

Testimony of

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Examining the Surface Transportation Board's Role in
Ensuring a Robust Passenger Rail System

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EXAMINING THE SURFACE TRANSPORTATION BOARD'S ROLE IN ENSURING A ROBUST PASSENGER RAIL SYSTEM

Introduction

Good morning Chairman Lipinski, Ranking Member Crawford, and all the members of this subcommittee. My name is Stephen Gardner and I serve as Senior Executive Vice President and Chief Operating and Commercial Officer for Amtrak. It is my pleasure to testify here today on behalf of Amtrak's many dedicated employees. Despite the challenges faced by our nation this year, thousands of our employees continue to further Amtrak's mission and provide a valuable service to the American public. I would like to thank them for their dedication and recognize the support Amtrak has also received from our state partners, labor unions, host railroads, and commuter colleagues as we navigate these difficult times.

I would like to thank this subcommittee for convening today's hearing to discuss a topic of great importance to Amtrak. A well-functioning Surface Transportation Board (STB) is essential to Amtrak's mission and core to the future of our company. With the strong backstop of an empowered STB, we can better connect communities across this nation with efficient, sustainable, modern service, and create thousands of new, good-paying jobs in the process as part of a vital effort to help this nation recover from the pandemic.

The STB has a central role to play in many issues critical to Amtrak including our ability to run trains in a timely fashion and efficiently expand and improve our network and the enforcement of Amtrak's statutory right to preference over freight trains. Amtrak's ability to grow and to reliably operate trains in an efficient manner without delay while traveling on tracks owned by host railroads lies at the heart of the company's ability to fulfill its congressional mandate. In each case, the STB is the forum that can help to ensure our success.

I would like to begin my testimony with a brief history of the STB's jurisdiction over various Amtrak matters before narrowing the focus of my remarks to emphasize three issues of particular importance to today's discussion.

A Brief History of Amtrak and the Surface Transportation Board

Prior to Amtrak's creation, private railroads – today commonly called “freight railroads” – were required to provide intercity passenger rail service pursuant to what is known as their “common carrier obligation.” This obligation, for both passenger and freight transport, ensured that in return for giving railroads the right to construct, operate and generate profits from railroad networks – which, like other infrastructure-based network industries whose assets cannot easily be replicated, give the infrastructure owner a de facto monopoly - there would be adequate rail service to meet public demand.

By the late 1960s, public investment in the highway and aviation industries had crushed the privately-funded intercity passenger rail business, and these losses – which amounted to over \$1.4 billion annually adjusted for inflation – threatened the financial viability of the entire railroad industry.

Recognizing the need to protect simultaneously the core intercity passenger rail network for the public and the viability of the private railroads, Congress enacted, and the Nixon Administration signed, the Rail Passenger Service Act (RPSA) of 1970. The RPSA created Amtrak to relieve the private railroads of their intercity passenger rail service obligation in return for making their tracks, facilities and services available to Amtrak on reasonable terms. As the Interstate Commerce Commission (ICC), the predecessor of the STB, stated, the RPSA

represents a public bargain that was struck with the nation's freight railroads, whereby the freight railroads were relieved of any duty to provide passenger service in exchange for making their tracks available to Amtrak at incremental costs.¹

Since the enactment of the RPSA 50 years ago last month, the ICC/STB have been tasked with effectuating this public bargain by ensuring, and resolving disputes over, Amtrak's access to the railroads and regional transportation authorities over which it operates or seeks to operate, which are referred to as "host railroads." The RPSA provisions governing Amtrak's access to its host railroads, codified at 49 U.S.C. 24308, provide that if Amtrak and a host railroad are unable to reach agreement on matters pertaining to Amtrak's operations, Amtrak may seek an STB order requiring that access be provided and establishing terms.

Under the RPSA's access provisions, Amtrak has the right to operate over all rail lines of any railroad or regional transportation authority whenever that is necessary for Amtrak to carry out the broad purposes of the RPSA. If Amtrak and a railroad or authority cannot agree upon terms, Amtrak may petition the STB to order that the railroad or authority's rail lines, facilities, and/or services be made available for Amtrak's operations, and to determine all terms governing Amtrak's access, including compensation, in some circumstances train schedules and speeds, and any capital investments by Amtrak or a state partner that may be required for new or expanded Amtrak service. The RPSA specifies that the compensation Amtrak pays shall be limited to the incremental costs that such a host railroad incurs as a result of Amtrak's operations; any additional payments (typically called "performance payments") must take into account the quality of service (e.g., on time performance) the host railroad provides to Amtrak.

¹ Interstate Commerce Commission, "Study of Interstate Commerce Commission Regulatory Responsibilities," October 25, 1994, p. 62.

The RPSA's access provisions also give the STB the authority, upon application by Amtrak and satisfaction of applicable statutory requirements, to require host railroads:

- To allow Amtrak to operate additional trains on a schedule based on legally permissible operating times, with the host railroad having the burden of proof if it asserts that the new trains would unreasonably impair freight transportation;
- To allow Amtrak trains to operate in an emergency; and
- To allow Amtrak trains to operate at accelerated speeds.

