BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36910

DENVER TRANSIT OPERATORS, LLC

-PETITION FOR DECLARATORY ORDER-

DENVER TRANSIT DISPATCH DEPARTMENT

COMMENTS OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

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September 8, 2026

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I. INTRODUCTION

The American Short Line and Regional Railroad Association ("ASLRRA") submits these comments in support of Denver Transit Operators, LLC's ("Denver Transit") petition for declaratory order. Denver Transit's Dispatching Department is not a rail carrier, and the application of the Surface Transportation Board's ("STB" or "Board") jurisdiction beyond its historical boundaries in *Rail Term Corporation –Petition for Declaratory Order*,[1] does not merit federal jurisdiction. The Board should declare the Dispatching Department is not a common carrier by rail under the Interstate Commerce Act.

<u>Interest of the ASLRRA in this Proceeding</u>

The ASLRRA is a national trade association representing over 500 Class II and Class III railroads ("Short lines") in legislative and regulatory matters. Short lines operate approximately

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[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). Hereinafter "*Rail-Term*."

50,000 miles of track in the United States, or about 30% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. Short lines are predominantly small businesses that rely on clear, predictable, and efficient regulatory processes at the STB.

Many Short lines outsource railroad functions on their railroads. Classifying contractors as rail carriers exposes Short lines to liability under the Federal Employers' Liability Act,[2] railroad labor-law requirements, federal regulatory oversight, and additional compliance costs. Those costs are either passed through to Short lines, substantially increasing the cost of doing business without a public benefit.

Brief Procedural History

This proceeding arises from questions concerning whether the dispatching activities performed by Denver Transit render it a rail carrier subject to the STB's jurisdiction. Denver Transit operates Regional Transportation District's (RTD) commuter rail system in the Denver metropolitan area and dispatches hundreds of commuter rail movements each day. In addition to its commuter operations, Denver Transit authorizes a very small number of movements by third-party passenger trains, including Amtrak's *California Zephyr* and the *Canyon Spirit* excursion train, over a short segment of track leading into Denver Union Station. Concerned that these limited dispatching activities could trigger rail-carrier status under the Board's precedent in *Rail-Term*, Denver Transit filed a petition for declaratory order asking the Board to clarify that it is not a rail carrier under the Interstate Commerce Act.

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[2] 45 U.S.C. §§ 51-60.

In its petition, Denver Transit argues that dispatching services are not common-carrier transportation because they are not offered to the public and cannot be demanded by members of the public. The company contends that it does not transport passengers or freight, does not market transportation services, and does not act as an agent of Amtrak, Canyon Spirit, or any freight railroad. Instead, Denver Transit maintains that it performs dispatching solely pursuant to its contractual obligations to RTD, a public transit authority. The petition also challenges the reasoning of the Board's 2013 *Rail-Term* decision, arguing that the Board departed from longstanding precedent when it concluded that a contractor performing an "essential function" could itself become a rail carrier even though it does not hold itself out to the public as providing transportation.

This proceeding presents an opportunity for the Board to revisit the scope of the *Rail-Term* doctrine. Denver Transit asks the Board to find that the dispatching activities alone do not confer rail-carrier status or, alternatively, to distinguish its circumstances from Rail-Term because more than 99.9 percent of its dispatching activities involve RTD commuter rial operations and only an incidental fraction involves third-party passenger carriers. The petition further argues that extending rail-carrier status to public-transit dispatching operations would conflict with prior Board precedent involving public commuter agencies and would impose regulatory and employee-benefit obligations that Congress did not intend.

II. DISCUSSION

<u>Rail-Term</u>

The *Rail-Term* case arose from a dispute over whether Rail-Term Corporation, a company that provided outsourced train dispatching services to several short line railroads, qualified as a "rail carrier" subject to the jurisdiction of the Board. After the Railroad Retirement

Board ("RRB") determined that Rail-Term was a covered railroad employer under the Railroad Retirement Act and Railroad Unemployment Insurance Act, Rail-Term challenged those determinations before the U.S. Court of Appeals for the D.C. Circuit. The court held the appeal in abeyance and referred the threshold jurisdictional question to the STB, asking the agency to determine whether Rail-Term constituted a rail carrier under 49 U.S.C. § 10102(5). *Rail-Term Corp.—Petition for Declaratory Order*, FD 35582 (STB served Nov. 19, 2013).

