

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36910

ENTERED
Office of Chief Counsel
September 28, 2026
Part of
Public RecordDENVER TRANSIT OPERATORS, LLC
—PETITION FOR DECLARATORY ORDER—
DENVER TRANSIT DISPATCH DEPARTMENT**BROTHERHOOD OF RAILROAD SIGNALMEN OPPOSITION TO DENVER
TRANSIT OPERATORS, LLC'S OPENING STATEMENT**

The Brotherhood of Railroad Signalmen (“BRS”), the collective bargaining representative of Train Dispatchers employed by of petitioner Denver Transit Operators, LLC (“Denver Transit” or “DTO”), respectfully submits its opposition to DTO’s opening statement and urges the Board to declare Denver Transit a rail carrier under 49 U.S.C. § 10102(5) and that its dispatching services are subject to the Board’s jurisdiction.

PROCEDURAL BACKGROUND

Denver Transit has petitioned the Board to institute a proceeding in which DTO seeks a determination as to whether its Dispatch Department is rail carrier under the Interstate Commerce Act. As described by Denver Transit, its request stems from a decision by the United States Railroad Retirement Board (an initial decision and a denial of reconsideration) that Denver Transit’s Dispatch Department is an employer under the Railroad Retirement Act (“RRRA”), and Railroad Unemployment Insurance Act (“RUIA”). Under that decision, Denver Transit’s Train Dispatchers are covered by those two Acts administered by the RRRB. Denver Transit sought review of that decision by the United States Court of Appeals for the D.C. Circuit, and then asked the Court to hold the petition for review in abeyance to allow Denver Transit to seek a

determination by this Board as to whether Denver Transit’s Dispatch Department “is a ‘rail carrier’ under 49 U.S.C. §10102(5). The petition to institute a proceeding ensued.

ARGUMENT

Rail-Term Followed Precedent and There is No Basis for Overturning the Decision

Because of the similarities in their operations, Denver Transit cannot be exempt from STB jurisdiction while *Rail-Term* is good law.¹ DTO’s opening statement can ultimately be boiled down to the request to overturn *Rail-Term* for no good reason other than to benefit Denver Transit and relieve the company of its Railroad Retirement tax obligations. In seeking to overturn *Rail-Term*, DTO has taken a maximalist approach and is, ultimately, requesting that the Board exempt all contract dispatchers from STB jurisdiction. DTO states that “Neither this *or any other dispatching activity* by itself merits federal jurisdiction.” Pet. For Decl. Order at 3 (emphasis added). Denver Transit argues *Rail-Term* was decided “[w]ithout any precedent” and “with little reference to any other legal authority.” Pet. For Decl. Order at 22. Denver Transit characterizes the *Rail-Term* decisions as setting a “new standard under the Act for whether one was a common carrier.” *Id.* at 7. But Denver Transit can’t just say things that are provably not true. DTO’s arguments about lack of precedent or legal authority require ignoring all of the precedent cited in the Board’s decisions. Once that has been taken into consideration, Denver Transit’s request to overturn *Rail-Term* is simply wrong.

The STB cited “[l]ong-standing Supreme Court precedent” in reaching its conclusion that contract dispatching operations must be subject to STB jurisdiction. *Rail-Term I* at 7 citing *United*

¹ *Rail-Term Corporation —Petition for Declaratory Order*, FD 35582 (STB served Nov. 19, 2013) (“*Rail-Term I*”) (aff’d by denial of petition for reconsideration in FD 35582 (STB served Dec. 30, 2014) (“*Rail-Term II*”); (appeal dismissed sub. nom. in *Rail-Term Corp. v. Surface Transp. Bd.*, Case No. 15-1033, ECF Dkt. No. 1561557 (D.C. Cir. Jul. 8, 2015), reh’g denied in ECF Dkt. No. 1572866, cert. denied in *Rail-Term Corp. v. Surface Transportation Board*, et al. Case No. 15-977 (June 6, 2015) (collectively “*Rail-Term*”).