The Supreme Court has characterized the railroads' "ongoing regulatory obligations" under the RPSA to "provide operational assistance and facilities" for Amtrak under terms determined by the ICC/STB as "consistent with the railroads' continuing obligations as common carriers."²

The RPSA also empowers the STB to convey interests in real property, including rail lines, to Amtrak, and to determine the compensation Amtrak should pay for such property interests.³

In order to appreciate the importance of the RPSA's access provisions, it bears noting that 97% of Amtrak's 22,300 route-mile network and over 70% of Amtrak's train-miles in 2019 were on rail lines owned by freight railroads and regional transportation authorities. While the vast majority of the terms governing Amtrak's operations over host railroads are negotiated without STB involvement, those negotiations take place against the backdrop of an STB that is empowered to resolve disputes and impose reasonable terms if the parties are unable to agree. In every case in which Amtrak has sought access to a host railroad's lines, facilities, or services under these provisions, the ICC/STB have found that the access Amtrak requested was necessary to carry out the RPSA. Were it not for these access provisions, the fulfillment of Amtrak's statutory goals, the continued operation of nearly every Amtrak route, the expansion of Amtrak's routes and services, and the compensation and terms applicable to Amtrak's operations on host railroads would be subject to the whims of individual host railroads who could demand unreasonable compensation and other terms or simply refuse to accommodate Amtrak's operations.

For example, Amtrak has temporarily reduced the frequencies of certain long distance trains. Our right to restore service is firmly grounded in statute, but that may not stop some host railroads from seeking to prevent these important trains from resuming daily service. This is why the STB's enforcement authority is essential.

The RPSA also requires railroads to give Amtrak trains preference over freight trains, but Amtrak had no means of achieving enforcement of this statutory obligation until enactment of Section 213

² National Railroad Passenger Corp. v. Atchison, T. & S. F. Ry., 470 U.S. 451, 468-469, n. 23 (1985).

³ 49 U.S.C. 24311(c).

of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). This provision, codified at 49 U.S.C. 24308(f), authorizes the STB to conduct investigations of poor on time performance of Amtrak trains, and if it finds that the poor performance was attributable to failure to provide preference, to award damages and other relief. Section 213 also transferred authority for determining, upon application by a railroad, whether providing preference to Amtrak would materially lessen the quality of transportation for freight shippers from the Secretary of Transportation to the STB. As I will discuss in a moment, more than twelve years after the enactment of PRIIA the STB continues to be precluded from carrying out its responsibilities under PRIIA 213 due to litigation brought by the AAR.

In addition to its jurisdiction over disputes between Amtrak and its host railroads, the STB also has authority:

- To require continuation of, and determine compensation for, certain commuter and freight rail operations on the portions of the Boston-to-Washington Northeast Corridor and other rail lines that Amtrak acquired pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976;⁴
- To resolve, or assist in resolution of, disputes regarding the implementation of or compliance with the Northeast Corridor (NEC) Cost Allocation Policy developed pursuant to Section 212 of PRIIA to allocate NEC costs among Amtrak and commuter railroads;⁵
- To resolve, or assist in resolving, certain types of disputes arising under the Cost Methodology Policy for State Supported Services operated by Amtrak in partnership with states that was developed pursuant to Section 209 of PRIIA;⁶ and
- To require, if certain conditions are met, that Amtrak provide facilities, equipment or services to a state that has selected an entity other than Amtrak to provide services for the operation of a state-supported route.⁷

I would like to focus my testimony on three of the issues regarding Amtrak and its host railroads over which the STB has jurisdiction: Amtrak's preference rights; the schedules of Amtrak trains; and resolution of disputes regarding the operation of additional Amtrak trains.

On Time Performance and Preference Over Freight Transportation

The public bargain with the freight railroads that relieved them of the obligation to operate unprofitable intercity passenger rail service and created Amtrak included an important condition:

⁴ 49 U.S.C. 24903(c).

⁵ 49 U.S.C. 24905(c).

⁶ 49 U.S.C. 24712(c).

⁷ 49 U.S.C. 24702 note.

freight railroads would provide Amtrak passengers traveling over their rail lines with “preference” over freight transportation. This was not a new concept at the time. When freight railroads operated their own passenger trains before Amtrak, they recognized that prioritizing trains carrying passengers over slower freight trains carrying cargo was critical to providing a viable passenger service. Pity the dispatcher that delayed the *20th Century Limited* or the *Super Chief* for a freight train. As the AAR has stated, when Amtrak was established freight railroads’ assurances that they would “grant Amtrak trains preference over their own freight trains” comprised an important part of the deal.⁸ The commitment was short-lived. Some railroads quickly backtracked on their promise and customers suffered: on time performance (OTP) of Amtrak’s long distance trains plummeted from 70% in 1972 to 35% in 1973. This led Congress to enact a 1973 amendment to the Rail Passenger Service Act specifically providing that “[e]xcept in an emergency... Amtrak has preference over freight transportation...” which remains the law today.

Amtrak’s right to preference over freight transportation under the law is clear but often ignored, most likely because of a lack of enforcement, as I will cover later. The largest cause of delay to our customers is “freight train interference,” typically caused by a freight railroad requiring an Amtrak passenger train to wait so that its freight trains can operate on the tracks ahead. On the U.S. rail network, rail line owners control the dispatching of trains that operate on their lines, which means the freight railroads have substantial control over the on-time delivery of Amtrak customers traveling on freight-owned rail lines. An analogy to air travel puts this reality in perspective. What if air cargo carriers were responsible for air traffic control? I would posit that planeloads of travelers would be left circling above airports while cargo jets landed first unless an effective regulatory regime existed to ensure the opposite.

When freight railroads ignore the law, our customers and your constituents suffer. Amtrak rigorously tracks all delays on every train to the minute and categorizes them according to the cause of delay. Freight train interference delays amounted to one million minutes in FY 2019 – equivalent to nearly two years of passengers waiting for freight trains to operate first. As a result of these delays, the on time performance of nearly all long distance services, and many state-supported trains, is unacceptably low. In FY 2019, only 42% of long distance customers and 75% of state-supported customers arrived at their destination on time, and a complete listing of the on time performance for each Amtrak route is included in the Appendix. The disregard of Amtrak’s right to preference set forth in law is a fundamental challenge to Amtrak’s survival and our ability to provide reliable

⁸ Statement of Edward R. Hamberger, President & CEO of the AAR, at Hearing on Passenger Rail Financing, Subcommittee on Surface Transportation and Merchant Marine of the U.S. Senate Committee on Science, Commerce, and Transportation, June 5, 2003, p. 5.

service to the nation, including to many of your home districts. This is not fair to your constituents and they deserve better service than they are receiving from many host railroads.