In response, the STB instituted a declaratory order proceeding in Finance Docket No. FD 35582 and examined the nature of Rail-Term's dispatching activities. Rail-Term argued that it merely provided a contracted service to railroads and did not hold itself out to the public as providing transportation. The Board disagreed, finding that dispatching is an "essential rail function" that directly controls the movement of trains and is integral to the common carrier service offered by the railroads that Rail-Term served. The STB therefore concluded that, by performing dispatching services on behalf of rail carriers, Rail-Term itself qualified as a rail carrier subject to the Board's jurisdiction. This determination became the foundation for what has commonly been referred to as the *Rail-Term* doctrine. *Rail-Term Corp.—Petition for Declaratory Order*, FD 35582 (STB served Nov. 19, 2013).

Rail-Term subsequently sought reconsideration, arguing that the Board had improperly expanded the definition of a rail carrier and departed from prior precedent. In a decision served December 30, 2014, the STB denied reconsideration and reaffirmed its conclusion that the performance of dispatching services for short line railroads rendered Rail-Term a rail carrier under the Interstate Commerce Act. The Board emphasized that outsourced dispatching was sufficiently connected to the provision of rail transportation to warrant regulation under its jurisdiction. Although the subsequent judicial challenge was ultimately dismissed on procedural grounds, the STB's decision in FD 35582 has remained an important precedent governing the regulatory treatment of contract dispatching providers. The pending Denver Transit proceeding seeks to limit, distinguish, or overturn that precedent, arguing that *Rail-Term* improperly expanded STB jurisdiction beyond traditional common-carrier activities.

ASLRRA's Position on *Rail-Term*

ASLRRA participated in *Rail-Term* as intervenor. ASLRRA's core argument was that a rail carrier must hold itself out to the public as providing rail transportation and have the ability to provide that transportation. ASLRRA argued that Rail-Term satisfied neither requirement because it did not market rail transportation to shippers, owns no track, locomotives, railcars, or rail operating assets, does not provide rail service to the public, and is not held out by its railroad customers as the provider of common-carrier service. Additionally, ASLRRA challenged the Board's conclusion that outsourced dispatching services transform the contractor into a rail carrier simply because dispatching is an "essential" railroad function. ASLRRA emphasized that Rail-Term operates as an independent contractor, and that the railroads remain responsible for operating decisions such as train schedules, service offerings, shipper relationships, and routing decisions.

ASLRRA disagrees 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. This decision has been problematic for Short lines because it discourages outsourcing dispatching services and increases regulatory exposure and cost. The Board has an opportunity with this matter to correct the decision issued in *Rail-Term* by holding that a company is not a rail carrier if it does not hold itself out to the public as providing rail transportation and does not have the ability to provide that transportation.

Denver Transit

To promote regulatory clarity, the Board should reverse its *Rail-Term* decision by granting Denver Transit's petition and determining that Denver Transit's Dispatching Department is not a common carrier within the meaning of the Interstate Commerce Act, as it does not provide common carrier railroad transportation. 49 U.S.C. 10102(5). Further, the Dispatching Department does not offer service to the public. Denver Transit is also not an agent for any rail carrier's service and should not be imputed to be a rail carrier. However, even if the Board declines to revisit *Rail-Term*, it should still grant Denver Transit's petition, as the facts here are starkly different. A dispatching operation, such as Denver Transit's, that overwhelmingly services commuter rail activities and only incidentally services common carrier passenger services, should not constitute a rail carrier under the Interstate Commerce Act.

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ASLRRA appreciates the opportunity to provide these comments on this important matter.

Respectfully submitted,

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September 8, 2026

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served on the following persons by U.S. or electronic mail this date:

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