States v. Brooklyn E. Dist. Terminal, 249 U.S. 296, 305 (1919); *United States v. Union Stock Yard & Transit Co.*, 226 U.S. 286, 305 (1912); *S. Pac. Terminal Co. v. ICC*, 219 U.S. 498, 523 (1911); and *United States v. California*, 297 U.S. 175 (1936). The STB also cited the following federal appellate court decisions that follow the earlier Supreme Court precedent and bolster the Board’s basis for its holding. *Burnside v. Railserve*, 2012 U.S. Dist. LEXIS 152026 (W.D. Ark. 2012); *Green v. Long Island R.R.*, 280 F.3d 224 (2d Cir. 2002); *Mahfood v. Cont’l Grain Co.*, 718 F.2d 779 (5th Cir. 1983); *United States v. Queen*, 445 F.2d 358 (10th Cir. 1971); and *Lone Star Steel Co. v. McGee*, 380 F.2d 640, 643 (5th Cir. 1967).

The Board also noted that the *Rail-Term* decisions are consistent with the principle that as “long as the questioned service is part of the total rail common carrier service that is publicly offered, then the entity providing it for the offering railroad, whether through common ownership or contract, is ‘deemed’ to hold itself out to the public.” *Rail-Term I* at 8 and *Rail Term II* at 8 (both citing *Assoc. of P&C Dock Longshoremen v. The Pitts. & Conneaut*, 8 I.C.C.2d 280, 295 (1992)).

Contrary to Denver Transit’s arguments, the *Rail-Term* decision is well founded in many decades of court precedent and STB (and its predecessor agency) decisions. DTO has not offered any legitimate basis for overturning the *Rail-Term* decision and it should be upheld.

Following *Rail-Term*, DTO’s Dispatching Services Are an Essential Rail Function Designed to Be Under STB Jurisdiction

Rail-Term is good law and Denver Transit must be a “carrier” under STB Jurisdiction. DTO “is providing a service—the dispatching of trains—that clearly occurs during, and as part of, the common carrier portion of the rail shipment... [i]t is an integral part of rail transportation that a rail carrier must have—either by employing its own dispatchers or by contracting for dispatching

services—to meet its common carrier obligation to move freight from origin to destination.” *Rail-Term II* at 9.

Rail-Term was described as a “small privately owned company that provides dispatching services to short-line railroads.” *Rail-Term I* at 4. “Rail-Term itself does not possess track, trains, conductors, signalmen, engineers or maintenance of way employees... [n]or does Rail-Term directly offer to transport freight by rail for the public.” *Id.* Nevertheless, “Rail-Term’s central business function is to provide dispatching service as an operational arm of the client carriers on an outsourced basis.” *Id.*

DTO is similarly a contractor that provides dispatching services (among other services) to the Regional Transportation District in Colorado. DTO does not possess track, trains, conductors, signalmen, engineers or maintenance of way employees. Still, DTO’s services include “Denver Transit’s Dispatching Department” with a “rotating cast of 17 dispatchers” who “dispatch all ‘Heavy Rail Movements’ at Union Station” for BNSF and Union Pacific. Pet. For Decl. Order at 4-5. And DTO dispatches for the Amtrak California Zephyr service and American Rocky Mountaineer’s Canyon Spirit service. *Id.*

DTO seeks a non-existent *de minimis* exemption from being a part of the interstate rail network by highlighting that when measured “by train miles, this is less than 0.1% of Denver Transit’s dispatch activity.” Pet. For Decl. Order at 4-5. And DTO similarly suggests that there should be a *de minimis* exemption because the dispatched area that BNSF and Union Pacific use isn’t very long. But that is not how dispatching works. No one with any experience in dispatching treats dispatching for these carriers in those terms of total train miles dispatched, the number of minutes spent actively directing freight train movement, or the length of the track. Instead, those carriers’ trains are simply a part of the overall picture of how to assemble the days’ train operations.

In other words, these dispatching functions are an essential part of the overall common carrier operations.

Furthermore, DTO's description of the work performed by its Dispatchers in dispatching Amtrak and Rocky Mountain trains misrepresents the actual duties of the Dispatchers, and their engagement with interstate trains, both Amtrak's and Rocky Mountain's, as well as trains of BNSF and Union Pacific. Submitted along with this brief is a declaration of David Martin, a DTO Dispatcher and Local Chairman of BRS Local 243 that describes the actual work performed by DTO Dispatchers.