Moreover, while the law allows the STB to grant relief to a freight railroad from the obligation to provide preference in the event that doing so would materially lessen the quality of freight transportation provided to shippers, no railroad has ever sought such relief. Why? We believe this is because the presence of a few daily passenger trains on freight railroad mainlines is no threat to the quality and growth of freight transportation. For comparison, Amtrak's mostly two-track Northeast Corridor mainline between Newark and New York Penn Station hosts up to 48 trains an hour. On most host railroad mileage, Amtrak operates two trains *a day*.

The experience of VIA Rail Canada, Canada's intercity passenger rail operator, clearly demonstrates the dire consequences when there is not even the pretense of the right to preference over freight transportation. As noted in a 2016 Special Examination Report of VIA Rail by Canada's auditor general, "in Canada, passenger trains do not have the right of way. Therefore, VIA's trains are frequently required to yield to freight traffic, which sometimes results in significant delays."⁹ These delays due to lack of preference have decimated the performance of VIA's principal long distance train, the Toronto-Vancouver *Canadian*. In 2009, VIA added an extra night to the *Canadian's* schedule with the expectation that this would improve its poor on time performance. Instead, on time performance plummeted to just 8% in 2018 and some trains operated as much as 43 hours late.¹⁰ In that year, VIA added an additional 12 hours to the *Canadian's* schedule, but on time performance continued to deteriorate.¹¹ VIA's recently released five-year plan states that operation of the *Canadian* "is not sustainable" due to a "combination of poor OTP" and "significant increases to the schedule."¹²

One of the reasons why freight railroads can delay our passengers while facing essentially no consequences is because Amtrak's ability to enforce our right to preference is limited. Only the U.S. Attorney General is presently allowed to bring a case to enforce provisions of the RPSA, and in

⁹ VIA Rail Canada, *Special Examination Report – 2016*, March 16, 2016, p. 12 (https://www.viarail.ca/sites/all/files/media/pdfs/About_VIA/2016_OAG_Special_Exam_VIArail_Canada_ENG.pdf).

¹⁰ VIA Rail Canada, *Summary of the 2019-2023 Corporate Plan and 2019 Operating and Capital Budgets*, July 26, 2019, p. 9 (https://www.viarail.ca/sites/all/files/media/pdfs/About_VIA/our-company/corporate-plan/Corporate_Plan2019.pdf).

¹¹ VIA Rail Canada, *Second Quarter Report 2019*, p. 37 (https://media.viarail.ca/sites/default/files/publications/VIA_Q2_2019_EN_1.pdf).

¹² VIA Rail Canada, *Summary of the 2020-2024 Corporate Plan and 2020 Operating and Capital Budgets*, September 30, 2020, pp. 19-20 (https://www.viarail.ca/sites/all/files/media/pdfs/About_VIA/our-company/corporate-plan/Summary_2020-2024_Corporate_Plan.pdf).

the 47 years since the preference law was enacted, the U.S. Department of Justice (DOJ) has only initiated one case to enforce Amtrak's preference rights. That was in 1979, in a case against what was then the Southern Pacific (since merged into Union Pacific). The D.C. District Court entered a Consent Order under which Southern Pacific was ordered to "accord to the operations of the *Sunset Limited* between New Orleans and Houston a preference over freight trains in the use of Southern Pacific's rail lines in accordance with" the preference law, as well as other requirements to support that order. Because DOJ does not represent Amtrak, it has no obligation to enforce Amtrak's preference rights and has not done so for over 40 years.

That is why Amtrak is particularly appreciative of the work of this Committee to include a provision in the Moving Forward Act that would allow Amtrak itself to seek enforcement of its right to preference, a vital step toward improving Amtrak on time performance. Simply put – if this provision is enacted, we believe host railroads will stop ignoring the law and your constituents will receive the service that they deserve.

More than ten years ago, Congress recognized the challenges that Amtrak faces regarding freight railroad noncompliance with the statutory right to preference and passed two provisions in the Passenger Rail Investment and Improvement Act of 2008 (PRIIA): Section 207, which directed Amtrak and the Federal Railroad Administration (FRA) together to develop metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, and Section 213, which set forth a new process for the STB to investigate the causes of substandard on time performance. Section 213 provides that the STB may initiate an investigation, or "Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service" may require the STB to initiate an investigation, when "the on time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 fails to meet those standards for 2 consecutive calendar quarters..." The STB would then determine whether the failure to achieve the minimum standards "are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation" and potentially award damages or prescribe other relief to Amtrak.

Unfortunately, shortly after the metrics and minimum standards rule was issued in 2010, the AAR filed suit, spending nearly a decade and millions of dollars fighting to prevent the implementation of the minimum standards. When the litigation finally concluded in 2019, Amtrak and FRA once again developed metrics and minimum standards, publishing a proposed rule in March of this year.

Just this week, the final metrics and standards were issued once again. This landmark rule fulfills the intent of Congress to create a framework to help ensure that your constituents traveling on Amtrak arrive at their destination on time, and if they do not, the responsible parties are held accountable. The establishment of an 80% customer on time performance standard grounds the regulatory framework in the experience of our passengers. That is, for a given train, a minimum of 80% of our customers must arrive at their destination within 15 minutes of the scheduled time for two consecutive quarters. If the standard is not met, the STB can investigate in accordance with the terms of Section 213. We appreciate the hard work and leadership of Administrator Batory and the FRA to progress the rule and reach this critical milestone in the pursuit of a reliable intercity passenger rail network.

