

Testimony of

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“Stakeholder Views on Surface Transportation Board Reauthorization”

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Good morning, Chairman Payne, Ranking Member Crawford, and Members of this Subcommittee. Thank you for inviting me to testify on behalf of Amtrak about the reauthorization of the Surface Transportation Board (STB). My name is Dennis Newman, and I am Amtrak's Executive Vice President, Strategy, Planning, and Accessibility.

THE NEED FOR STB REAUTHORIZATION

When Congress was drafting the ICC Termination Act of 1995 (ICCTA) that created the STB, passenger rail issues were not top of mind. The ICCTA made no mention of Amtrak. The 15-part Rail Transportation Policy the ICCTA directed the STB to follow in exercising its regulatory powers did not say anything about passenger rail.

Perhaps that is not surprising. At the time the STB was created, its recurring role with regard to passenger rail was limited to resolving, under 49 U.S.C. 24308(a), the relatively infrequent disputes between Amtrak and its host railroads over terms and conditions for Amtrak's access to their lines and issuing orders to allow Amtrak trains to operate in an emergency under 49 U.S.C. 24308(b). Railroad mergers were viewed as necessities to rid the industry of excess capacity and combine financially precarious railroads with stronger ones that did not affect passenger rail.

Many things have changed in the ensuing 26 years. First, several statutory changes have given the STB important new responsibilities regarding Amtrak:

- Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) gave the STB power to investigate poor on-time performance of Amtrak trains and enforce Amtrak's longstanding right to preference over freight trains.
- PRIIA also shifted from the U.S. Department of Transportation to the STB the responsibility for resolving disputes between Amtrak and its host railroads over the operation of Amtrak trains at accelerated speeds under 49 U.S.C. 24308(d), and over Amtrak's operation of additional trains under 49 U.S.C. 24308(e).
- Section 11204(a) of the Fixing America's Surface Transportation (FAST) Act of 2015 gave the STB ongoing responsibility for adjudicating disputes regarding application of the cost allocation methodology for state-supported trains developed pursuant to Section 209 of PRIIA.

Second, the on-time performance of Amtrak trains operating over our host freight railroads has deteriorated, driven by the fact that some host railroads are ignoring Amtrak's statutory preference over freight trains. During Amtrak's Fiscal Year 2021, only 52% of passengers on our long-distance routes arrived at their destinations on time, seven percentage points worse than the year before. Only one of our 15 long-distance routes, and just 12 of 26 state-supported routes, met the standard of 80% customer on-time performance established by the FRA's metrics and standards during 2021.

And third, while railroad mergers and line sales have helped large U.S. freight railroads achieve record profits, implementation of many mergers has triggered rail service meltdowns with lasting adverse impacts on Amtrak train performance and in some cases has jeopardized the continued operation of Amtrak routes.

The Surface Transportation Board (STB) plays an essential role both in meeting national transportation needs and in Amtrak's fulfillment of its statutory goals and directives. Approximately 97% of Amtrak's 22,300 route-mile network is on rail lines owned by freight railroads and regional transportation authorities. Over 70% of Amtrak's train-miles in pre-pandemic 2019 operated over the lines of these host railroads.

Absent agreements between Amtrak and its host railroads, it is the STB that determines whether and on what terms Amtrak may operate its National Network of state-supported and long-distance routes over host railroad lines, and the compensation Amtrak must pay for those operations. While nearly all such operations are conducted pursuant to negotiated agreements, it is Amtrak's ability to obtain STB adjudication of disputes that ensures such agreements are reasonable, and that existing and additional Amtrak services can operate. The statutory and other changes since enactment of the ICCTA that I have described have greatly increased the STB's importance to passenger rail. Few things are more important to the continued operation, performance, and expansion of Amtrak's National Network than a well-functioning and adequately funded STB.

THE IIJA

For Amtrak and passenger rail, the reauthorization of the STB could not come at a more opportune time. The Infrastructure Investment and Jobs Act (IIJA) enacted in November will transform intercity passenger rail service to a much greater extent than any previous legislation since Amtrak's creation more than 50 years ago. The IIJA provides the significant, multiyear federal funding requested by the Administration and long supported by many members of this Subcommittee: \$58 billion in advance appropriations over the next five years for investment in Amtrak and intercity passenger rail. That funding will allow us to begin the modernization of Amtrak's assets and initiate significant expansion of Amtrak's route network.

