable effort shall be made to obtain the prompt resolution of disputes which are submitted to arbitration pursuant to this Agreement. The Parties further specifically agree that neither Party shall be entitled to delay the arbitration process significantly by insisting on the application of extensive procedural steps or other actions which cannot clearly be expected to improve the ability of the arbitrators to render a reasonable and fair decision and agree further that reasonable discovery requests shall not be barred by the foregoing.

Section 18.2 In the event of a dispute arising under or related to an invoice or request seeking payment of any kind under this Agreement the Party disputing that amount shall timely pay any undisputed amount of the invoice or requested fee, charge or cost.

Section 18.2.1. In the event of such a dispute, only the disputed portion of the invoice and/or request for payment shall be subject to the dispute resolution process under this Section 18.2.

Section 18.2.2. The Party disputing an amount set forth in an invoice shall not be required to pay the disputed amount pending resolution of the process described in this Section 18.2. Payment of or receipt of the undisputed amount may not be construed to be any admission by either Party regarding any matter arising from the disputed amount. Further, payment of or receipt of the undisputed amount does not preclude recovery of any or all of the amount paid if it is subsequently determined that a dispute exists as to the paid portion.

Section 18.3. Notwithstanding anything to the contrary in this Agreement, any question or issue regarding whether either Party is in compliance with any applicable federal, state, local or other law or whether any state, local or other law is preempted by federal law shall not be addressed in arbitration or by any arbitrator, but instead is subject to the exclusive jurisdiction of the federal courts.

Section 18.4. Pending resolution of a dispute as set forth under this Section 18, the Parties shall proceed diligently with the performance of this Agreement in accordance with its terms.

Amtrak proposes that the New Agreement provide for arbitration of disputes arising out of the New Agreement. Second Moritz V.S. at ¶ 16. Subsection 18.3 of Amtrak's proposed Section 18 carves out a narrow category of disputes from the arbitration provision: disputes that turn on interpretation of federal law applicable to Amtrak. *See id.* The reason for that carve-out is that

Amtrak has an institutional interest in ensuring that it is subject to uniform interpretations of federal law across its system. *Id.* Permitting arbitrators to construe and apply federal law would be particularly problematic because their decisions would not be subject to appeal on the merits. *Id.* Amtrak's Section 18 sets forth a detailed and reasonable scheme that will facilitate fair and organized dispute resolution between the parties.

9. Audit

The next material contractual term in dispute concerns the procedure for, and scope of, any financial audit conducted by Metra of Amtrak Chicago Union Station operations and services. On that issue, Amtrak proposes the following language:

Section 23.1. Audit: Metra will have the right, at Metra's expense, to inspect, examine, and audit all financial books, records, and accounts of Amtrak which support the actual variable costs billed under this Agreement. Fixed payment amounts are not subject to audit, with the exception of the application of the [Reserved for Board decision] Index as set forth in Section 12.10 to such fixed payment amounts. Amtrak will retain all such books, records, and accounts for a period of three (3) years following the end of each Contract Year of this Agreement. This right to inspect, examine, and audit shall extend to auditors of FTA and any other government agencies requiring access to Amtrak records relating to the services provided by Amtrak in support of Metra's access to CUS under this Agreement, when requested by the Administration. Once an audit has been completed by Metra, a letter shall be sent to Amtrak setting forth the results of the audit. Items to which Metra does not take exception will be considered closed for the period unless Amtrak indicates in writing within ninety (90) days of the receipt of Metra's letter that certain cost items may be subject to future retroactive settlement(s) or adjustment(s). In this case, any items identified by Amtrak related to unionized labor agreements to be ratified shall be held open until the actual settlement(s) or adjustment(s) occurs, and such Amtrak claims for retroactive unionized labor agreement settlements or adjustments shall survive termination of this Agreement.

Section 23.1 provides guidelines under which Metra may audit Amtrak's Chicago Union Station operations and services. *Second Moritz V.S.* at ¶ 17. Amtrak's proposal is a standard contract provision that allows Metra to review materials relevant to its operations while protecting

Amtrak's proprietary information. *Id.* Amtrak's Section 23.1 sets forth a detailed and reasonable scheme that will facilitate fair and organized audit processes between the parties.