While the final rule has been issued, Amtrak remains concerned that the AAR will pursue additional legal challenges to prevent the rule's implementation. Last year, the AAR testified to Congress that while the devil is in the details, the federal government should "move forward in its development of metrics and standards... [and that the] STB is the appropriate authority to evaluate and investigate those situations once the metrics and standards are in place." The AAR stated further that the metrics and standards represented "a path forward that can be workable." Now that the final metrics and standards have been published, more than a decade after Congress first directed the development of these standards in PRIIA, the important question is: will the AAR once again try to block the implementation of these minimum standards? Riders need more on time trains, not more litigation. Another protracted legal fight would simply not be fair to our customers and your constituents.

The metrics and standards form just one of two potential triggers for an STB investigation. The second is ostensibly more straightforward: 80% on time performance. Here, the AAR and some freight railroads spent more money and energy in litigation to strike down the STB's definition of on time performance. The result was to make it impossible for Amtrak to appeal to the STB to investigate poor on time performance and preference violations.

Freight railroads' and AAR's history of using their tremendous resources to thwart the intent of Congress to give Amtrak a remedy for their violations of federal law demonstrates the need for Congress to make crystal clear that the 80% on time performance standard is measured by the arrival of an Amtrak train at each station, no later than 15 minutes from the time in the published schedule. This is consistent with the statutory goals for on time performance of Amtrak trains that have been in force for 39 years. Performance below this standard would permit Amtrak to appeal to the STB for relief, as originally envisioned by Congress.

Amtrak would prefer not to litigate to redress preference violations, but history has proven that the only times when Amtrak is provided with reliable service across the system is when a real

threat of preference enforcement has existed. Around 2008, with the looming passage of Sections 207 and 213 of PRIIA, the average on time performance of Amtrak long distance trains increased 45 percentage points to 75%. After AAR launched its legal challenge to Section 207, the average on time performance of these same trains fell a full 22 percentage points within one year. An annotated chart presenting the on time performance of long distance trains since Amtrak's inception is included in the Appendix.

Preference violations – and the absence of preference enforcement – have also meant that public investment in freight railroad infrastructure to improve passenger rail performance has not yielded promised returns for passengers or state funding partners. For example, after nearly \$500 million were invested in the freight railroad line used by the State of North Carolina-supported *Piedmont* service, host railroad delays actually increased in the year after completion of the project, up to twice the level they were prior to the investment. Host railroad delays eventually fell somewhat, but there is still much room for improvement. On the route into Chicago used by three train services supported by the State of Michigan, as well as our *Capitol Limited* and *Lake Shore Limited* long-distance trains, \$200 million of public funds were invested into the Englewood Flyover and Indiana Gateway projects. Today, however, passengers traveling on this line regularly encounter severe – and eminently avoidable – host railroad delays. Taxpayers and passengers deserve a better return on their investment.

Even freight railroads' own initiatives to improve operating efficiency have sometimes resulted in more delays to Amtrak customers. Most of the major freight railroads have recently adopted new operating practices, called "Precision Scheduled Railroading," that they claim have made their operations more reliable. However, passengers traveling over lines owned by railroads that have deployed Precision Scheduled Railroading principles have experienced severe delays, in part driven by the operation of trains too long to fit into the existing sidings on the line. In recent months, passengers on Amtrak Cascades and *Missouri River Runner* trains have been forced to follow freight trains for miles, at a slower speed, because the freight train ahead could not fit into a siding to allow the Amtrak train to pass. Passengers have also been stuck on trains for hours while freight trains experience mechanical issues, inherent to the operation of extremely long and heavy freight trains, that effectively shut down the line. We appreciate that the Committee has recognized the potential adverse effects of certain Precision Scheduled Railroading practices and included in the Moving Forward Act a Government Accountability Office study on the impact of the implementation of Precision Scheduled Railroading on Amtrak and other stakeholders, as well as a National Academies study of the safety impacts of freight trains that are longer than 7,500 feet.

Some freight railroads claim that providing passenger trains with preference is an unreasonable standard that limits the efficiency of the rail network and service provided to shippers, or that

it will bring freight movement to a standstill. These inflated claims do not withstand any level of scrutiny. First, freight railroads can seek relief from the STB if they truly believe that providing Amtrak with preference materially lessens the quality of freight transportation provided to shippers. The fact that not one railroad has sought such relief suggests that either railroads do not believe providing preference affects the quality of service provided to shippers or the railroads are not providing Amtrak with preference in the first place. Second, there is no correlation between freight volumes and freight train interference delays on most rail lines, which means dispatching decisions unrelated to the level of freight traffic drive Amtrak on time performance. Simply stated, freight railroads cannot show that compliance with federal law on preference leads to a detrimental impact on their freight transportation business. When freight leadership has decided to dispatch Amtrak trains according to the law, we have seen Amtrak's on time performance improve literally overnight. During these times, there was no evidence of negative impacts to the overall fluidity of America's rail network. In fact, it has been reported by some freight railroad leaders that efficient Amtrak service is a strong indicator that their own operations are running efficiently.

The disparate levels of service experienced by passengers traveling over each host rail line can be stark. Canadian Pacific, which received an "A" on Amtrak's 2019 Host Railroad Report Card (a copy of which is included in the Appendix) dispatches Amtrak trains with minimal delay, which has led to on time performance of the *Hiawatha* consistently above 90% each year. At the other end of the class is Norfolk Southern, which received an "F" on the last Host Railroad Report Card. Customers traveling on Norfolk Southern often encountered severe delays. On the *Crescent*, which primarily operates over Norfolk Southern, nearly 70% of customers were an average of an hour and a half late to their destination in 2019. Host railroads can quickly improve the passenger experience if they elect to do so. CSX reduced freight train interference delays to passengers by nearly 50% in a matter of months in late 2018, improving its overall performance to the equivalent of a "B+" on the report card.