The IIJA directs the Federal Railroad Administration (FRA), in consultation with Amtrak and other stakeholders, to establish a Corridor Identification and Development Program to identify specific corridors for improvement and expansion of intercity passenger rail service. It also tasks FRA with leading a two-year study of long-distance service expansion.

Amtrak's participation in the corridor development effort will be informed by Amtrak Connects US, a vision for developing and expanding corridor services throughout the United States over the next 15 years that Amtrak released last April. Amtrak Connects US identified 39 new corridors with high demand and potential for intercity passenger rail service, and an additional 25 existing corridors that are prime candidates for service

expansion. Many of these corridors are in fast growing states and regions that Amtrak's current route network does not serve well, or in many cases at all, today. Amtrak's current network is about the same size as it was in 1971, even though the U.S. population has increased by roughly 120 million since that time.

The enactment of the IIJA will greatly increase the importance of the role the STB plays with respect to Amtrak and its existing and future operations over host railroad lines. Access to all host railroad lines on reasonable terms, without lengthy delays or exorbitant and unjustified demands for capital investments when Amtrak seeks to operate additional trains, is an essential prerequisite to using the funding provided by the IIJA to grow our network.

REAUTHORIZATION PROPOSALS

I would like to focus my testimony on several issues affecting Amtrak that we believe should be addressed as the Committee develops its STB reauthorization bill. Thanks to the Committee's work, provisions addressing some of these matters were included in the Moving Forward Act, the infrastructure bill adopted by the House last year, but unfortunately were not part of the IIJA that ultimately became law.

Enforcement of Amtrak's Preference Rights

A high level of on-time performance on trains operating over Amtrak's host railroads is crucial to attracting customers and realizing the benefits of public investments in rail. Although Amtrak's statutory preference over freight trains has been the law since 1973, it has increasingly been ignored by host freight railroads because there has been no means to enforce it. Only the U.S. Attorney General is empowered to bring a case to enforce provisions of the Rail Passenger Service Act, including the preference law provision. In the 49 years since enactment of the preference provision, the U.S. Department of Justice has brought only one case to enforce Amtrak's preference rights.

Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), codified at 49 U.S.C. 24308(f), gave the STB authority to conduct investigations of Amtrak routes with poor on-time performance; to determine whether the cause was the host railroads' failure to give preference to Amtrak trains; and to award damages and other relief to Amtrak where that was the case. By giving the STB authority to enforce preference, Congress intended to remedy the lack of enforcement problem. Unfortunately, that did not happen for two reasons.

First, the Association of American Railroads (AAR), acting on behalf of its freight railroad members, launched what became a decade-long legal challenge to the constitutionality of Section 213's grant of preference enforcement power to the STB. While that challenge

ultimately failed, it effectively prevented the STB from exercising its investigatory and enforcement powers during the more than 13 years since PRIIA's enactment.

Second, the STB was never given the resources necessary to investigate and take action against preference violations. Funding was never appropriated for the additional STB staff positions that Section 24308(f) authorized. As a result, when Amtrak did bring complaints of preference violations to the STB, which were ultimately withdrawn due to the AAR's legal challenge, the STB was forced to treat them as adversarial adjudicatory proceedings rather than investigations by STB staff as Section 213 contemplated. The protracted litigation resulting from this approach benefits poor performing railroads that seek to drag out legal proceedings while Amtrak passengers continue to experience delays and makes preference violation complaints extremely expensive to pursue.

Amtrak is gratified that the STB is finally empowered to begin exercising the authority it was given by PRIIA Section 213 to investigate substandard Amtrak on-time performance and to take action if poor performance is a result of preference violations. However, when that happens, there is nothing to prevent freight railroads from launching yet another legal challenge to the STB's authority. In the meantime, Amtrak passengers will continue to suffer unnecessary and protracted delays when freight railroads violate the law and give preference to their freight trains over Amtrak trains.

In the interest of providing effective relief to Amtrak and its passengers as soon as possible, Amtrak recommends that the STB reauthorization bill:

- Ensures that the STB's Passenger Rail Program, created by Section 22309 of the IJJA and authorized for ten full-time staff positions, is adequately funded, preferably by specifying that at least five percent of the total funding appropriated for the STB in each year the bill authorizes is to be made available to fund salaries, investigations, and other activities of that program;
- Authorizes Amtrak to seek enforcement of its preference rights in federal court, as did the Moving Forward Act and the Rail Passenger Fairness Act sponsored by Rail Subcommittee Chairman Payne, which we deeply appreciate;
- Specifically directs the STB to conduct investigations rather than initiate adversarial proceedings when Amtrak or another authorized party files a complaint alleging a preference violation with the STB;
- Specifies that, at any time during a preference investigation, the STB may utilize its authority under 49 USC 1321(b)(4) to issue injunctive orders where the facts warrant and as necessary to avoid irreparable harm to Amtrak passengers from continuing preference violations; and
- Specifically provides that, under the broad power Section 213 confers upon the STB to award relief for preference violations, the STB may require that rail lines on which continuing preference violations are found be dispatched jointly by the railroad and Amtrak or by an independent third party.