Mr. Martin explains that the Denver Union Station ("DUS") territory is a small space with many trains in it at any given time, the Dispatchers have to not only dispatch interstate trains, they have to plan for intrastate train movements with consideration for interstate train movements, manage intrastate movements with recognition that Amtrak trains have priority, and coordinate with, and monitor all interstate train movements. He explains that the two tracks that Amtrak uses sit in the middle of the territory and divide it in two, which means that all moves at DTO must be coordinated around Amtrak's arrival and departures because Amtrak trains take precedence over DTO trains, and the Dispatchers cannot move trains from one side of DUS to the other when Amtrak is lined in or out. He also notes that during much of the year Amtrak equipment occupies the DUS interlocking 24/7. Mr. Martin then describes the responsibilities of the DTO Dispatchers for the regular Amtrak trains which, if on schedule, arrive and then depart about an hour and a half later, their responsibilities for the ski trains and the Rocky Mountaineer trains, and their responsibilities related to BNSF and Union Pacific train movements. BRS respectfully refers the Board to Mr. Martin's declaration for a detailed description of what DTO Dispatchers actually do. Upon review of that declaration, the Board will see that DTO has misrepresented the work of its

Dispatchers, mischaracterized the nature of their work with interstate trains, and incorrectly minimized the amount of work they do with respect to interstate trains by focusing solely on the amount of time they spend when the trains are in the actual process of moving in and out of the DUS. The work of Dispatchers is not just in the time spent when a train is moving, there is also work of planning, coordinating with other train movements and managing the presence of those trains in DUS when they are not moving.

With respect to DTO's citation to the relatively short length of track involved in the Dispatchers' responsibilities for interstate trains the lead Supreme Court case that the Board relied on in deciding *Rail-Term* is clear: "The fact ***that the railroad of the Terminal is short does not prevent it from being a common carrier***... nor does the fact that the thing which it undertakes to carry is contained only in cars furnished by the railroad companies with which it has contracts." *Brooklyn E. Dist. Terminal*, 249 U.S. at 305 (emphasis added). Further, in *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 524 (1911), the Supreme Court described the case as about "one actively managing and uniting the railroads and the Terminal Company into an organized system. And ***it is with the system that the law must deal, not with its elements***." (emphasis added). As shown by Mr. Martin, the system here involves intertwined operations of interstate and intrastate train movements with DTO Dispatchers responsible for managing the train movements in an organized system.²

The great majority of Denver Transit's argument that it should not be a "carrier" is because the DTO "Dispatching Department offers none of its eponymous service to the public" (Pet. For

² BRS also notes that the Board generally does not recognize a *de minimis* exception to its jurisdiction. Indeed, the Board regularly processes petitions and notices of exemption concerning acquisitions of mere hundreds or a thousand or two thousand feet of track. See e.g. F.D. 36895 *NPJ Rail—Acquisition Exemption—Rail Line of Franklin Storage, LP at Guilford Springs Road Transload Facility, Chambersburg, PA.*, concerning an acquisition of 1800 feet of track.

Decl. Order at 13) and the “Dispatching Department is not ‘holding itself out’ to either the public or any person such that it is a common carrier.” Pet. For Decl. Order at 14. But this reasoning was soundly rejected in *Rail-Term I*. The Board correctly noted that “Because of the integral transportation service Rail-Term provides, this Supreme Court precedent permits the agency to impute to Rail-Term the holding out of its client rail carriers regardless of the contractual arrangement between Rail-Term and those rail carriers.” *Rail-Term I* at 8. Similarly, in *United States v. Union Stock Yard & Transit Co. of Chi.*, 226 U.S. 286, 304 (1912), the Supreme Court wrote that it does not “make any difference that neither the Junction Company nor the Stock Yard Company issues through bills of lading. It is the character of the service rendered, not the manner in which goods are billed, which determines the interstate character of the service.”

Again, the Board’s comments about *Rail-Term* apply to Denver Transit’s dispatching functions: “While Rail-Term is not itself physically moving goods or passengers directly, its dispatching services are an essential component of its clients’ holding out of interstate common carrier rail transportation, and, by Rail-Term’s own description, are ‘required’ for provision of common carrier service by its customers.” *Rail-Term I* at 8-9. The same essential component of dispatching services applies to Denver Transit as it applied in *Rail-Term*. The outcome must be the same. DTO is a carrier under the STB’s jurisdiction.