There is absolutely no reason why this nation cannot have both a world class freight rail network and modern intercity passenger rail service. Amtrak wants both freight and passenger rail to succeed, and it appears that individual freight railroads agree with us to widely varying degrees depending on the railroad and sometimes on the individuals making decisions.

The law is perfectly clear: passenger trains have preference over freight trains. This was the promise that the freight railroads made to convince Congress to relieve them of their passenger obligations; and when that promise was broken, it was the intent of Congress in passing the preference law. Clarifying the statute would empower the STB to investigate violations of that law. Until then, your constituents ultimately face the consequences in the form of hours-late trains,

missed business meetings and family events, and the lost opportunity to travel reliably by rail across the country.

Schedules Must Serve the Needs of Amtrak Customers

The train schedule is one of the fundamental attributes of Amtrak travel that determines whether a trip is attractive to customers and provides a valuable transportation option for communities. The AAR and some freight host railroads claim that schedules are outdated and never change. This is incorrect. It is important to note that all schedules in operation have been agreed on with every host railroad and state partner associated with each train. Amtrak and host railroads discuss schedules frequently – every week, in the case of some host railroads – and schedule accuracy is also regularly tested using statistical analysis and ride study programs.

The importance of schedules was recognized at Amtrak’s founding and is embedded into law. The RPSA directs Amtrak to offer “efficient and effective intercity passenger rail mobility consisting of high-quality service that is trip-time competitive with other intercity travel options.” Congress also provided that Amtrak should “operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables” and “implement schedules based on a systemwide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort.” Unfortunately, for too many trains these standards are not met, with limited trip-time competitiveness compared to alternative travel modes and an effective speed much lower than 60 miles per hour.

Schedules are designed based on the amount of time it takes to travel between two points without delay, plus recovery time or “pad” to help a train maintain the published schedule in the event delays are encountered during the trip. There are often several hours built into a long distance train’s schedule to absorb delays. For example, on the *Coast Starlight*, which operates between Los Angeles and Seattle, it would take 27 hours to travel the route by train without delay. However, the published schedule includes five hours of recovery time to absorb en route delays. Even with this pad, only 50% of customers arrived within 15 minutes of their scheduled time in FY 2019, and 64% arrived on time in FY 2020.

Schedule modifications are regularly implemented, often at a host railroad’s request. For example, in recent years Amtrak has not operated the *Crescent* between Atlanta and New Orleans for over a month at Norfolk Southern’s request. This year, the schedule of the *Illini/Saluki* between Chicago and Carbondale, Illinois was temporarily modified many times, adjusting the departure times by as much as three hours and adding half an hour to the schedule at Canadian National’s request; several trains were also canceled in their entirety. Note that these changes can have a severe impact on your constituents; at the host railroad’s insistence, the train may operate at a time that is no longer convenient or attractive to a potential customer.

The proposed rulemaking for Metrics and Minimum Standards for Intercity Passenger Rail Service that the FRA published in March of this year included guidance on schedules, stating that the recovery time should be redistributed within each schedule – with no time added – to align the schedule with the proposed customer OTP metric and improve the likelihood that a customer will arrive on time by putting the pad in the “right” place. Amtrak and host railroads have redoubled our efforts to assess schedules and determine whether any changes are necessary in light of the proposed metric. Customer OTP has been Amtrak’s internal measure of reliability for several years, so many schedules have already been designed or modified to align with the customer OTP metric, such as the *San Joaquin* service in California and *Northeast Regional* trains that operate in Virginia. For other routes, we are nearing agreement on potential modifications.

What is often lost in the negotiations with host railroads and AAR talking points is that schedules must serve the needs of passengers. In fact, there seems to be a general indifference to the competitiveness of Amtrak’s service relative to driving or flying by most hosts, as if the trip times of a hundred years ago – many of which we currently cannot even meet owing to the slow-speed design of our now freight-biased system – are all we should hope for. Congress expects Amtrak to offer intercity passenger rail as a viable alternative to other modes as codified in Amtrak’s mission. In the 21st century, that means achieving highway-like average speeds and reliable service, on schedules optimized for the needs of the traveling public.

While some host railroads assert there is a trade-off between longer schedules and on time performance, that is a false choice. Current schedules already include plenty of time to absorb delays and lengthening schedules provides more opportunity to delay passengers. Further, what some host railroads deem to be a “modest” schedule change has historically included the addition of as many as several hours to the schedule – drastic and unnecessary schedule changes when OTP could be improved by simply reducing delays and enforcing Amtrak’s right to preference. Lengthening the schedule allows for additional time to delay the train and inconveniences our passengers who would otherwise be able to arrive at their destination sooner. Additionally, lengthening the schedule costs Amtrak and any state that funds the service.

For many of Amtrak’s trains, schedules already reflect an average speed that is far below 60 miles per hour and offer limited trip-time competitiveness. Even with the substantial pad in the existing schedules, host railroads regularly ask Amtrak to lengthen schedules further – sometimes by several hours – to absorb additional host railroad delays. The question we must ask is why should your constituents bear the burden of a host railroad’s inability to manage their own operations effectively?

Communities and passengers across the country deserve intercity passenger rail service that meets their needs, and the standards set forth under law and schedules must be designed accordingly. If we are to provide compelling, trip-time competitive transportation services, we need cooperation from host railroads to offer attractive schedules to customers that are dispatched on time according to the law.

