NATIONAL MEDIATION BOARD
1301 K St NW, Suite 250E
Washington, DC, 20005

53 NMB No. 8
January 14, 2026

The Honorable Crystal Stowe Carey
General Counsel
National Labor Relations Board
Division of Operations- Management
1015 Half Street, SE
Washington, DC 20570

Re: 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
Space Exploration Technologies, Inc.

Dear Ms. Carey:

This responds to the National Labor Relations Board's (NLRB) May 21, 2025 request for the National Mediation Board's (NMB or Board) opinion regarding whether Space Exploration Technologies Corporation (SpaceX) is subject to the Railway Labor Act (RLA or Act), 45 U.S.C. § 151, *et seq*. As discussed below, the NMB finds that SpaceX is subject to the RLA.

I. PROCEDURAL BACKGROUND

On November 16, 2022, eight engineers (Charging Parties) who had previously been employed by SpaceX at its Hawthorne, California location filed separate unfair labor practice (ULP) charges with NLRB Region 31 in Los Angeles alleging that their terminations violated Section 7 of the National Labor Relations Act (NLRA). On January 3, 2024, the NLRB issued a consolidated Complaint against SpaceX based on the allegations and scheduled a hearing for March 5,

2024. On January 4, 2024 SpaceX filed a lawsuit in federal court seeking to enjoin the NLRB proceedings based on constitutional grounds.

On January 30, 2024, SpaceX filed a motion to dismiss the NLRB cases on jurisdictional grounds, arguing it was subject to the RLA rather than the NLRA. On March 11, 2024, the NLRB denied SpaceX's motion to dismiss and deferred decision on the jurisdictional issue until after the factual record could be developed at the ULP hearing. The hearing was subsequently stayed by the Fifth Circuit pending resolution of the constitutional challenge.

On April 23, 2025, the Acting General Counsel of the NLRB and SpaceX filed a joint motion asking the Fifth Circuit to lift the stay on the ULP hearing for the limited purpose of referring the case to the NMB for an advisory opinion. On May 5, 2025, the court granted the request. On May 21, 2025, the General Counsel of the NLRB referred the case for the NMB's determination of the jurisdictional issue.

On June 26, 2025, the Charging Parties and SpaceX submitted initial position statements to the NMB. Additional position statements were submitted by both parties on July 29, 2025. The Charging Parties contend that SpaceX is not subject to RLA jurisdiction because it is not a common carrier by air, and that the RLA does not cover commercial space transportation. They argue that SpaceX does not hold itself out to the public indiscriminately and is not a licensed air carrier. SpaceX contends that it is a common carrier by air because it offers its services indiscriminately to the categories of customers it serves, and because it is engaged in interstate and foreign travel. Additionally, SpaceX asserts that its contract with the United States Government to transport mail provides another avenue to RLA jurisdiction.

The NMB's opinion is based on documents provided by the NLRB and the submissions to the NMB from the Charging Parties and SpaceX.[1]

II. FACTUAL BACKGROUND

SpaceX's Operations

SpaceX was founded in 2002. It designs, manufactures, and launches rockets and spacecraft to transport cargo and humans to Earth orbit and other destinations in space. The company launches commercial and government cargo into space and delivers human crews to the International Space Station (ISS) and returns them to Earth.

[1] The Commercial Space Federation filed an amicus brief in support of SpaceX's position.

Although SpaceX is currently developing other products, it has throughout its history been primarily a space launch business, with this part of its business generating the vast majority of its revenue. SpaceX sells its launch services to transport customer cargo into space. An early version of its Falcon rockets carried its first cargo into space in September 2008. Currently, launch vehicles Falcon 9 and Falcon Heavy use fairings[2] to carry satellites as cargo to space. The fairings are replaced by the Dragon spacecraft for human spaceflight missions and cargo missions to the ISS. The Falcon rockets launch from Cape Canaveral, Florida and Vandenberg Air Force Base, California.

SpaceX Falcon first stages often land on drone ships in international waters in the Atlantic or Pacific Oceans. These drone ships recover the first stage of these rockets after launch and return them for reuse. Falcon fairings also land most often in international waters, where they are placed into a vessel with the use of a crane, inspected by SpaceX employees, and returned to the United States for reuse.