DTO inexplicably argues that it is not acting as an “agent” for a rail carrier because it says it has no agreement or legal relationship with any of the foreign carriers. DTO Opening Statement at 14-15. But DTO is dispatching trains for Amtrak and Rocky Mountain, it is performing a function for them that is necessary to their operations. And DTO’s argument conflicts with the Salama Verified Statement submitted by DTO stating that RTD entered “agreements with Amtrak, the BNSF Railway Company, and Union Pacific regarding train

service (for Amtrak) and land use and planning (for each railroad)”, and that “For its services to the RTD, Denver Transit Operators is paid a monthly fee that covers the Heavy Rail Dispatch movements. Salama Verified Statement at 2-4. Heavy Rail is defined as Amtrak, BNSF and UP. Salama V.S. Salama Exhibit A, Page 17.³

DTO’s Policy Arguments to the Contrary are Unavailing

The rest of Denver Transit’s position is just policy arguments that the Board has already considered and correctly rejected.⁴ DTO selectively quotes from federal rail transportation policy at 49 U.S.C. § 10101 by only citing the six factors to argue that classifying contract dispatchers as “carriers” subject to STB jurisdiction does not *advance* those specific factors. Pet. For Decl. Order

³ See Salama Verified Statement at 2-3:

In its planning for the Lines, the RTD sought to leverage Union Station as a transit hub that the selected concessionaire would build and operate the Lines into. Union Station had not been used for commuter rail service in recent decades but had consistently had Amtrak service (regular and seasonal ski trains) and always had connection points to the interstate rail network. The current connection points are freight railroads BNSF Railway Company and Union Pacific Railroad. Accordingly, to support the Eagle P3 Project, the RTD needed to enter into certain agreements with Amtrak, the BNSF Railway Company, and Union Pacific regarding train service (for Amtrak) and land use and planning (for each railroad).

The draft texts of those agreements are incorporated into the Denver Transit Operators–Denver Transit Partners–RTD operations and maintenance agreement; Denver Transit Operators is bound to observe them. (Exhibit A at 33 “Railroad Agreements”). Beginning April 2026, RTD has also permitted the American Rocky Mountaineer Company to operate its *Canyon Spirit* service to Denver Union Station. (See Exhibit C described below); I understand it had previously operated to a Union Pacific yard. In sum, Denver Transit Operators is obligated to dispatch the foreign railroads insofar as the RTD has promised that service, which occurred in the broader context of its commuter rail planning.

And Salama Verified Statement at 4:

For its services to the RTD, Denver Transit Operators is paid a monthly fee that covers the Heavy Rail Dispatch movements. Exhibit A at 56, Section 3.18 (requiring dispatch) and at 73–75, Section 5.2 (fee arrangements). However, the current fee does not account for any Railroad Retirement Board contributions.

⁴ DTO also makes a minor policy argument about the supposedly unfair burden of already having a 401(k) retirement plan and a collective bargaining agreement so that “extending the Act to cover the Dispatching Department will result in imposing a double obligation on Denver Transit for these personnel.” Pet. For Decl. Order at 25, noting that it cannot by itself discontinue the 401(k) program. This argument is entirely without merit. The answer is readily apparent. If it is a priority for Denver Transit, the company can collectively bargain with the union for a change to the agreement to avoid a so-called “double obligation.” Problem solved.

at 24-27. But DTO does not – and cannot – show how carrier status for Denver Transit *harms or conflicts with* those factors. Significantly, however, 49 U.S.C. § 10101(11) requires the STB to “encourage fair wages and safe and suitable working conditions in the railroad industry.” DTO argues “There are 15 policy considerations the Board must consider ‘in regulating the railroad industry.’ 49 U.S.C. § 10101 Of the six policy considerations Congress established that are relevant, *Rail-Term* supports none of them.” Pet. For Decl. Order at 26. This is a spectacularly weak argument. Of the cherry picked six out of 15 policy considerations in 49 U.S.C. § 10101, the best argument DTO can muster is that the *Rail-Term* decision is neutral regarding those factors. Then Denver Transit cannot explain how “encourage[ing] fair wages and safe and suitable working conditions in the railroad industry” is irrelevant. It only shows that Denver Transit views fair wages and working conditions to be irrelevant because the company’s business model is shameful and founded on extracting profit from workers by evading the very federal laws meant to protect them.⁵ It’s exactly because the STB called out profit-making through regulatory arbitrage by shedding Railroad Retirement tax obligations in *Rail-Term* that DTO is so upset. They’ve been caught. They’ve been called out. This Board has written in black and white exactly what is wrong with this business model. If “the primary business justification for a corporation is to avoid employee benefits that Congress intended should apply, then there is no reason it should not be deemed a carrier.” *Rail-Term II* at 14.⁶

