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VIA E-FILE [OLA-EFILE@NMB.GOV]

Investigator Angela I. Heverling
Associate General Counsel
National Mediation Board
1301 K Street NW
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RE: Space Exploration Technologies, Corp.
NMB File No. CJ-7243; NLRB Case Nos. 31-CA-307446, 31-CA-307514, 31-CA-307525, 31-CA-307532, 31-CA-307539, 31-CA-307546, 31-CA-307551, and 31-CA-30755

Dear Investigator Heverling:

Participants Yaman Abdulhak, Scott Beck, Rebekah Clark, Paige Holland-Thielen, Deborah Lawrence, Claire Mallon, Tom Moline, and André Nadeau (hereinafter, "Charging Parties") submit this response to SpaceX's June 26, 2025 position statement concerning jurisdiction pursuant to the NMB's July 3, 2025 letter.

The Charging Parties lament that the new Acting General Counsel reversed the National Labor Relations Board Order finding that it was appropriate in this matter for SpaceX's jurisdictional challenge to be adjudicated in the ULP hearing, where a *full* record, including the ability to subpoena information and cross-examination of witnesses would have been afforded. Instead, the matter has now been sent to the NMB with *no* developed record: *no* opportunity for Charging Parties to seek discovery, and *no* opportunity for Charging Parties to cross-examine the witnesses that SpaceX has provided.[1] This is a great disservice to the goal of truth seeking in general and a particular disservice where, as here, the issues presented are novel.

[1] While we appreciate the offer to respond to SpaceX's factual presentation, the opportunity is all but meaningless in the absence of the opportunity to conduct discovery and to cross-examine SpaceX's witnesses. Charging Parties do not have access to this data absent discovery. Indeed, SpaceX has twice requested significant extensions of time to respond to the NMB's request for a statement because it needed more time to investigate its own operations before responding! Charging Parties cannot reasonably challenge SpaceX's factual representations in the absence of an opportunity to conduct discovery.

Indeed, SpaceX's submission is rife with speculation regarding its plans for the future. One can only surmise that the reason for its constant reference to its *future* intent to develop its role as a "common carrier" is the lack of *current* standing in that capacity. We respectfully request that all of the "facts" regarding SpaceX's future intent be stricken from consideration as irrelevant. *Railway Labor Execs.' Ass'n v. Wheeling Acquisition Corp.,* 736 F. Supp. 1397, 1402 (E.D. Va. 1990).

When future intent is stripped from its factual presentation, we are left with slim facts that do *not* support SpaceX's request that the NMB overreach its current jurisdiction in order to find that transport between earth and outer space – which SpaceX offers to only hand-picked customers – actually as affords it "common air carrier" status.

A. Expansion Of The RLA Is A Matter For Congress.

As SpaceX freely acknowledges, "this case presents a matter of first impression" because the RLA has never before been applied to the commercial space transportation industry. *See* Initial Position Statement of Space Exploration Technologies, Inc., June 26, 2025 ("SpaceX Statement") at pp. 1, 24. SpaceX devotes substantial time to arguing that the nascent commercial space transportation industry is akin to the nascent air transportation industry in 1936, when Congress amended the RLA to cover air carriers. *See id.*, pp. 30-32; *see also* Schaefer Declaration ¶¶ 3, 5, 14-15. Therefore, SpaceX argues, the NMB should assert jurisdiction over commercial space transportation for the same reasons Congress found it appropriate to amend the RLA to include air carriers. But this argument actually drives home the Charging Parties' point that expanding the RLA's remit is a matter for Congress. As it currently stands, the statute does not encompass space transportation, and SpaceX's awkward attempts to shoehorn itself into definition of an air carrier only underscore the lack of fit. *See* § B, *infra*.

Indeed, as support for its claim—which it concedes as being novel—that the NMB "should" include space travel within its jurisdiction, SpaceX cites *Pan American World Airways, Inc.,* 115 NLRB 493, 495 (1956). SpaceX Statement, pp. 24-25. But the holding in that decision was quickly called into question and debunked in a subsequent case involving the same industry at the same location. Specifically, in denying the claim that the workers were covered under the RLA the Court averred the NMB's prior "long opinion" to the contrary was not persuasive because the NMB's proposed definition of air carrier created an irrationally overbroad interpretation of RLA jurisdiction. *Pan American World Airways, Inc. v. United Brotherhood of Carpenters & Joiners of America, Etc., et al.*, 324 F.2d 217 (9th Cir. 1963). As the Court surmised there, care must be taken when "facing the problem of whether a highly specialized and distinct set of labor laws tailor-made for employees engaged in transportation of persons and goods should be applied to other employees having nothing whatever to do with the transportation of persons and goods… employees are governed by the Railway Labor Act [only where] Congress has said that they should be so governed."