Resolving Disputes Over Amtrak’s Operation of Additional Trains

One of Amtrak’s most important rights administered by the STB is the ability to add additional trains and routes on any rail line whenever that is necessary to advance the broad purposes of the RPSA. When Amtrak was created, Congress anticipated that it would expand beyond its original route network and operate faster trains to attract passengers away from congested highway and aviation systems. In testimony urging the enactment of the RPSA of 1970, the president of the AAR assured Congress that private railroads stood ready to accommodate new high-speed Amtrak services on their tracks:

If the passenger trains run 150 miles an hour and we are still to run heavy coal trains over them, from my experience we will have a little problem of maintenance, but we can do it and the costs can be fairly shared.¹³

However, after Amtrak began operations, some freight railroads did not fulfill their obligation to allow Amtrak to operate additional trains, even those that would operate at conventional speeds. Finding that railroads were impeding additional Amtrak services by demanding “inordinate capital investments” before they would allow them, Congress enacted in 1980 the Additional Trains Provision of the Rail Passenger Service Act (RPSA). That provision, now codified at 49 U.S.C. 24308(e), was intended to provide an “expedited procedure,” supplementing Amtrak’s existing legal remedies, for Amtrak to obtain an order from the Secretary of Transportation allowing it to operate additional trains, with the railroad having the burden of proof if it claimed that the additional trains would impair freight operations.

The problem of host railroad intransigence the Additional Trains Provision was intended to address remains today. Rail freight traffic has been declining – down 10% from 2006 to 2019 – and railroads that have embraced Precision Schedule Railroading claim that it has produced excess rail line capacity. Nevertheless when Amtrak seeks to add additional trains – often at the request of state agencies who will be funding the additional service – many host railroads continue to demand exorbitant capital investments that clearly are not necessary to accommodate limited new operations or modest increases in service on existing routes. Some host railroads

¹³ Testimony by Thomas M. Goodfellow, President of the AAR, at Passenger Train Service - Supplemental Hearings, Subcommittee on Transportation and Aeronautics of the U.S. House of Representatives Committee on Interstate and Foreign Commerce (June 3, 1970), p. 111.

have refused to engage in joint planning using objective, agreed-upon, criteria to determine whether, and if so what, capital investments are required. Instead, they insist that Amtrak or its state partners fund capacity modeling studies performed by the railroad or consultants it controls, using assumptions and criteria unilaterally chosen by the railroad and data not shared with Amtrak.

Host railroad demands have delayed, and in some cases thwarted entirely, efforts by Amtrak and its state partners to add additional trains and routes to serve growing regions and corridors that are underserved or not served at all by Amtrak's existing network. Despite the substantial time and resources expended by Amtrak and state partners, efforts to expand Amtrak service take far too long. Even with nearly five years of joint planning and negotiations, we still do not have an agreement to restore passenger service to the Gulf Coast. It simply should not take five years to determine what needs to be done to enable the operation of two daily round trips. Amtrak and its partners have also struggled for years to pursue growth opportunities for the *Hiawatha* and *Pennsylvanian* services, preventing potential customers and communities from benefiting from increased connectivity and attractive transportation alternatives. Efforts with the host railroad just to add temporary trains to improve Pacific Northwest service during the World Athletics Championships in Eugene, Oregon (now scheduled for 2022) have been persistently challenged.

At the heart of these tactics appears to be a concerted effort to alter Amtrak's right of access by fiat. The law is clear that Amtrak has a right to use host railroad infrastructure at incremental cost, and to add additional trains to meet increased demand. We do this, in essence, to fulfill the railroads' former common carrier passenger service obligation. As the Supreme Court has stated, the railroads have "ongoing regulatory obligations" under the RPSA to "provide operational assistance and facilities" for Amtrak under terms determined by the STB that are "consistent with the railroads' continuing obligations as common carriers."¹⁴

Amtrak should not be required to undertake years-long studies, or provide massive capital investment to increase capacity, every time we seek to add an additional train. Yet, today, these are the demands of many of our hosts for new or additional service. They have effectively inverted the logic of the law, denying us the additional use of their rail lines we need and forcing us to the STB to gain access, as opposed to providing us access as a matter of course and seeking relief themselves before the Board if they felt real harm to freight transportation was the likely outcome of our additional service. Imagine what it would be like if a company with a government-granted

¹⁴ National Railroad Passenger Corp. v. Atchison, T. & S. F. Ry., 470 U.S. 451, 468-469, n. 23 (1985).

monopoly over an essential telecommunications network limited access to the level of use in 1971? Or if Amtrak demanded exorbitant capital investments each time one of the Class I railroads that provide freight service on the Northeast Corridor and other Amtrak-owned rail lines sought to operate an additional freight train to serve growing port traffic or new industries?

To address this problem, the Additional Trains Provision needs to be updated and clarified to provide a fair, well-defined, and expeditious process for resolving disputes over adding Amtrak services. Crucially, the current language does not take into account that, while some rail lines will require investments to increase capacity, others have the capacity to accommodate additional Amtrak trains on existing infrastructure.¹⁵ Nor does it require that assumptions, criteria, and processes used to decide upon any necessary capital investments be determined impartially, and not unilaterally by the host railroad.

Amtrak is gratified that the Moving Forward Act that originated in this Committee and the House adopted includes, in Section 9205, amendments to the Additional Trains Provision that address these issues. I have appended to my testimony the language of that provision as amended by the Moving Forward Act and have noted several additional minor changes that Amtrak recommends be incorporated. One of the cornerstones of Amtrak's reauthorization proposals is to develop new routes, and increase service frequency on existing routes, to reflect demographic changes, population increases, and growing demand for passenger rail services since Amtrak's largely unchanged route system was developed a half century ago. These goals directly correlate with Congress's vision for Amtrak to bring service to underserved communities and regions, provide a viable, energy-efficient, low-carbon alternative to flying or driving, and work with its state partners to provide additional service in fast growing corridors. An expedited, fair, and impartial process for resolving disputes over Amtrak's operation of additional trains is essential to making that happen.

