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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423

Re: In Re: On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (STB Docket No. EP-726)

Dear Ms. Brown,

Enclosed for filing in the above-referenced docket are CSX Transportation's reply comments to the Board's Notice of Proposed Rulemaking regarding On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008. Thank you for your assistance with this matter.

Sincerely,

Michael K. Murphy

Counsel for CSX Transportation, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. EP-726

ON-TIME PERFORMANCE UNDER SECTION 213 OF THE PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008

REPLY COMMENTS OF CSX TRANSPORTATION, INC.

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Dated: March 30, 2016

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CSX Transportation, Inc. ("CSXT") respectfully submits its reply to the comments submitted to the Surface Transportation Board's Notice of Proposed Rulemaking in Docket No. EP 726, *On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008*.

As an initial matter, CSXT remains of the view that the Board's definition of On-Time Performance must: (1) operate as a gatekeeper to investigations, (2) require Amtrak's schedules to be fact-based and reasonable, (3) ensure network fluidity for passenger and freight traffic, and (4) recognize the paramount consideration of safety. Many of the comments submitted by other parties echoed these critical factors and the importance of balancing passenger, freight, and public interests. And many comments agreed with CSXT's position that the Board's Notice of Proposed Rulemaking provided insufficient information to substantiate its decision to graft the ICC's 1973 On-Time Performance standard onto PRIIA.

A number of other comments advocated instead for defining On-Time Performance by measuring performance of Amtrak trains at all stations. For a number of important reasons, the Board should reject an "all stations" On-Time Performance metric. Amtrak's current schedules are ill-suited to a measurement at every station because most "recovery" time is included at the back-end of schedule—at the train's endpoint or the handoff point between host railroads. Moreover, a number of Amtrak schedules currently employ "negative recovery" at certain intermediate stations. In other words, trains are scheduled to arrive late at certain stations—making all stations an inappropriate measure of performance. Finally, an all-stations performance metric will result in a number of false positives for trains that depart late from notoriously congested Amtrak terminals.

But if the Board were to amend its proposed definition to include measurements of performance at additional stations, it should only do so by calculating performance on each host railroad's segment. For long distance routes with only one host, the Board could select one or two major intermediate stations at which to measure performance, provided however that Amtrak's schedules are built with sufficient recovery time and in such a manner as to render on-time performance at those stations reasonably achievable.

A. Adopting CSXT's Proposed Definition Of On-Time Performance Would Ameliorate The Concerns Of Many Commenters.

For the reasons outlined in CSXT's initial comments to the Board's Notice of Proposed Rulemaking in Docket No. EP 726, *On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008* (filed Feb. 8, 2016), the Board should revise its proposed definition of On-Time Performance. Any rule adopted by the Board must: (1) operate as a gatekeeper to investigations, (2) require Amtrak's schedules to be fact-based and reasonable, (3) ensure network fluidity for passenger and freight traffic, and (4) recognize the paramount consideration of safety. The Board's adoption of the old ICC standard, without analyzing whether it is an appropriate measure of On-Time Performance today, is overbroad because it would subject many well-performing routes to a preference investigation. CSXT once again encourages the Board to conduct a detailed analysis of these and other elements of a potential definition of On-Time Performance in Section 213.

CSXT's proposed definition of On-Time Performance addresses many of the proposed rule's deficits that other commenters identified:

1. On-Time Performance should be measured separately for each host railroad's segment of an Amtrak train's route. For many Amtrak routes with more than one

host railroad, this approach would result in measuring performance at multiple points along a train's route—not at the endpoint only.

2. On-Time Performance should include more reasonable levels of tolerance than the ICC's 1973 standard. Specifically, the Board should apply a minimum of 15 minutes of tolerance to all segments, regardless of length. At 201 miles, tolerance should increase to 20 minutes, and it should increase by five-minute increments for each additional 100 miles of a segment's length with no upper limit or cap.
3. On-Time Performance should be measured against the run time for each host railroad's segment, not against the scheduled departure and endpoint arrival time for the entire route.
4. For Amtrak trains that arrive at a host railroad's segment behind schedule by less than 30 minutes, the number of minutes behind schedule at the time of the train's arrival should be added to the tolerance for that train. Amtrak trains that arrive outside of their designated slots—more than 30 minutes behind schedule—should not be counted when calculating On-Time Performance for a host railroad's segment of a route.
5. CSXT and Amtrak's operating agreement contains negotiated provisions regarding which trains are counted in a performance analysis and additional tolerance included in such a calculation. The Board's definition of On-Time Performance should include these conditions as a part of the formula for calculating performance.
6. Within each host's segment, On-Time Performance should be calculated separately for each train.

7. If a party seeks an investigation of an entire Amtrak route (for instance, the Capitol Limited), then each individually numbered train that comprises that route (for instance, trains 29 and 30), must fall below the 80 percent performance threshold in both quarters in order for it to launch an investigation.
8. If a train's performance falls below 80 percent under this definition of On-Time Performance, the Board should require Amtrak to demonstrate that the scheduled run time for each segment of a route is realistic, fact-based, and can be achieved with reliability.