SpaceX's customers are commercial businesses and governments, most purchasing single launch flights to deliver their cargo into space. SpaceX also sells its services through a "Smallsat Rideshare Program," which allows multiple payloads to share a ride on a single launch. At the time of its initial submission to the NMB, SpaceX had completed fourteen Rideshare missions.

SpaceX also uses its Falcon rockets to deliver its own Starlink satellites into orbit to provide internet access to millions of customers globally. Starlink also provides data from and communications with SpaceX rockets and internet access to commercial airlines.

The National Aeronautics and Space Administration (NASA) contracted with SpaceX in 2006 to develop the capability to carry cargo to the ISS and return it to earth. NASA and SpaceX signed a Commercial Resupply Contract in 2008, and SpaceX conducted its first twelve delivery missions under the contract between 2012 and 2020. SpaceX and NASA have extended this program through a new contract, which NASA classified as "Nonscheduled Chartered Freight Air Transportation" in its solicitation notice. SpaceX has flown 32 delivery missions as of June 2025. SpaceX reports that it delivers cargo to the ISS and returns cargo to Earth every three to six months.

As part of its Commercial Resupply Services program, SpaceX transports letters and packages to space, generally to astronauts on the ISS on NASA missions, and transports letters from the ISS to Earth. Under the contracts with NASA, SpaceX and two other companies "deliver pressurized and unpressurized

[2] A fairing is "is a two-piece protective shell made of aluminum and carbon composite at the tip of the Falcon 9 and Falcon Heavy rockets. Its purpose is to protect the payload from acoustic and atmospheric effects during launch." *SpaceX Fairing Recoveries,* ELONX.NET (Mar. 3, 2020), https://www.elonx.net/fairing-recovery-attempts/.

cargo, return and disposal of pressurized cargo, disposal of unpressurized cargo, special tasks and studies, and ground support services for the end-to-end cargo resupply services." NASA has stated that "cargo resupply missions are a critical need for the ISS program" and "maintaining uninterrupted cargo resupply service to and from the ISS is essential to ensure the ISS remains a viable, life-sustaining, and productive facility."

SpaceX also delivers cargo to and from the ISS as part of another NASA contract. These deliveries include cargo bags and storage containers of water, food, medicine, spare parts, and research equipment. NASA tells SpaceX what it will be delivering by providing "bag level manifests," which provide the information SpaceX needs to safely transport the specific cargo. This information is provided by SpaceX to the Federal Aviation Administration (FAA).

SpaceX also performs other missions that do not dock with the ISS and are secured by commercial customers. During these "Free-Flyer Missions" civilian crews have brought personal belongings, such as heirlooms and childhood photos that are launched into space, travel around the Earth, and returned.

As of the date of its June 2025 submission to the NMB, SpaceX reported that it had successfully launched and returned 65 government astronauts and civilian participants on 18 flights. Through its contract with NASA, it has conducted 14 crewed missions to the ISS. In addition to the government-led space missions, SpaceX has also conducted standalone commercial human spaceflight missions, flying Axiom Space's private commercial customers to and from the ISS, and has flown three Free-Flyer Missions for private commercial customers.

SpaceX has provided the NMB with a significant amount of information about future plans, much of which is not repeated here. The RLA generally deals with the present status and interests of employers and employees and not speculation based on potential future developments. *See, e.g., Aloha Air Cargo*, 44 NMB 190, 193 (2017); *United Airlines*, 11 NMB 41, 43-44 (1983).