10. Assignability

The next material contractual term in dispute concerns the extent to which either party may assign the agreement. On that issue, Amtrak proposes the following language:

Section 25. Assignment: Metra may not assign or transfer this Agreement in whole or in part without the prior written consent of Amtrak, which may not be unreasonably withheld or conditioned. Notwithstanding the preceding sentence, any action by a governmental entity having authority over Metra to assign Metra's rights and interests in this Agreement to another public transportation agency is permitted provided that Metra notifies Amtrak in writing at least 60 days in advance of any such proposed assignment. No authorized assignment of Metra's interests shall amend this Agreement unless Amtrak expressly agrees to such amendment in writing. Any authorized assignee shall have the same rights and obligations of the party assigning its interests under this Agreement.

Section 25 sets forth provisions that permit Metra to assign the New Agreement subject to Amtrak's consent. *Second Moritz V.S.* at ¶ 18. Amtrak is the owner and controlling operator of Chicago Union Station, and needs protection against the possibility—however unlikely—that Metra's assignment could impose on Amtrak an unsuitable partner. *Id.*

Amtrak's proposal permits Amtrak to assign the New Agreement without Metra's consent, which is reasonable. *See id.* at ¶ 19. Were Amtrak to sell Chicago Union Station—unlikely as that is—Amtrak would necessarily need to assign the New Agreement as well. *Id.* Moreover, the entity to whom Amtrak sold Chicago Union Station would have to assume the New Agreement. *Id.* Granting Metra control over Amtrak's ability to assign the New Agreement would amount to Metra having a veto over Amtrak's right to sell Chicago Union Station. *Id.* Amtrak cannot agree to that limitation on its property rights. *Id.*

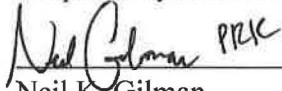
V. CONCLUSION

For the foregoing reasons, the Board should adopt Amtrak's contractual language submitted on the above issues relating to the terms and form of the New Agreement.

Dated: January 22, 2021

William H. Herrmann
Christine E. Lanzon
National Railroad Passenger Corporation
(Amtrak)
60 Massachusetts Avenue, N.E.
Washington, DC 20002

Respectfully submitted,



Neil K. Gilman
Perie Reiko Koyama
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W.
Washington, DC 20037
ngilman@HuntonAK.com
pkoyama@HuntonAK.com
(202) 955-1500

Thomas R. Waskom
HUNTON ANDREWS KURTH LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
twaskom@HuntonAK.com
(804) 788-8200

*Counsel for the National Railroad Passenger
Corporation (Amtrak)*

CERTIFICATE OF SERVICE

I hereby certify that I have this day, January 22, 2021, caused copies of the foregoing to
be served by electronic mail on:

Thomas J. Litwiler
Robert A. Wimbish
Thomas J. Healey
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
tlitwiler@fletcher-sippel.com
rwimbish@fletcher-sippel.com
thealey@fletcher-sippel.com
bsmith@fletcher-sippel.com

Counsel for Metra


Perie Reiko Koyama

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

SECOND VERIFIED STATEMENT OF PAUL O'MARA

Date: January 22, 2021

Paul O'Mara
Assistant Vice President, Transportation – Central (North)
National Railroad Passenger Corporation (Amtrak)
500 West Jackson Boulevard
Chicago, Illinois 60661

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 36332

PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)

VERIFIED STATEMENT OF PAUL O'MARA

I, Paul O'Mara, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the State of Illinois, over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation ("Amtrak"). I have been an employee of Amtrak since 1986. My current job title is Assistant Vice President, Transportation – Central Northwest Division.

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. The purpose of this verified statement is to provide facts and analysis in support of Amtrak's supplemental brief regarding proposed terms for a new agreement between Amtrak and Metra (the "New Agreement").

A. Dispatching Feed

5. Amtrak is responsible for providing dispatching services at CUS. The dispatching service is responsible for managing track use, ensuring that trains are routed safely and efficiently, and ensuring the safety of personnel working on and around the track.

6. Amtrak performs its dispatching function at CUS from the CUS Dispatch Operations Center. Within the Dispatch Operations Center, Amtrak personnel analyze current track states via computer feed (the “Dispatching Feed”), communicate via radio with various personnel such as train engineers, and balance multiple demands placed on track use.