⁵ The agreement under which DTO operates is actually consistent with this RTP; that agreement provides: “Compliance with Labor and Employment Laws. With respect to hiring of personnel and its employment policy, Operator shall comply with all applicable Laws and shall exercise control over labor relations in a reasonable manner consistent with the intent and purpose of this Agreement.” Salama Exhibit A, at 51.

⁶ DTO also argues that Rail Term conflicts with RTP consideration (7) in creating an “unnecessary burden to both entry and exit to providing industry services”. DTO Opening Statement at 26, citing *Alameda Belt Line -Operation Exemption -Board of Harbor Comm’r*, F.D. 36787 (July 22, 2025) at 1, n.2. But *Alameda Belt Line* says nothing about RTP (7) or burdens on entering or exiting providing industry services. And the only obligation created by *Rail-Term* is that those seeking to provide industry services essential to rail carrier operations must comply with the Federal rail statutes concerning retirement and unemployment benefits.

Instead, this Board correctly held that “the overall scheme of regulation under ICCTA indicates that Congress intended for the regulation of these kinds of contracted dispatching services to rest within our jurisdiction and, consequently, for the railroad labor laws to apply to those employees who are performing these essential rail transportation services.” *Rail-Term I* at 2. Further, the Board correctly considered the labor impacts in making contract dispatching subject to STB jurisdiction; cited 49 U.S.C. § 10101(11) and wrote “Among the Interstate Commerce Act’s ‘primary purposes are to ensure fair shipping rates, safety, fair wages and working conditions and efficiency in transportation, and to discourage monopolistic practices and labor strikes.’” *Rail-Term II* at 13 citing *Cedarapids, Inc. v. Chi., Cent. & Pac. R.R.*, 265 F. Supp. 2d 1005, 1010 (N.D. Iowa 2003). And to the extent that other statutes, like the Railroad Retirement Act and Railroad Unemployment Insurance Act cite to STB jurisdiction in determining application of those statutes, it is entirely appropriate for the Board to consider the impact of its determinations on those other statutes.

The Board considered the wholly unacceptable alternative. “In an extreme scenario, carriers could subcontract out every essential rail operation—even those performed by crews operating the trains—and avoid many of the applicable rail laws, by declaring that none of the companies providing what collectively amounts to the totality of the rail operations are in fact rail carriers. Instead, the only company that would be a rail carrier would be the shell company that pays the actual providers of service.” *Rail-Term I* at 9. “If a rail carrier were able to contract out all of its functions to non-carriers without consequence, then the statutory protective conditions that apply to merger proceedings and abandonment proceedings would be meaningless.” *Rail-Term I* at 13 citing 49 U.S.C. § 11326 and 49 U.S.C. § 10903(b)(2).

DTO also contends that applying Rail-Term to DTO's violates what DTO calls a "Freeze" of 49 U.S.C. §10501(c)(3), that the ICCTA only extends STB's jurisdiction to entities that were, or hypothetically would have been, subject to the ICC's jurisdiction immediately before the ICCTA took effect. DTO Opening Statement at 27, *citing Commuter Rail Division of the Reg'l Transp. Auth.—Terminal Trackage Rights—Union Pacific Railroad, Co.*, F.D. 36844 (September 3, 2025 at 5. But that decision says nothing about a "freeze" or about limiting STB jurisdiction to entities in existence at the time of enactment of the ICCTA. And there is no use of the word "freeze" or word of similar meaning in Section 10501(c)(3). Furthermore, that provision actually preserves application of laws related to "employment, retirement, annuity, and unemployment systems", even where the STB does not have jurisdiction over an entity. It is, to say the least, odd that DTO would rely on a provision that preserves RRRRA and RUIA coverage regardless of STB jurisdiction in arguing that the Railroad Retirement Board incorrectly held that DTO is covered by RRRRA and RUIA.