Regulatory Regime

The Commercial Space Launch Act authorizes the Secretary of Transportation to oversee, license, and regulate commercial space transportation activities launched in the United States. *See* 51 U.S.C. § 50901. This authority has been delegated to the FAA's Office of Commercial Space Transportation. The Office of Commercial Space Transportation is one of five departments within the FAA, along with the Office of Aviation Safety, the Office of Airports, the Air Traffic Organization, and the Office of Security and Hazardous Materials Safety. The FAA has issued regulations for launch and reentry operation at 14 C.F.R. Part

450. SpaceX is the operator with the most licensed launches.[3] SpaceX's flight and landing routes are subject to use and approval by the United States National Airspace System (NAS) controlled by the FAA because all space vehicles pass through the entirety of the vertical airspace used by airplanes. According to the FAA's webpage devoted to airspace integration, "[t]he FAA is responsible for the safe and efficient integration of space operations into the U.S. airspace system, the busiest and most complex in the world. This includes space operations for FAA-licensed commercial space operators and for NASA, the U.S. military and other U.S. government agencies." The agency further describes its oversight as follows:

> The FAA develops an Airspace Management Plan for each space operation that details how it will safely and efficiently manage the airspace. As part of the FAA commercial space licensing and permitting process, a launch or reentry vehicle operator, or spaceport operator, must enter into a Letter of Agreement with FAA air traffic control to define general procedures for notification, communication and contingency plans for its space operations. After the FAA issues a license or permit, the space operator provides timely and operation-specific information as the mission date approaches. The FAA Office of Space Operations assesses how the space launch or reentry impacts the airspace, seeks input from the airline industry, establishes potential aircraft hazard areas and negotiates with the space operator to identify additional efficiencies. A final Airspace Management Plan is distributed to the affected FAA air traffic control facilities and other stakeholders.[4]

Additionally, the State Department requires that SpaceX obtain an export license because the landing of a rocket and fairings outside of United States waters is considered an "export" under the International Traffic in Arms Regulations.

III. DISCUSSION

In 1936, Congress extended the RLA's coverage to air carriers. Section 201 provides that:

> [A]ll of the provisions of title I of this Act, except the provisions of section 3 thereof, [45 U.S.C. § 153,] are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under

[3] *Commercial Space Data*, FED. AVIATION ADMIN., https://www.faa.gov/data_research/commercial_space_data (last visited December 18, 2025).

[4] *Airspace Integration*, FED. AVIATION ADMIN., https://www.faa.gov/space/airspace_integration (last visited December 18, 2025).

> contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.[5]

SpaceX argues that it is subject to RLA jurisdiction because it is a "common carrier by air" that engages in "interstate or foreign commerce." It also contends that it is subject to RLA jurisdiction because it transports mail under contract with the Government. These two arguments will be addressed separately.

Carrier by Air

Initially, it is necessary to consider whether SpaceX is a carrier by air under the RLA. The Charging Parties argue that Congressional action is needed for the RLA to be extended to space transportation companies. Although the intent of the 1936 amendment was to extend RLA coverage to the nascent airline industry, in the decades since, the NMB has asserted jurisdiction over companies outside of the traditional airline industry who may not have been contemplated by the drafters of the 1936 amendment. The most notable example is helicopter companies, over which the Board first exercised jurisdiction in 1957. *See Chicago Helicopter Airways,* 3 NMB 74 (1957); *see also Evergreen Helicopters*, 8 NMB 505 (1981) (finding jurisdiction over a company providing specialized helicopter services "including spraying and seeding for logging companies, ferrying crews and equipment for oil companies, and providing emergency medical ambulance service"); *North Memorial Health Care d/b/a Air Care*, 50 NMB 5 (2022) (finding jurisdiction over a health care provider's helicopter transport operation). The plain language of Section 201 does not limit RLA jurisdiction to traditional airlines, and the NMB has asserted jurisdiction over various enterprises as technologies and the market have evolved.

The Charging Parties argue that SpaceX is not a "licensed air carrier" and therefore, not subject to RLA jurisdiction. They cite cases where the Board considered whether an entity has a "valid FAA operating certificate authorizing it to operate as an air carrier[,]" including *Mountain Air Helicopters*, 39 NMB 512 (2012). Although the Board has considered an FAA operating certificate to be an indicator of air carrier status, it is not required to establish RLA jurisdiction. *See Bullock v. Capitol Airways, Inc.*, 176 F. Supp. 449, 450 (E.D.N.Y. 1959) ("The defendant's argument that it was not a common carrier because during the significant period herein it did not operate under a certificate of public convenience and necessity issued by the Civil Aeronautics Board is specious. Operation under such a certificate is not a condition to the applicability of the

[5] 45 U.S.C. § 181.

provision of the Railway Labor Act."), *cited in Southern Air Transport*, 8 NMB 31 (1980).