Before it amended the RLA to include air carriers, Congress engaged in extended debate and fact finding to determine whether such amendment would serve the purposes of the RLA. *See, e.g.*, Schaefer Declaration ¶¶ 14-15. The same level of engagement needs to happen here before an entirely new industry is roped in. This matter goes beyond facts specific to SpaceX (or any single employer), and deserves the full investigation and assessment that prior expansions of RLA jurisdiction have been afforded.

B. SpaceX Is Not Subject To The RLA As Presently Construed

1. SpaceX Is Not A "Common Carrier By Air."

For all its many exhibits, SpaceX's position statement falls short of demonstrating that it "undertakes to carry for all people indifferently." *Kieronski v. Wyandotte Terminal R. Co.*, 806 F.2d 107, 108 (6th Cir. 1986). In support of its argument that it holds itself out to the public as a common carrier, SpaceX points to its website and supposed "marketing materials." SpaceX Statement, p. 22. As to the website, Charging Parties previously pointed out that it does not permit anyone to actually book transport but merely allows them to submit their information so that SpaceX can determine if its wants to contract with them. *See* Charging Party Participants' Position Statement Concerning Jurisdiction, June 26, 2025 ("Charging Parties' Statement"), pp. 4-5. It is merely the beginning of a process that ends with a negotiated, bespoke contract.[2] As to the so-called marketing materials, when providing them to the NMB and Charging Parties as exhibits to its statement, SpaceX redacted pricing information from them. *See* SpaceX Statement Exhibits 35 & 36. If these were actually marketing materials provided to the public, there would be no need to redact pricing information. SpaceX's redactions underscore that it provides such materials at its discretion to select recipients, not to the public at large—far from the conduct of a true common carrier.

SpaceX also claims that its licensure by the FAA is an additional basis to find that it is a common carrier by air. SpaceX Statement, p. 26. Charging Parties agree that FAA licensure is a relevant factor, but here it points against "common carrier" status since SpaceX is not licensed by the FAA as an air carrier. *See* Charging Parties' Statement, pp. 5-6. SpaceX glosses over the fact that the commercial space transportation license it holds is granted under a different licensing scheme than that required for certified air carriers. *Id.* This discrepancy only highlights the point that asserting jurisdiction over the commercial space transportation industry would indeed be an expansion of the statute and should be addressed in the first instance by Congress.

Finally, SpaceX's descriptions of its transport activities are highly misleading. First, regarding human spaceflight, other than sending astronauts to the ISS on behalf of the U.S. and foreign governments, it has only ever agreed to contract with two very wealthy, famous entrepreneurs. The Inspiration4 and Polaris Dawn missions were both for Jared Isaacman, CEO

[2] While SpaceX alleges that its customers sign "standard" contracts, it has provided none of them and should be required to substantiate that highly suspect allegation.

of Shift4 and President Trump's former pick to lead NASA prior to his public falling out with SpaceX CEO Elon Musk.[3] Fram2 was for Chun Wang, a cryptocurrency investor who reportedly paid $55 million per seat.[4] A total of two private customers for human spaceflight does not a common carrier make. While SpaceX avers that it has conducted four missions for Axiom Space, flying its "private commercial customers to and from the ISS," it provides no evidence or support for this statement. SpaceX Statement, p. 10. Axiom's website, in turn, says nothing about SpaceX's involvement in these missions, but does reveal that the "customers" were actually astronauts selected by the US and foreign governments to participate in government sponsored missions.[5] Being an astronaut requires specialized training. Unlike airplane travel, members of the public cannot participate.

Next, regarding cargo deliveries, all 32 of SpaceX's flights were under contract with the federal government to carry goods to the ISS. SpaceX Statement, p. 2. It appears that no private individuals or companies have ever contracted with SpaceX to transport cargo.

Third, regarding satellites, SpaceX's alleged "over 400 flights" carrying government and customer satellites is unsubstantiated. SpaceX Statement, p. 3. Charging Parties' research indicated that the majority of SpaceX's satellite launches are for its own satellites. Charging Parties' Statement, p. 4. Of the remainder, SpaceX does not divulge how many were for the government versus a private customer—a telling omission. SpaceX should divulge exactly how many commercial customers it has and prove that it contracts to carry for all such customers without discrimination.

2. SpaceX Is Not Engaged In "Interstate Or Foreign Commerce."

It is odd that SpaceX suggests looking to the Interstate Commerce Act for a definition of interstate or foreign commerce (*see* SpaceX Statement, p. 27), when the term is already defined in the RLA:

> The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other

[3] *See, e.g.*, https://www.cnn.com/2025/05/31/politics/nasa-jared-isaacman-trump-pull (describing Isaacman's "close ties to SpaceX chief Elon Musk"). Selection of the passengers of Inspiration4, which was a charity fundraiser for a hospital, involved a raffle process overseen by the hospital. *See* https://inspiration4.com/faq. The passengers for Polaris Dawn included one employee of Isaacman's Shift4 and two employees of SpaceX – not other paying members of the public. *See* https://polarisprogram.com/dawn/.