7. Amtrak currently permits Metra to monitor the computer feed showing current track states. Amtrak provides the Dispatching Feed to Metra personnel located in the “Glass House” locations established at the track level adjacent to Tracks 4 and 19. Amtrak also provides the Dispatching Feed to two off-site Metra laptops assigned to Metra personnel. Metra does not have “playback capability”—i.e., the ability to record and playback portions of the computer feed showing track states.

8. Amtrak installed the cabling and hardware used to provide the Dispatching Feed to the Glass House at its own expense. Amtrak also incurs costs for the licenses, software, upgrades, repairs, and replacements for Metra’s Dispatching Feed.

9. Provision of the Dispatching Feed to Metra does not benefit Amtrak. It solely benefits Metra.

10. The costs Amtrak incurs associated with the provision of the Dispatching Feed to Metra are not included in any of the costs stipulated to by Amtrak and Metra.

11. I have reviewed Amtrak’s proposals for Sections 6.3 and 12.6 of the New Agreement. Amtrak’s proposed Section 6.3 accurately describes the Dispatching Feed services that Amtrak currently provides to Metra and that Amtrak should—in Amtrak’s view—continue to provide. Amtrak’s proposed Section 12.6, which requires Metra to pay a monthly fee of \$500 for the Dispatching Feed, would compensate Amtrak for the costs it incurs for Metra’s sole benefit in providing Metra the Dispatching Feed.

B. Scheduling

12. As the owner and controlling operator of CUS, Amtrak is responsible for coordinating train schedules, including service levels.

13. Because Amtrak controls CUS, it must have final say over schedules and service levels at CUS, within reasonable limits. Amtrak has always worked cooperatively with Metra to ensure that Metra is able to provide its customers an adequate and appropriate level of commuter service while also maintaining and potentially expanding intercity passenger rail service.

14. Coordination of train schedules at CUS is critical. Coordination of scheduling is not limited to the operation of trains. It also enables preventive and scheduled maintenance and capital work at the station, to protect worker safety by adjusting train schedules.

15. Amtrak will continue to cooperate with Metra. But ultimately, a single party must have final say over scheduling. Amtrak will not unnecessarily change its own schedule in a way that affects Metra's schedule without first considering reasonable alternatives.

16. I have reviewed Amtrak's proposed Section 3 for the New Agreement, which is consistent with the goals and principles stated above.

C. Service Levels

17. As the owner and controlling operator of CUS, Amtrak has the responsibility to coordinate service levels among the users of the station. That also requires Amtrak to have ultimate decision-making authority regarding service levels.

18. Due to the COVID-19 pandemic, both Amtrak's and Metra's ridership at CUS has decreased significantly. Before the pandemic, capacity was constrained. In fact, *any* service disruption during peak commuter periods could immediately overtax the system, leaving service with no room for error.

19. Amtrak anticipates that ridership will regain its pre-pandemic level, at which time the same capacity constraints will limit Amtrak's and Metra's ability to provide superior service to their customers.

20. Amtrak believes the parties should jointly develop a long-term solution to capacity constraints at CUS. That requires a formalized joint planning process. The New Agreement should formalize that joint planning process.

21. Amtrak does not anticipate any difficulty with the parties' restoring their service levels to those in place prior to the pandemic. But any increases above that level will require significant coordination between the parties.

22. The New Agreement should also formalize the process by which Metra requests increases in service levels above pre-pandemic levels.

23. I have reviewed Amtrak's proposed Section 4 for the New Agreement, and it is consistent with the principles and goals stated above.

D. Dwell Time and Storage Time

24. Amtrak grants Metra access to CUS to provide service to Metra customers. The purpose of Metra equipment on Amtrak's CUS property is to provide that service.

25. Metra should not use CUS as a storage facility. It does not have a contractual right to do so, and the New Agreement should not create a contractual right to do so.

26. It is important that equipment not be stored at platforms because it impedes Amtrak's ability to have maintenance and capital work performed. Delays in work in areas where Metra has improperly stored equipment will also result in the knock-on effect of delays in work elsewhere.

27. Additionally, the use of platforms and tracks by Metra for storage exacerbates the effect of any service disruption, because it makes it more difficult for Amtrak to modify track use to resolve the disruption.