Despite not having the FAA operating certificate held by airlines, SpaceX's operations are regulated by the FAA. The Commercial Space Launch Act regulates the industry and requires companies to obtain a license before launching or reentering a vehicle in the United States. It also requires the FAA to grant such a license within 180 days of accepting an application that complies with the requirements of that Act. *See* 51 U.S.C. § 50905(a)(1). According to the FAA's website, SpaceX has an active reentry license and is the commercial space operator with the most licensed launches.[6]

SpaceX is an air carrier under the RLA. It is engaged in transportation through both domestic and international air space, as well as activities in international waters. Prior to entering outer space, space transport includes air travel within the same air space as airlines.[7] Commercial space transportation vehicles are integrated into NAS because they pass through all of the vertical airspace utilized by airplanes.

Additionally, the NLRB has in the past recognized airline employees working in functions related to space travel subject to the RLA. In 1974, for example, the NLRB held that the functions of employees operating under Pan American World Airways, Inc.'s contract with NASA in support of manned space launch operations at the Kennedy Space Center were "sufficiently flight related as to fall within the jurisdiction of the National Mediation Board, the agency vested with jurisdiction over air carriers under the [RLA]." *Pan Am. World Airways*, 212 NLRB 744, 746 (1974), *cited with approval in Marshall v. Pan Am. World Airways*, 1977 WL 1772, at *4 (M.D. Fla. Aug. 8, 1977).[8]

Common Carrier Status

The RLA does not define the phrase "common carrier by air" but the Board has long held that the term "is to be defined in accordance with the common law

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[6] *Commercial Space Data*, FED. AVIATION ADMIN., https://www.faa.gov/data_research/commercial_space_data (last visited on December 18, 2025).

[7] There is no internationally agreed upon definition of where air space ends and outer space begins, but the von Karman line (100 kilometers above the earth) has been recognized by some nations as that boundary.

[8] The Charging Parties cite an earlier case, *Pan Am World Airways, Inc. v. United Bhd. of Carpenters and Joiners of Am.*, 324 F. 2d 217 (9th Cir. 1963), that rejected the argument that all employees of an air carrier are subject to the RLA even if they do not perform transportation functions. That court held that the Pan Am employees who maintained a Nuclear Research Development Station had a "nonexistent" relationship to Pan Am's transportation functions. *Id.* at 221. There has been no argument raised here that the Charging Parties did not perform work related to SpaceX's transportation functions; rather, the issue here is whether SpaceX's is a common carrier by air based on those transportation functions.

carriers" and that the "essential characteristic of a common carrier is its quasi-public character." *Southern Air Transport*, *above* at 33-34. In *Southern Air Transport*, the Board further found that in order to be a common carrier by air, an entity must have an affirmative duty to serve the public or hold itself out as a common carrier or the public must have the right to demand services. *Id.*

The Charging Parties argue that SpaceX is not a common carrier because it provides limited services to parties it selects. SpaceX disputes that characterization and argues that it holds itself out to the public as a provider of space transportation for individuals and cargo for those who are willing to pay. It further argues that the fact that only a small percentage of the population can afford any of SpaceX's services does not preclude it from being a common carrier.

The evidence indicates that SpaceX holds itself out to the public as a common carrier. The NMB has defined holding out as "any conduct which communicates that a service is available to those who wish to use it." *Southern Air Transport*, *above* at 35. SpaceX's website advertises its public offerings for transporting payloads, cargo, and passengers. Even though it does not allow individuals to instantly make reservations, potential customers can retrieve pricing for the rideshare program online, and the website provides many opportunities to contact the company. Throughout the website, potential customers are advised to email sales@spacex.com to begin the process of securing services.

SpaceX customers sign standard contracts to procure their launches. SpaceX offers contracts for single customer launches, human spaceflight missions, Free-Flyer missions, and rideshare missions. As of June 2025, SpaceX had delivered payloads into space through direct sales to over 225 commercial customers and many more indirect customers through brokered rideshare sales.