[4] *See* https://timesofmalta.com/article/meet-chun-wang-first-maltese-citizen-space.1106102. All individuals participating in these three flights (Inspiration4, Polaris Dawn, and Fram2) had to undergo months of intensive training to become eligible. *See, e.g.*, https://time.com/6083965/inspiration4-space-training/; https://spaceflightnow.com/2025/03/31/meet-the-fram2-crew-a-crypto-entrepreneur-a-cinematographer-a-robotics-engineer-and-an-arctic-explorer//.

[5] *See* https://www.axiomspace.com/missions/ax4.

> Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

45 U.S.C. § 151. SpaceX does not meet this definition. SpaceX's transport activities are not between one state or territory and another, nor between a state or territory and a foreign nation, nor between points in the same state but through another state. Rather, they originate in Florida, Texas, or California, and go to outer space. As SpaceX's own statement recognizes, neither the ISS nor the points in space where it deposits satellites are "foreign nations." SpaceX Statement, p. 28. Neither are the international waters where the rocket stages land. Further, even if the stages' landing were in a state or foreign nation, the re-entry location is entirely irrelevant to the common carrier analysis because the rocket stages carry no cargo whatsoever. They are instead part of the spacecraft itself that is falling back to earth. Their retrieval merely serves SpaceX's desire to re-use the stages for future missions, not any common carrier activity. Thus, at best, SpaceX's "transport activities" demonstrate one-way transportation from a state to outer space.

SpaceX mentions just one single flight that took off from one state and landed in another: a Varda Space Industries capsule that launched from Florida and landed in Utah. SpaceX Statement, p. 20. However, Varda managed its own reentry and landing process entirely independent of SpaceX.[6] This flight therefore does not show that SpaceX is engaged in interstate commerce, either.

3. SpaceX Is Not A "Carrier By Air Transporting Mail For Or Under Contract With The United States Government."

SpaceX also argues that it is a "carrier by air transporting mail for or under contract with the United States Government." SpaceX Statement, p. 29. This is wrong for two reasons.

First, the evidence provided by SpaceX shows that it has not transported mail for anyone but itself. SpaceX cites Exhibits 22-28 to its Position Statement as examples of the "dozens of letters sent into space-and returned-via SpaceX spacecraft." SpaceX Statement, p. 13. However, Exhibits 23-27 are SpaceX's own letters—they are all messages from SpaceX employees to the crew of the ISS. Exhibits 22 and 28 are both copies of the same note from the ISS crew stating: "Thank you so much for the tons of supplies!" Thus, SpaceX has only shown that it has carried its own private communications and a single, one-sentence thank you note from the ISS crew (with no envelope or postage). This is a far cry from the mail carrier in *NLRB v. Interior Enterprises, Inc.*, 298 F.2d 147 (1961), which explicitly contracted with the U.S. government to carry, e.g., "communications between servicemen and their friends and relatives,

[6] *See* https://spacenews.com/varda-capsule-lands-in-utah/.

and between servicemen and mail order houses," which went first through the United States post office and then to remote air force bases via the services of the carrier at issue.

Similarly, SpaceX misleadingly argues that it carries "care packages" to astronauts on the ISS to attempt to make it sound more like a mail carrier. But again, the only evidence it cites are Exhibits 22-28 (SpaceX's own letters) and a NASA shipping manifest that references "crew care package" underneath "crew supplies." SpaceX Statement, p. 9. These "care packages" are crew supplies provided for by the U.S. government in its contracts with SpaceX to haul cargo to the ISS. They do not show that the government has contracted with SpaceX as a "mail carrier."

Conclusion

SpaceX cannot demonstrate that its ***current*** operations meet the definition of "common carrier." We respectfully submit once again that if Congress wants space travel to be included under the RLA's jurisdiction it must take up the matter as it has done in the past. Unless and until that occurs, SpaceX's request to be considered a common carrier under the RLA must be rejected.

Very truly yours,

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Certificate of Service

The undersigned counsel of record for Participants Yaman Abdulhak, Scott Beck, Rebekah Clark, Paige Holland-Thielen, Deborah Lawrence, Claire Mallon, Tom Moline, and André Nadeau certifies that this Position Statement was served simultaneously on all participants on June 29, 2025 by copying the following counsel of record for Space Exploration Technologies Corp. on the transmission e-mail to the National Mediation Board:

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