Operation of Long Freight Trains

The implementation of so-called “Precision Scheduled Railroading” by many Class I railroads has, among other things, led to the operation of very long freight trains, some more than three miles in length. In many cases, these trains are too long to fit in most passing sidings on the single-track rail lines that are predominant on the national rail network. Amtrak trains are often required to follow long freight trains at slow speeds for considerable distances, sometimes a hundred miles or more, before these behemoths reach a siding long enough to accommodate them. When two very long freight trains are operating in opposite directions, they can effectively shut down a rail line. The operation of such trains also produces lengthy grade crossing blockages, and concerns have been expressed that they can create safety risks.

To address these problems, Amtrak believes that the STB reauthorization bill should require that railroads that operate very long freight trains develop Long Train Operating and Safety Plans and submit them to the STB and FRA for review and approval following public comment. These plans would be similar to the plans for implementation of positive train control that railroads are required to submit to FRA, and the approach followed in regulating heavy trucks that are allowed to operate on designated highways after obtaining special permits. The plans would detail how the railroad would ensure safe operation of long trains, and the operational practices and/or infrastructure investments

railroads would implement so that the operation of these trains would not negatively impact passenger rail service or communities.

Consistent Application of Federal Railroad Laws

Passenger and freight railroads over which the STB has regulatory jurisdiction are subject to a number of important federal laws governing railroads, including the Railway Labor Act and the Railroad Retirement Tax Act. Although Amtrak is exempt from most STB regulation, Congress specified in the Rail Passenger Service Act that Amtrak is also subject to these federal railroad laws.¹

However, as a result of a 2012 STB decision determined by a single vote,² intercity passenger railroads that operate within a single state are deemed not to be part of the interstate rail network – even though they operate over the interstate rail network on tracks shared with and owned by STB-regulated railroads – as long as they do not connect with Amtrak. It makes no difference whether, like the applicant in the 2012 case, these railroads connect directly with interstate and international airlines and cruise lines, or benefit from federal railroad loans and federal railroad grant programs. As a result,

¹ 49 U.S.C. 24301(c)

² All Aboard Florida – Construction and Operation Exemption, STB FD No. 35680, Decision served Dec. 21, 2012.

these railroads are not subject to STB jurisdiction, or to the federal railroad laws that apply to Amtrak and to passenger and freight railroads that are subject to STB jurisdiction.

Congress should eliminate this loophole. All railroads operating intercity passenger rail service over the interstate rail network should be subject to federal railroad laws. A federal regulatory scheme that discourages other intercity passenger railroads from connecting with Amtrak contravenes current federal transportation policy reflected in the IJIA. It also gives a few for-profit passenger rail companies an unfair advantage over railroads subject to federal railroad laws and deprives the employees of these companies of the rights and benefits enjoyed by other railroad employees.

Railroad Mergers

The statutory provisions governing the STB's review of railroad mergers and line sales and leases predate the STB. They are largely unchanged since enactment of the Staggers Act in 1980, when federal policy encouraged railroad mergers to rationalize the railroad network and alleviate the railroad industry's severe financial distress. Additionally, they do not specify that the STB must consider impacts on passenger rail when reviewing rail mergers.

Indeed, the statutory provisions that apply to mergers not involving two Class I railroads have essentially been construed to require the STB to rubber stamp such transactions absent severe anti-competitive effects, regardless of whether a merger is in the public interest. Some have even asserted that the STB is also prohibited from imposing

conditions on mergers that are required by the public interest to avoid harm to passenger rail service or to ensure safe operations.

Since enactment of the ICCTA in 1995, implementation of railroad mergers has produced rail service meltdowns that have lasted for many months or years. Like freight shippers, Amtrak passengers have been severely impacted by the resulting rail network gridlock, which has triggered multi-hour delays on some routes on nearly every trip. On many routes, the performance of Amtrak trains has never fully recovered to pre-merger levels. In at least two cases, a railroad merger or rail line lease has produced changes in freight traffic flows or track maintenance responsibility that threatened the continued operation of Amtrak routes.