CSXT's proposed definition measures performance on most routes (those with more than one host railroad) at multiple locations—not simply at the endpoint. It also takes into account existing contractual agreements between host railroads and Amtrak, and focuses the Board's limited resources on the trains and route segments most worthy of an investigation.

B. Performance At Intermediate Stations On A Host Railroad's Segment Should Not Be Used As A Measure Of On-Time Performance.

1. Realistic Schedules Are An Essential Part Of An On-Time Performance Measurement.

As CSXT iterated in its initial comments filed in this docket, Amtrak's existing schedules were designed to be aspirational and are not experience-based. Most of Amtrak's schedules have not changed in years—failing to reflect a number of important changes in the surface transportation industry since the early 1970s. A significant change is the increase in freight volumes, as CSXT described in its initial comments. However, improvements in safety have been equally significant, and many of these changes have resulted in longer run times. To be clear: safety is the principal concern for CSXT. However, the Board and Amtrak should understand that improved safety sometimes results in longer run times for trains.

Improved grade crossing warning devices and additional regulations pertaining to grade crossings have improved the safety of such crossings. *See generally* 49 C.F.R. § 234; *see also* FRA Office of Railroad Safety, Compilation of State Laws and Regulations Affecting Highway-Rail Grade Crossings (5th Ed.) (Oct. 2009) (compiling state and local laws and regulations governing grade crossings), *available at* https://www.fra.dot.gov/Elib/Document/1576 (last accessed March 23, 2016). However, regulations that require frequent inspection of warning devices and trains to slow and railroads to provide alternative means of warning highway traffic and railroad employees before proceeding can elongate run times, particularly on long distance routes. Similarly, regulations pertaining to engineer certification, track inspection, track maintenance, and railroad operations have grown more complex and comprehensive since the 1970s. In many cases, these regulations have improved safety; however, they have also resulted in more limited windows of time to perform more complex maintenance, a locomotive engineer's inability to "make up time," and stricter operating rules for host railroads and Amtrak alike. Another innovation that has improved safety but could result in longer run times for Amtrak trains is the proliferation of continuous welded rail. It is beyond question that continuous welded rail is stronger, safer, and provides for a smoother ride than jointed rail. However, continuous welded rail is more susceptible to failure in very hot and very cold temperatures because it lacks joints that can absorb expansion and contraction of the rail. This risk of the rail buckling (in hot temperatures) or pulling apart (in cold temperatures) has necessitated the issuance of heat orders and slow orders to ensure trains do not strain the continuous welded rail beyond its capabilities in extreme temperatures.

A number of commenters, including Amtrak, made no mention of these significant changes. Amtrak has repeatedly ignored the effects of such safety improvements on run times

when CSXT has attempted to work cooperatively with it to devise new schedules with realistic runtimes for the Amtrak trains that it hosts. Amtrak's decision to overlook historical evidence of a train's runtime when crafting its schedules runs counter to its routine use of historical information and real-world data to calculate the proper amount of dwell time at stations along its routes. Nonetheless, Amtrak has refused to do the same when calculating a train's runtime. For these reasons and the reasons discussed in CSXT's initial comments and those comments submitted by other Class I railroads, Amtrak's current schedules are not realistic and should not form the basis for an on-time performance definition absent a process for the Board to determine whether such schedules are reasonably achievable.

2. Existing Amtrak Schedules Were Not Designed To Meet An All-Stations On-Time Performance Metric.

The existing Amtrak schedules were not designed to meet an all-stations On-Time Performance metric. First, most Amtrak schedules include "recovery" time at the checkpoint—either the train's endpoint or the handoff point between two host railroads. This approach to scheduling leads to a serious challenge to meeting an all-stations performance metric. Second, a number of Amtrak schedules currently employ "negative recovery" at certain intermediate stations—meaning that time is removed from a train's schedule at certain intermediate stations to ensure that it does not hold for its departure time. Measuring performance at these stations against Amtrak's public schedules would result in unfair and misleading calculations.

a. Amtrak Schedules Place The Majority Of A Schedule's Recovery Time At The Endpoint Or Checkpoint And Are Not Conducive To Meeting An All-Stations Metric.

