



**Massachusetts Bay  
Transportation Authority**

# 2022 Attleboro Agreement Between MBTA and Amtrak

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MBTA Board of Directors  
Audit & Finance Committee  
January 20, 2022

# MBTA Board of Directors Overview

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- The Board is being asked to approve the 2022 Attleboro Agreement, a renewal of the 2017 Attleboro Agreement which expires February 28, 2022
- The 2017 agreement (and predecessor agreement from 2003) established the terms which the MBTA and Amtrak share costs and jointly use the Attleboro Line
  - The Attleboro Line is part of Amtrak's Northeast Corridor service
- The MBTA and Amtrak believe the 2017 agreement worked well and thus the proposed 2022 agreement preserves and extends many of its terms until 2027



# MBTA Board of Directors: Background on 2003 Agreement

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- In 2003, MBTA and Amtrak entered into the “2003 Attleboro Agreement” governing joint use of the Attleboro line, on which both MBTA and Amtrak trains operate. MBTA owns the track and right of way, including 2 of the 3 shared stations (South Station and Back Bay). Under the 2003 Attleboro Agreement:
  - Amtrak used the line and had limited priority for its trains
  - Amtrak maintained the track and performed dispatching
  - No money changed hands



# MBTA Board of Directors: 2017 Agreement Background

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- In 2008, Federal legislation, section 212 of the Passenger Rail Investment and Improvement Act (“PRIIA”) created the Northeast Corridor Commission composed of members representing the Northeast Corridor states, Amtrak, and the U.S. Department of Transportation
- The Commission was charged with developing a cost allocation policy based on proportional use for all NEC infrastructure owners and operators, including MBTA and Amtrak
- Amtrak, and others, asserted that PRIIA superseded the Attleboro Agreement.
- Amtrak demanded annual payments from the MBTA (approximately \$29 million for FY16)
- MBTA initiated litigation, challenging PRIIA as unconstitutional
- In December 2016, Amtrak and the MBTA reached a settlement of the PRIIA litigation



# MBTA Board of Directors: 2017 Agreement Background

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- As a result of the settlement:
  - Amtrak would continue to maintain and dispatch the line
  - MBTA and Amtrak costs would be allocated per PRIIA, with certain credits to the MBTA
  - No longer a “barter” arrangement
- The 2017 Attleboro Agreement implemented that settlement.



# MBTA Board of Directors: 2022 Agreement Summary

Term	March 1, 2022 – September 30, 2027
Payment Obligations	<p>Preserved benefits of MBTA's 2016 litigation and settlement.</p> <ul style="list-style-type: none"><li>• Annual cost allocations to MBTA to reflect 2016 modifications, including credits to MBTA</li><li>• MBTA Federal Fiscal Year 2022 operational obligation: \$11.6m</li><li>• MBTA Federal Fiscal Year 2022 Capital Obligation: \$21.7m less a \$6.4m credit for \$15.3m total. Payments made on actual work performed<ul style="list-style-type: none"><li>○ Reflects credit to MBTA for certain federally appropriated amounts to Amtrak</li></ul></li></ul>
Operation and Maintenance	<p>Largely extends Amtrak's obligations and required standards from 2003 and 2017 Agreements.</p> <ul style="list-style-type: none"><li>• Clarifies process for MBTA contractors to access the property</li><li>• Allows Amtrak to request more Acela service, subject to MBTA approval</li></ul>
Capital Program	<p>Preserves MBTA control of Capital Program on Attleboro line.</p> <ul style="list-style-type: none"><li>• Extends all preexisting capital obligations</li><li>• Increases Amtrak management fee from 6% to 8% for work the MBTA elects to assign to Amtrak</li></ul>
Penalties and Incentives	<p>Modifies 2017 Penalties and Incentives to reflect effects of Covid.</p> <ul style="list-style-type: none"><li>• Caps all penalty and incentive payments at 50% of 2017 cap</li><li>• Sunsets penalty and incentive payments in 2023 unless parties can agree to extend them</li></ul>



## MBTA Board of Directors: Requested Vote

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“That the Board authorizes the General Manager to execute the proposed 2022 Attleboro Agreement consistent with the terms of the attached Term Sheet (Exhibit A hereto) and take any and all actions necessary or advisable to effectuate the foregoing consistent with the attached Term Sheet.”



# MBTA Board of Directors: 2017 Agreement Summary

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- Compensation:
  - MBTA made payments pursuant to PRIIA §212 for duration of Term (with modifications);
  - Costs for operating and capital updated annually pursuant to PRIIA model;
  - FFY17 payments by MBTA were approximately:
    - \$11.2m for operating and \$12.4m for capital;
    - Amtrak paid approximately \$5.8m+ for capital; and
    - MBTA recovered \$1m+ from RI for service there.
- Eliminated Amtrak's right to approve MBTA projects on Right of Way.
- Capital Planning:
  - MBTA managed capital spending on the Attleboro Line (both its allocated cost and Amtrak's); and
  - Bulk of capital spending was on recapitalization of line.





# MBTA Board of Directors: 2017 Agreement Summary

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- Penalties:
  - New penalty provisions and incentive added to ensure Amtrak operations did not impede MBTA Commuter Rail Operations
    - On Time Performance (“OTP”) of MBTA trains:
      - Penalties for Amtrak performance below certain OTP level; incentives for performance above certain OTP level;
    - Catastrophic failures:
      - \$10k/day for every day MBTA service significantly compromised (service degraded below 50%);
    - Failure to comply with notification requirements:
      - Amtrak penalized for failure to abide by notification requirements to MBTA in event of service delays; and
  - Penalties and Incentives were each capped at \$1m per year.
- Indemnification:
  - Reduced MBTA indemnification obligation from \$75m to \$20m for certain incidents;
  - Tightened Amtrak’s indemnification requirements in Massachusetts;
  - Clarified and potentially increased MBTA indemnification obligations in RI; and
  - All indemnification requirements capped at MBTA statutory limit.



# MBTA Board of Directors: Summary of Differences

2017		2022
<b>Costs</b>		
• <b>Operating</b>	• \$11.2m	• \$11.6m
• <b>Capital</b>	• \$12.4m	• \$21.7m (reduced by \$6.4m credit to \$15.3m)
<b>Operations</b>		
• <b>Coordination of MBTA projects on Attleboro Line</b>	• Eliminated Amtrak approval for design of MBTA projects (e.g., station accessibility improvements) to accelerate MBTA projects.	• Further streamlined process to remove bottleneck slowing MBTA contractor access on the property.
• <b>Increased Acela Service</b>	• Continues 2003 allotment of Amtrak trains per hour in each direction.	• Allows for increased Amtrak service upon MBTA approval.
• <b>Performance Incentives During Covid</b>	• Pre-Covid agreement did not anticipate pandemic-decreased ridership.	• Caps incentive payments to Amtrak to reflect decreased ridership.
• <b>Covid, or other, Pandemic Suspensions</b>	• Pre-Covid Agreement was not clear whether pandemic constitutes a Force Majeure event.	• Specifies that in the event of a pandemic either side may declare a Force Majeure event with all obligations being suspended, although the MBTA retains the right to provide services with its workforce.
<b>Legal</b>		
• <b>Benefits from 2016 litigation settlement</b>	• 2017 Agreement was essentially a 4-year pilot to test PRIIA as modified.	• Preserves the 2016 settlement benefits since the parties believe the arrangement worked well.
• <b>MBTA control of capital work on Attleboro Line</b>	• Notwithstanding MBTA payment obligations, established that MBTA was in control of capital planning for Attleboro Line for term of 2017 Agreement.	• Preserved this arrangement since it was working well.