28. Amtrak has been made aware that Metra currently stores some equipment at CUS both between rush hours and overnight. Metra has its own storage yards, and it should store its equipment there, not on Amtrak property.

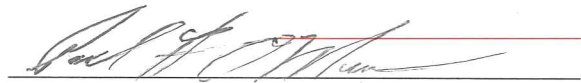
29. Amtrak also recognizes that in order to provide service to its customers, Metra must, in certain circumstances, keep its equipment on CUS property at times other than boardings and alightings. For instance, Metra may have to perform minor maintenance on equipment at a platform, and keep limited equipment at CUS overnight to address potential emergencies.

30. I have reviewed Amtrak's proposed Section 2.1.4.1 for the New Agreement. It is consistent with the principles and goals stated above, and strikes a balance between Amtrak's right to control its property and Metra's desire to keep equipment at CUS longer than is necessary to provide direct services to customers.

VERIFICATION

I, Paul O'Mara, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on January 19, 2021 in Chicago, Illinois.

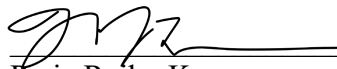

Paul O'Mara

CERTIFICATE OF SERVICE

I hereby certify that I have this day, January 22, 2021, caused a copy of the foregoing to
be served by electronic mail on:

Thomas J. Litwiler
Robert A. Wimbish
Thomas J. Healey
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
tlitwiler@fletcher-sippel.com
rwimbish@fletcher-sippel.com
thealey@fletcher-sippel.com
bsmith@fletcher-sippel.com

Counsel for Metra



Perie Reiko Koyama

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

SECOND VERIFIED STATEMENT OF THOMAS MORITZ

Date: January 22, 2021

Thomas Moritz
Assistant Vice President of Infrastructure Access and Investment
National Railroad Passenger Corporation (Amtrak)
2955 Market Street
Philadelphia, PA 19104

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF THOMAS MORITZ

I, Thomas Moritz, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the Commonwealth of Pennsylvania, over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation ("Amtrak"). I have been an employee of Amtrak since 2000. My current position is Assistant Vice President of Infrastructure Access and Investment.

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. The purpose of this verified statement is to provide information regarding facts and analysis regarding the relationship between Amtrak and Metra (the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority) (Amtrak and Metra collectively, the "Parties") and the allocation of costs in this matter.

5. Amtrak owns Chicago Union Station. Chicago Union Station was originally owned by the Chicago Union Station Company (CUSCO), Amtrak's former wholly-owned subsidiary.

6. On May 1, 1984, CUSCO entered into an agreement with the Northeast Illinois Regional Commuter Railroad Company (the "1984 Agreement"), allowing Metra to access and

use the Chicago Union Station facilities in exchange for payment to CUSCO. Amtrak is CUSCO's successor in interest for purposes of the 1984 Agreement.

7. I have been involved in Amtrak's negotiations with Metra regarding a subsequent agreement governing access and services at CUS (the "New Agreement").

A. Recalculation of Base Costs

8. Amtrak and Metra have negotiated and reached an agreement on several terms in the New Agreement, including the types of base costs incurred (maintenance of way, dispatching, policing, station operations and maintenance, and ground power), the amount of maintenance of way and dispatching base costs, and the parties' relative shares of certain of these costs. One of the terms, Section 12.1.1, permits either party to request recalculation of the parties' relative shares of the base costs incurred by Amtrak for operation of CUS. Section 12.1.1 does not address periodic recalculation of the base costs themselves.

9. The New Agreement will have a term of either 10 or 20 years. At the start of the term, the amount of compensation Metra owes Amtrak will be based on Amtrak's costs incurred in Fiscal Years 2016 and 2017. The New Agreement will include an index to adjust the base costs to account for inflation. While the present day costs will be adjusted for inflation, it is not possible to anticipate all types of costs Amtrak will incur at CUS in 10, 15 or 20 years for Metra's benefit. Inflation adjustment will not account for cost increase or decreases caused by, for instance, changes in technology, federal regulations or safety standards.