While the STB revised its regulations governing mergers between Class I railroads almost 20 years ago to reflect the vastly changed condition of the railroad industry, the old statutory provisions governing railroad mergers remain on the books. When the STB is reauthorized:

- Impacts on passenger rail service should be added to the statutory criteria the STB is required to consider in reviewing *all* railroad mergers and line sales/leases;
- The STB's authority to impose conditions on all transactions to protect passenger rail service and safety should be reaffirmed; and

- The STB should be empowered to disapprove any railroad merger, line sale, or lease transaction that is not in the public interest.

Rail Transportation Policy

The preservation, improvement, and expansion of passenger rail service should be added to the Rail Transportation Policy, codified at 49 U.S.C. 10101, that guides the STB's actions.

Operation of Additional Trains

I also wanted to mention briefly the STB's authority, codified at 49 U.S.C. 24308(e), to issue orders requiring host railroads to allow the operation of additional Amtrak trains.

Nearly a year ago, Amtrak for the first time initiated a proceeding under that provision, seeking an order that would allow restoration of state-supported Amtrak service between New Orleans and Mobile. The second of two STB hearings in that proceeding will take place in early April, and the STB will issue a decision thereafter. We are gratified by the support for Amtrak's position in that case that was expressed at the first hearing last month by the FRA and members of Congress from both parties, particularly Chairman DeFazio who testified at the hearing.

Congress enacted Section 24308(e) in 1980 to provide Amtrak with an "expedited procedure" to add additional trains in the face of some host railroads' "intransigence"

and demands for “inordinate capital improvements.”³ The enactment of the IIJA last year, with its focus on service expansion and unprecedented funding to make it a reality, reaffirmed that Congress intends for Amtrak to be able to expand its network without impedance or unnecessary delay. After the STB issues its decision in the pending case, we will advise the Committee if we believe any further legislative action is necessary to effectuate Congress’s intent.

DEVELOPING A WORLD CLASS FREIGHT AND PASSENGER RAIL NETWORK

Finally, I wanted to debunk the myth that improvement and expansion of Amtrak service will result in the degradation of freight rail service. Those who assert that either seek to mislead or are unfamiliar with the U.S. railroad network.

Improving our nation’s rail network is not a zero-sum competition between passengers and freight. There is absolutely no reason why this nation cannot have both a world class freight rail network *and* modern, expanded intercity passenger rail service.

Amtrak wants both freight and passenger rail to succeed. Amtrak and shippers have the same interest in freight railroads providing good service and maintaining their infrastructure. We know that some freight railroads, driven by a myopic focus on operating ratios and short-term financial performance, are not making the infrastructure

³ House Rep. No. 96-839, Mar. 20, 1980, p. 21; House Conf. Rep. No. 96-1041, May 20, 1980, p. 42.

investments they should be making. It also bears noting that the freight railroads that are providing good service to Amtrak, as measured by Amtrak's Host Railroad Report Card that ranks Class I railroads based upon relative minutes of host railroad-responsible delays to Amtrak trains, are not generally the railroads whose service freight shippers are complaining to the STB about.

Another reason why freight railroads and freight shippers should welcome expansion of Amtrak service is the public investment in rail infrastructure that passenger rail service brings to the table. Over the last few decades, Amtrak, our state partners, and the federal government have invested billions of dollars in public funding to add capacity and upgrade tracks, signals, and other infrastructure on the freight railroad-owned lines over which Amtrak operates. One recent example is the \$3.7 billion that the Commonwealth of Virginia and Amtrak have recently committed for passenger rail-driven infrastructure investments along CSX's Washington-to-Richmond/Petersburg rail corridor and for acquisition of CSX rail lines and right-of-way throughout Virginia. Virtually every regional and short line railroad over which Amtrak operates has benefited from significant public funding to upgrade tracks and other infrastructure that it would not have received otherwise.

Amtrak accounts for only approximately 4% of train miles on Class I railroads. That percentage would not significantly increase even if all of the expansion contemplated in the Amtrak Connects US vision occurred over the next 15 years, and that expansion would

be accompanied by huge investments of IIJA and other public funding in freight railroad-owned lines to accommodate the additional Amtrak service. Amtrak expansion, and the investment in the U.S. rail network it will bring, can provide a “win/win” for Amtrak and its passengers *and* for freight railroads and their shippers.

CONCLUSION

I thank the members of the Subcommittee for your time today and for your support for Amtrak. We look forward to your work to develop an STB reauthorization bill that serves the interests of Amtrak passengers and all rail users.