Additional STB Improvements

In addition to the nuanced policy matters discussed earlier in my testimony, there are a number of practical measures Congress can take that will help to maximize the effectiveness of the STB in ensuring a thriving passenger rail system that meets the needs of the American public. The STB requested a total of \$37.5 million for FY 2021 in furtherance of its statutory responsibilities and in support of its efforts to continue investing in personnel and modernizing workflow processes and data capabilities. Amtrak supports this request and urges Congress to make every effort

¹⁵ See Statement of Ian Jefferies, President & Chief Executive Officer, Association of American Railroads Before the Senate Committee on Commerce, Science & Transportation, "Hearing on Amtrak: Next Steps for Passenger Rail," June 26, 2019, p. 4 ("[M]any freight corridors lack spare capacity... When existing or potential future freight traffic levels are so high that there is no spare capacity for passenger trains, new infrastructure might be needed...").

to meet the Board's desired funding level, and in fact, Amtrak supports additional resources for the STB to allow it to acquire staff with specific expertise in passenger rail issues in recognition of the central role the Board plays in various matters involving passenger railroads, despite the Board's more common focus on freight rail issues.

Adequate staffing – in terms of both staff-size and dedicated passenger rail staff – would also increase the Board's capacity to handle disputes between Amtrak and freight railroads in the investigatory manner Congress intended, as noted in PRIIA 213. When Congress passed PRIIA, it recognized that additional STB staff would be required to carry out its new role in investigating poor on time performance and preference violations, and provided that 15 additional staff members should be added for this purpose. Yet to date, sufficient funding has not been provided for this additional passenger rail staff, and we believe this has seriously hampered the Board's ability to carry out the robust statutory role envisioned for it by Congress.

For example, when Amtrak brought two proceedings under PRIIA 213, the Board declined to carry out any investigatory functions – even though the statute explicitly provides for the Board to investigate – and instead treated the proceeding as an adversary adjudication, complete with the private discovery efforts and the disputes and delays that process typically entails. The STB should be adequately staffed so that it can effectively perform its fact-finding role and ensure that actions to resolve on time performance issues can proceed in an efficient and focused manner. In light of these considerations, we ask that Congress's FY 2021 funding for the STB include the resources required to hire the 15 additional staff members identified in PRIIA and include funding that is specifically dedicated to the acquisition and retention of passenger rail staff.

Of course, there was another factor that paralyzed the Board's ability to investigate properly poor on time performance, and that was the series of legal challenges brought by the AAR and several freight railroads to insulate themselves effectively from the Board's scrutiny under PRIIA 213.

Despite these challenges and decade-long delays, the PRIIA 207 final rule has now been finalized with OMB, which would serve as the basis for the STB to investigate poor on time performance. Strong congressional funding and a dedicated passenger rail staff will ensure that the STB is well-equipped to step into this much needed function in order to protect your constituents and our customers from host railroad delays. As I noted earlier, the aims of ensuring a world class freight rail network and promoting a modern intercity passenger rail service are not mutually exclusive. We strongly support our freight railroad partners and believe that both passenger and freight rail service have a bigger role to play in meeting the mobility needs of our nation. Amtrak looks

forward to collaborating with this subcommittee and the organizations present on today's panel to continue working toward that goal.

I thank you again for inviting me to speak here today. I appreciate your time and your support of Amtrak, and I look forward to your questions.

Appendix

Additional Trains Provision as Modified by INVEST Act (with Amtrak Proposed Changes in Redline)

SEC. 9205. USE OF FACILITIES AND PROVIDING SERVICES TO AMTRAK.

Section 24308(e) of title 49, United States Code, is amended —

(1) by striking paragraph (1) and inserting the following:

“(1)(A) When a rail carrier does not agree to allow Amtrak to operate additional trains in accordance with proposed schedules over any rail line of the carrier on which Amtrak is operating or seeks to operate, Amtrak may submit an application to the Board for an order requiring the carrier to allow for the operation of the requested trains. Within 90 days of receipt of such application, the Board shall determine whether the additional trains would unreasonably impair freight transportation and —

“(i) ~~for upon~~ a determination that such trains do not unreasonably impair freight transportation, order the rail carrier to allow for the operation of such trains on a schedule established by the Board; or

“(ii) ~~for upon~~ a determination that such trains do unreasonably impair freight transportation, initiate a proceeding to determine any remedy for such impairment, such as additional infrastructure investments required to be made by, or on behalf of, Amtrak, or operational or scheduling changes, as a condition for permitting the operation of such additional Amtrak trains,

“(B) If Amtrak seeks to resume operation of a train that Amtrak operated during the 5-year period preceding an application described in subparagraph (A), the Board shall apply a presumption that the resumed operation of such train will not unreasonably impair freight transportation ~~unless the Board finds that there are substantially changed circumstances.~~”;

(2) in paragraph (2) —

(A) by striking “The Board shall consider” and inserting “The Board shall”;

(B) by striking subparagraph (A) and inserting the following:

“(A) in making the determination under paragraph (1), take into account any infrastructure investments previously made by, or on behalf of, Amtrak or proposed in Amtrak’s application, with the rail carrier having the burden of demonstrating that the additional trains will unreasonably impair the freight transportation; and”;

(C) in subparagraph (B) by inserting “consider investments described in subparagraph (A) and” after “times,”; and