10. Because inflation adjustment alone will not adequately adjust base costs over the term of the New Agreement, Amtrak has proposed a mechanism by which the parties can seek to recalculate the base costs. Amtrak believes the base costs should be recalculated often enough that Metra does not materially over- or under-compensate Amtrak over the term of the New Agreement.

At the same time, the recalculation process itself is costly and time-consuming, so the parties should not recalculate too often.

11. Amtrak's proposed Section 12.10.3 provides that either party can request a recalculation after seven years since the last calculation of base costs. And if neither party requests a recalculation after seven years, then the base costs must be recalculated after 10 years. This proposal strikes a balance between ensuring up-to-date cost data and not overburdening the parties.

B. Termination for Default

12. The parties have not reached an agreement on whether a party can terminate the New Agreement for the other party's material default, and what the parties' respective obligations should be in the event of a termination.

13. Amtrak does not anticipate that the New Agreement would ever be terminated. But Amtrak believes that the New Agreement should still plan for the unlikely possibility that one party would materially default. If one party materially defaults, the other party should not be required to continue performing its obligations. In particular, Amtrak believes that Metra should not be able simply to refrain from paying, or that Amtrak's remedy in that event should be limited to seeking payment from Metra. In addition, Amtrak should not be required to continue providing service under the agreement if Metra fails to make payment.

14. Amtrak has proposed Sections 17.2 and 17.3 to specify the circumstances under which a party can terminate for cause. Amtrak's proposal provides multiple opportunities and significant time for the breaching party to cure before termination. Amtrak's proposal also expressly states that failure to make a timely payment due under the New Agreement will not constitute a material default until two payments are missed, and the payments are not the subject

of a dispute proceeding. Even then, the defaulting party has a chance to cure before termination is permitted.

15. Amtrak's proposal is consistent with the 1984 Agreement. Amtrak's proposal includes a cure provision that is more favorable to the breaching party than the 1984 Agreement.

C. Dispute Resolution

16. Amtrak proposes that the New Agreement provide for arbitration of disputes arising out of the New Agreement. Amtrak's proposed Section 18 carves out a narrow category of disputes from the arbitration provision: disputes that turn on interpretation of federal law applicable to Amtrak. The reason for that carve-out is that Amtrak has an institutional interest in ensuring that it is subject to uniform interpretations of federal law across its system. Permitting arbitrators to construe and apply federal law would be particularly problematic because their decisions would not be subject to appeal on the merits.

D. Audit

17. Amtrak has proposed a provision, Section 23.1, under which Metra may audit Amtrak's CUS operations and services. Amtrak's proposal is a standard contract provision that allows Metra to review materials relevant to its operations while protecting Amtrak's proprietary information.

E. Assignability

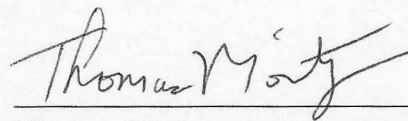
18. Amtrak has proposed an assignment provision, Section 25, that permits Metra to assign the New Agreement subject to Amtrak's consent. Amtrak is the owner and controlling operator of CUS, and needs protection against the possibility, however unlikely, that Metra's assignment could impose on Amtrak an unsuitable partner.

19. Amtrak's proposal permits Amtrak to assign the New Agreement without Metra's consent. Were Amtrak to sell CUS, it would necessarily need to assign the New Agreement as well. Moreover, the entity to whom Amtrak sold CUS would have to assume the New Agreement. Granting Metra control over Amtrak's ability to assign the New Agreement would amount to Metra having a veto over Amtrak's right to sell CUS. Amtrak cannot agree to that limitation on its property rights.

VERIFICATION

I, Thomas Moritz, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on January 21, 2021 in Churchville, Pennsylvania

A handwritten signature in cursive script, appearing to read "Thomas Moritz", is written over a horizontal line.

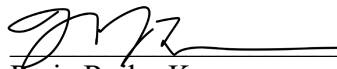
Thomas Moritz

CERTIFICATE OF SERVICE

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be served by electronic mail on:

Thomas J. Litwiler
Robert A. Wimbish
Thomas J. Healey
Bradon J. Smith
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
tlitwiler@fletcher-sippel.com
rwimbish@fletcher-sippel.com
thealey@fletcher-sippel.com
bsmith@fletcher-sippel.com

Counsel for Metra



Perie Reiko Koyama