The fact that a limited number of individuals or businesses can afford space travel does not prevent space transportation companies from being common carriers. Airlines are common carriers even when they limit who or what they carry. Courts have held that serving only a small percentage of the population or "a specialized niche" does not preclude common carrier status. *See, e.g., Riegelsberger v. Air Evac EMS, Inc.*, 970 F.3d 1061, 1065 (8th Cir. 2020). The DC Circuit stated the following:

> [W]e note that under common law a "common carrier" was an entity that held itself out indiscriminately to the clientele it was suited to serve. Thus, air lines that hold themselves out to serve only a certain class of the public (shippers who do not ship dangerous articles) and to carry only a limited class of cargo (nonhazardous materials) are nonetheless "common carriers" under common law. The essential element is the offer to transport anything for anyone

> within the limitations specified. To be sure, however, the extent to which the airline carriers of today have a right to delineate what they will carry and for whom depends not only upon their common law responsibilities as common carriers, but also upon the statutory obligations and regulatory powers created by the Federal Aviation Act.

Delta Air Lines, Inc. v. C.A.B., 543 F.2d 247, 259 (D.C. Cir. 1976). Like the airlines discussed by the court, space transportation companies are heavily regulated and this in itself currently limits who or what they can transport, making instant booking unlikely and requiring further review by the company of individuals or businesses seeking its services.

The NMB has found companies to be common carriers even when they offer specialized services or services only available to a small segment of the public. *See, e.g., Offshore Logistics, Aviation Servs. Division, d/b/a Air Logistics*, 10 NMB 477 (1983) (helicopter air taxi company that transported oil company personnel and equipment was a common carrier under the RLA because its services were available to any company); *Mountain Air Helicopters*, 39 NMB 512 (2012) (company that provided helicopter utility flight services was a common carrier under the RLA because held itself out to the public for hire). Based on this precedent, the Board finds that SpaceX is a common carrier for purposes of RLA jurisdiction.

Contract to Carry Mail

Section 201 extends RLA jurisdiction to "every carrier by air transporting mail for or under contract with the United States Government . . .." SpaceX argues that its activities related to carrying packages and letters meet the requirement for transporting mail under contract with the government. The Charging Parties argue that SpaceX only transports letters and packages between the company and the ISS crew and that the only packages it sends are full of items required by its contract with NASA.

On SpaceX missions to the ISS, SpaceX carries letters to astronauts aboard the ISS and brings letters back to Earth. The Dragon spacecraft carries cargo to the ISS from Cape Canaveral, Florida and returns cargo from the ISS by landing off the coast of Florida or California, often in international waters. According to SpaceX, shipments to and from the ISS include care packages, letters, cards, bags of food, and clothes. SpaceX delivers these items as part of its Commercial Resupply Service contracts with NASA.

Congress did not define "mail" in the RLA and the plain language of Section 201 does not require a carrier to hold a contract with the United States Postal Service (USPS). In 1961, the Ninth Circuit held that an air transport business

was subject to the RLA because it delivered cargo, letters, and packages under a subcontract with the Federal Election Commission, which held a primary contract with the Air Force for maintenance of isolated military sites in Alaska. *See N.L.R.B. v. Interior Enters., Inc.*, 298 F.2d 147, 150 (9th Cir. 1961). The Air Force used the company as the most cost-effective way to get mail to remote sites not serviced by the USPS. *Id.* Here, SpaceX holds contracts with NASA which involve delivering packages and letters to astronauts aboard the ISS. As in *Interior Enterprises*, where the company delivered mail to areas not serviced by any airline and which did not have mail service available to the general public, NASA has likewise retained SpaceX to perform this service to the ISS in the absence of traditional mail service through the USPS.

Because SpaceX transports letters and packages as part of its contracts with NASA, it is also "carrier by air transporting mail for or under contract with the United States Government" as described in Section 201, and therefore subject to RLA jurisdiction on that basis.

V. CONCLUSION

Based on the record in this case and the reasons discussed above, the NMB's opinion is that Space Exploration Technologies Corporation and its employees involved in space transportation operations are subject to RLA jurisdiction.

BY DIRECTION OF THE NATIONAL MEDIATION BOARD.

Maria-Kate Dowling
General Counsel