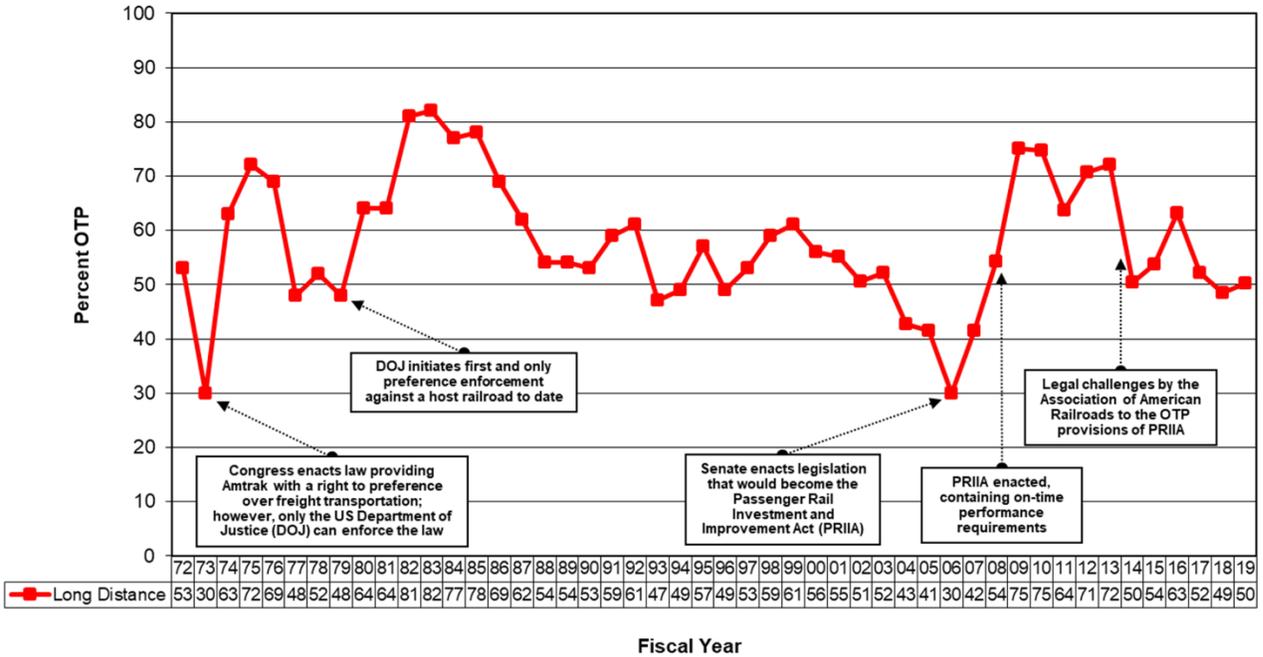
(3) by adding at the end the following:

“(4) In a proceeding initiated by the Board under paragraph (1) ~~(B)(ii)~~, the Board shall solicit the views of the parties and require the parties to provide any necessary data or information. Not later than 180 days after the date on which the Board makes a determination under paragraph (1) ~~(B)(ii)~~, the Board shall issue an order requiring the rail carrier to allow for the operation of the requested trains conditioned upon additional infrastructure or other investments needed to mitigate the unreasonable interference. In determining the necessary level of any additional infrastructure ~~or other~~ investments, the Board shall use any reasonable criteria, assumptions, and processes it considers appropriate.

“(5) The provisions of this subsection shall be in addition to any other statutory or contractual rights or remedies Amtrak may have ~~to obtain the right with respect~~ to operating the additional trains.”

Historical On Time Performance of Long Distance Trains

Amtrak Long Distance On-Time Performance since 1972



Note: Endpoint On-Time Performance is shown due to the metric's availability since Amtrak's inception.

FY 2019 Customer On-Time Performance by Service

Service	FY 2019 Customer OTP
Amtrak System	74%
Northeast Corridor	83%
Acela Express	83%
Northeast Regional	83%
On Spine Northeast Regional	89%
Richmond / Newport News / Norfolk	75%
Roanoke	70%
Springfield Shuttles	89%
State Supported	75%
Capitol Corridor	87%
Carolinian	56%
Cascades	58%
Downeaster	81%
Empire	79%
Adirondack	69%
Ethan Allen Express	85%
Maple Leaf	67%
New York - Albany	90%
New York - Niagara Falls	66%
Heartland Flyer	47%
Hiawatha	92%
Hoosier	77%
Illinois	61%
Carl Sandburg / Illinois Zephyr	78%
Illini / Saluki	26%
Lincoln Service	71%
Keystone	93%
Michigan	40%
Blue Water	45%
Pere Marquette	64%
Wolverine	34%
Missouri River Runner	67%
Pacific Surfliner	71%
Pennsylvanian	66%
Piedmont	71%
San Joaquins	61%
Vermont	83%

Service	FY 2019 Customer OTP
Long Distance	42%
Auto Train	59%
California Zephyr	34%
Capitol Limited	28%
Cardinal	53%
City Of New Orleans	70%
Coast Starlight	50%
Crescent	29%
Empire Builder	46%
Lake Shore Limited	44%
Palmetto	62%
Silver Meteor	42%
Silver Star	29%
Southwest Chief	32%
Sunset Limited	20%
Texas Eagle	25%

Amtrak Host Railroad Report Card 2019

Who delays passengers?

The Host Railroad Report Card grades each of the six Class I freight host railroads based on delays caused to Amtrak trains in 2019.

1	Canadian Pacific	A
2	CSX	B+
3	BNSF	B
4	Union Pacific	B-
5	Canadian National	D
6	Norfolk Southern	F

Average grade for all host railroads: **C**

Grades reflect the passenger experience

A	Most passengers are on-time
B	Passengers on some routes are late
C	Many passengers are very late
D	Most passengers are very late
F	Majority of passengers are severely late