The American Short Line and Regional Railroad Association ("ASLRRA") submitted comments in this docket on September 8, 2026 where the trade group explained that they "disagree[]" with the Rail-Term decision, as contract dispatching companies should not automatically be treated as rail carriers simply because they provide dispatching services to railroads. ASLRRA claims this decision has been problematic for Short lines because it discourages outsourcing dispatching services and increases regulatory exposure and cost." ASLRRA Comments at 6. But, of course, the decision does not impede the Short Lines in contracting-out dispatching, it only impedes their doing so for the purpose of avoiding the costs of statutorily imposed financial obligations that they would otherwise incur. Nothing in the decision prevents the Short Lines from contracting-out dispatching with a rail carrier whose employees are

covered by the RRRRA and RUIA. They reveal their real r objection in saying that “Classifying contractors as rail carriers exposes Short lines to liability under the Federal Employers’ Liability Act, railroad labor-law requirements, federal regulatory oversight, and additional compliance costs.” *Id.* at 3. That’s it. ASLRRA objects to the STB preventing short line railroads from cutting costs as much as possible by using contractors to evade costs associated with the statutory requirements of being a railroad. It’s shameful. The Board rejected these arguments during the original consideration of *Rail-Term* and should continue to reject these arguments now.

As the Board correctly reasoned, “there is no reason to believe that Rail-Term and other similar firms cannot operate successfully while being regulated as rail carriers as long as they provide a service based on special expertise, technical sophistication, and the economies of shared operations.” *Rail-Term II* at 14. The alternative, the Board noted, would mean these contractors exist with “the primary business justification... to avoid employee benefits.” *Id.* The Board must continue to reject such schemes.

The Board Has Already Rejected DTO’s *State of Maine* Argument

As a final “Hail-Mary” attempt at exclusion from STB jurisdiction, DTO cites the *State of Maine* decision by arguing that “the Board declined to make the rail asset-acquiring **public entities** rail carriers under the Interstate Commerce Act and subject them to regulation.” Pet. For Decl. Order at 29 (emphasis added). BRS continues to maintain that the *State of Maine* decisions are contrary to the plain language of the statute, and that those decisions cannot withstand scrutiny under contemporary methods of statutory interpretation that are based on plain meaning of the words of a statute. BRS also notes that DTO is not an entity that acquired a freight line with the selling carrier retaining an operating easement for freight common carrier service as in the *State of Maine* cases. In any event, Denver Transit ignores the STB’s explanation d in *Rail-Term I* that

the “Board has never permitted a private party in a *State of Maine*-type case to take over dispatching without becoming a rail carrier.” *Rail-Term I* at 11 fn. 28. There is no need for the Board to engage in an in-depth consideration of the *State of Maine* decision in this docket. That is a much more complex issue that would deserve a much fuller airing of stakeholder opinions. Suffice it to say that DTO is simply misstating the Board’s protection of public entities from rail carrier status with its clear position on private party contractors taking over essential dispatching operations that would otherwise be performed in-house by a common carrier.

CONCLUSION

For the foregoing reasons, BRS respectfully submits that the Board should declare Denver Transit a rail carrier under 49 U.S.C. § 10102(5) and that its dispatching services are subject to the Board’s jurisdiction.

Respectfully submitted,

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Date: September 28, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served copies of this Opposition to Denver Transit's Opening Statement by email on the following:

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36910

DENVER TRANSIT OPERATORS, LLC
—PETITION FOR DECLARATORY ORDER—
DENVER TRANSIT DISPATCH DEPARTMENT

DECLARATION OF DAVID MARTIN

I, David Martin, declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct and based on personal knowledge

1. I am a Train Dispatcher employed by Denver Transit Operators, LLC (“Denver Transit” or “DTO”) and Local Chairman for the Brotherhood of Railroad Signalmen (“BRS”) Local 243. BRS is the collective bargaining representative of Train Dispatchers employed by DTO. I am submitting this declaration in support of the response of BRS to DTO’s petition for a declaratory order that DTO is not a rail carrier under 49 U.S.C. § 10102(5), and that its dispatching services are not subject to the Board’s jurisdiction.

2. The DTO dispatching unit is comprised of approximately twenty-four staff members employed at the Operations Control Center (“OCC”) when fully staffed. Staff includes train Dispatchers, operations control coordinators, supervisors, and managers. All OCC staff are integrally involved in the process of train dispatching to varying degrees. Most OCC employees are cross-trained and can perform the duties of other positions.

3. DTO has sought to minimize the role and time spent by its Dispatchers in dispatching Amtrak trains and other trains such as the Rocky Mountaineer/Canyon Spirit, ski trains and other specialty trains out of the Denver Union Station (“DUS”). However, this misrepresents the role and responsibilities of DTO Dispatchers.

4. DTO argues that the amount of time DTO Dispatchers spend dispatching trains engaged in interstate commerce is so insignificant that it should void our right to railroad retirement benefits. DTO has also argued that the DUS territory is geographically so small that our claim to railroad retirement benefits should be nullified on those grounds as well. While the DUS territory is small, and the primary duty of DTO Dispatchers is to dispatch trains not involved in interstate commerce, the reality is that the DUS territory is a small space with many trains in it at any given time which makes for a busy desk. The presence of trains involved in interstate movements at DUS requires DTO dispatchers to engage in additional movement monitoring, coordination, and planning to avoid scheduling conflicts. The two tracks that Amtrak uses sit in the middle of the territory and divide it in two. This division means that all moves at DTO must be coordinated around Amtrak’s arrival and departures because Amtrak trains take precedence over DTO trains, and we cannot move trains from one side of DUS to the other when Amtrak is lined in or out. Indeed, the small size of the DUS interlocking increases the complexity of dispatching Amtrak in our operation and makes them a significant concern for Dispatchers when making operational plans. It must also be recognized that during much of the year Amtrak equipment occupies the DUS interlocking 24/7. The following will explain what operationally happens at DUS, daily, seasonally, occasionally, and what is planned with regard to DUS Dispatchers and the movement of trains involved interstate commerce today and in the future.

5. Amtrak

- a. Amtrak 5: Arrives daily in the 0700 range and typically departs around 0846. They shove in from the Buck lead to track four at DUS. Sometimes they are late, arriving, departing, or do not depart at all. Some days they leave Amtrak cars, locomotives, or private cars at DUS. At times they require routes for switching moves. DUS Dispatcher is required to job brief with BNSF 31st street yard master before all departures.
- b. Amtrak 6: Arrives daily in the 1730 range and typically departs around 1859. They shove in from the Passenger lead to track four at DUS. Sometimes they are late, arriving, departing, or do not depart at all. At times they leave cars, locomotives, or private cars at DUS. Some days they require routes for switching moves. DUS Dispatcher is required to job brief with BNSF 31st street yard master before all departures.
- c. Amtrak Ski Train/Winter Park Express: This train will typically arrive at DUS in December and sit on track five for the entire season. Sometimes an additional locomotive consist will be stored on the Amtrak lead outside of DUS. Winter Park Express revenue service typically begins around December 19th and ends on March 29th the following year. This train typically runs Thursday through Sunday with daily departures at 0700 and arrivals back to DUS around 1900. In December, this train sometimes only runs 3 days per week. This train's arrival can conflict with the departure of Amtrak 6 and DTO early pull-ins. This train can require additional switching moves. The DUS Dispatcher is required to job brief with BNSF 31st street yard master before all departures.

- d. Amtrak Ski Train/Winter Park Express #2 or Mountain Rail Colorado Zephyr
Operated by Amtrak or Union Pacific: Mountain Rail is expected to begin service starting in November of 2026. Service will be from DUS to Granby initially and will eventually continue to Steamboat Springs. At this time no schedule has been approved, however, it is expected to run 365 days per year. Amtrak is the stated operator. DUS Dispatcher is required to job brief with BNSF 31st street yard master before all departures.
6. Rocky Mountaineer/Canyon Spirit
- a. Canyon Spirit Denver to Moab: This scenic tourist train typically operates from April to November each year. For 2027 the posted schedule includes two departures from DUS per week. Departures occur on Tuesdays and Wednesdays from DUS. These trains shove in from the UPRR lead to DUS track five. Typically, they arrive around 0815 hours and are scheduled out at 0900. These moves can take longer because they are typically overlapping with Amtrak's departures. This train returns to DUS on Saturday and Sunday. Additional switch moves can be required.
 - b. Canyon Spirit Denver to Salt Lake City: This scenic tourist train typically operates from April to November each year. For 2027 the posted schedule includes two departures from DUS per week. Departures occur on Tuesdays and Wednesdays from DUS. These trains shove in from the UPRR lead to DUS track five. Typically, they arrive around 0815 hours and are scheduled out at 0900. These moves can take longer because they are typically overlapping with Amtrak's departures. This train returns to DUS on Friday

and Saturday. Additional switch moves can be required. The operators of the Canyon Spirit have stated that they are increasing the number of trains in 2027/2028/2029 due to demand.

7. BNSF.

The DTO Dispatchers also have responsibilities concerning BNSF trains. The DUS desk controls the BNSF auto router which is part of the signaling system within the DUS interlocking that allows BNSF to position their consists for servicing and placement on outbound trains. While the auto router is frequently set to automatically authorize moves from the Buck to the 8S CP DUS for BNSF locomotive consists, when Amtrak, Canyon Spirit, or any other moves are routed into DUS for an arrival, departure, DTO Dispatchers set the auto router to manual to prevent issues with the derails on the Buck and other leads into DUS. On occasion the auto router has failed for various reasons, and all moves from the BNSF leads have had to be manually routed under control of DTO Dispatchers. The operation of the auto router can be passive but actively monitored by the DUS desk, or manually operated by the DUS desk depending on operational conditions. The auto router is also disabled when DTO MOW employees are servicing the Buck lead.

8. Union Pacific.

- a. Union Pacific Big Boy: UPRR will periodically bring the Big Boy steam locomotive and all accessories into DUS for several days. The arrival and departure of this equipment is not as simple as setting a route into and out of DUS. The Big Boy's arrival and departure requires significant planning by employees at DTO. The Dispatcher's involvement will involve scheduling,

coordinating special orders with MOW for measurements, clearance points checks, and track specifications evaluations before its arrival. The Dispatcher will also have to coordinate around an entire track being out of service with regards to the arrival and departures of other scheduled trains.

- b. Union Pacific Special Trains: UPRR will periodically run special trains to DUS. UPRR is scheduled to utilize DUS for several days during November of 2026 for a special train. Once again this will require significant input from the DTO OCC and other personnel at DTO.

9. In addition to these duties regarding train movements, over the years DTO has dealt with other issues involving interstate trains. There have been Amtrak diesel spills at DUS which have taken weeks and multiple special orders to rectify. DTO is responsible for dealing with noise complaints from idling Amtrak locomotives within the DUS territory. DTO has assisted with studies and coordinated moving locomotives to different areas. DTO has dealt with signal over- runs within the DUS interlocking and other signal issues that impact the service of foreign railroads. BNSF has experienced derailments within the DUS interlocking and outside of the DUS interlocking on the coal leads that have resulted in significant issues for DTO and other railroads with regards to arriving and departing DUS. DTO also frequently deals with grade crossing issues with BNSF, and UPRR that can be from crossing protection issues to heavy multiday maintenance projects or gates being held down excessively by their trains or track cars. Occasionally we must coordinate a response to onboard emergencies. For DTO Dispatchers when any of the above issues occur, they require significant, thought and coordination with other DTO departments, other railroads, and other Dispatchers to keep trains moving safely and on time.

10. It should also be noted that we are a small operation with many trains operating in close proximity to one another, and with Denver Union Station serving as our central hub all desks are operationally entwined. Therefore, whatever happens on the DUS desk will have an operational impact on all adjacent desks. Additionally, within the DTO OCC a primary Dispatcher will sit at their desk for most of their shift, however, it is not uncommon for a Dispatcher to be away from their assigned territory for a portion of their shift. When this occurs a Dispatcher from an adjacent territory, a supervisor, manager, operations control coordinator will sub in during their absence. We are also frequently short staffed to the point of having to run combined territories. When this is the case, two Dispatchers would be sharing the DUS desk. Furthermore, DTO Dispatchers rotate desks daily which means that all Dispatchers in the OCC will work the DUS desk multiple times per month.

11. I hope that this synopsis is helpful to the Board in understanding the actual daily operations of the DTO OCC and the actual duties of DTO Dispatchers. While the DUS territory is geographically small, the volume of trains currently arriving and departing per hour make it an extremely busy location. This means that the activities of foreign railroads are a frequent consideration and responsibility for DTO Dispatchers as they perform their duties.

September 25, 2026

/s/ David Martin
David Martin