Amtrak schedules are assembled using three principal building blocks: pure run time, station dwell, and recovery. Recovery is time in an Amtrak train's schedule added to compensate for contingencies and delays encountered *en route*. Recovery time is not the same as

tolerance; rather, it is part of the schedule itself. All schedules for Amtrak trains that operate on CSXT's rails contain a modicum of recovery time.[1]

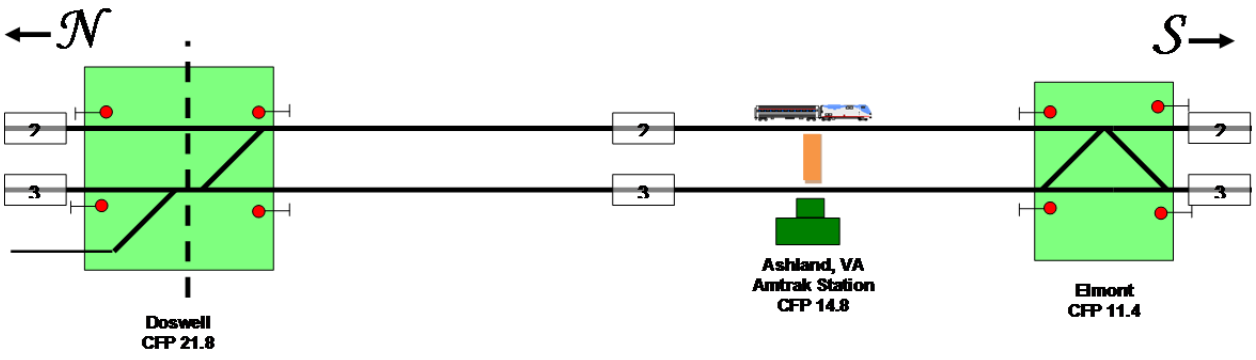
Recovery time is not distributed evenly in a schedule; in other words, the same amount of recovery time is not placed between each intermediate station or distributed evenly by track mile. Instead, most Amtrak schedules are "tightly strung" at the first few intermediate stations—without much, if any, recovery time. Then, between a third to half of the total recovery time is divided between the remaining intermediate stations. Finally, the remaining half to two-thirds of the total recovery time is added to the endpoint (or checkpoint). This approach—of which many commenters likely are unaware—makes good sense for a number of reasons. First, including minimal or no recovery time early in a train's schedule comports with the low likelihood that a train would accumulate a delay early in its trip. Second, it is more likely that a train will incur more minutes of delay as it progresses along its route, which explains the need to place more recovery minutes in the latter half of a train's schedule. Third, this approach avoids "killing time"—using recovery time not to offset delays or excess dwell time, but instead holding at an intermediate station for a train's departure time. Indeed, Amtrak includes significant amounts of recovery time at the end of a number of its schedules where an Amtrak train concludes its trip on a segment hosted by Amtrak, near congested stations like Chicago. During contract negotiations with CSXT, Amtrak repeatedly has refused to distribute some of this recovery time to intermediate stations on segments hosted by CSXT.

Distributing recovery time more evenly between intermediate stations could result in Amtrak trains holding at intermediate stations, particularly during the first half of a train's

[1] As a general matter, most Amtrak trains that operate on CSXT's network use schedules with insufficient recovery time.

journey. For Amtrak trains that traverse single-track railroads, holding on the main line at an intermediate station until the scheduled departure time would impact other passenger and freight trains in the vicinity. Even on certain double-track railroads, placing too much recovery between intermediate stations could result in Amtrak trains holding to "kill time" on some trips, which could lead to delays rippling throughout CSXT's network. For example, when Amtrak trains arrive at the Ashland, Virginia Amtrak station using main track number no. 2, freight and passenger trains are held at the nearest control points on each side of the station to protect passengers that need to cross main track no. 3 to access the train or the station. *See* Figure 1. If excessive recovery time is added to a train's schedule at Ashland, and that train must on occasion "kill time" and wait for its scheduled departure time, it will prevent other trains (passenger and freight alike) from approaching the Ashland station even though one of the two main lines is unobstructed.

Figure 1:
RF&P Subdivision, Ashland, Virginia Amtrak Station



Preserving half to two-thirds of a schedule's recovery time for the endpoint (or host checkpoint for multi-host routes) is sound scheduling policy for similar reasons. It is difficult to predict where a train will incur delay minutes on a particular run. It is likewise difficult to assign recovery time to a particular station anticipating delays—on some runs, this practice would

properly account for delays, while on other runs, this practice would require the train to hold at intermediate stations to "kill time" before continuing its journey. For these reasons, Amtrak schedules that place half to two-thirds of a schedule's recovery time at the endpoint or checkpoint are not conducive to meeting an all-stations metric.

b. Amtrak Schedules That Employ "Negative Recovery" Are Not Conducive To Meeting An All-Stations Metric.

Not only do most Amtrak schedules lack sufficient recovery time at intermediate stations in order to meet an all-stations metric, but also some Amtrak schedules include so-called negative recovery at some intermediate stations. A train operating a perfect run will depart late from a station with negative recovery. For instance, Amtrak train 50, the Cardinal eastbound, includes negative recovery time at Ashland, Kentucky and Alderson, West Virginia. Amtrak train 51, the Cardinal westbound, includes negative recovery time at South Portsmouth, Kentucky and Crawfordsville, Indiana. While some schedules place only one or two minutes of negative recovery at intermediate stations, others place significantly more. For instance, the schedule for Amtrak train 92, the Silver Star northbound, includes five minutes of negative recovery at Okeechobee, Florida. If an all-stations metric with 15 minutes of tolerance is applied to this train, the Amtrak train will meet this metric only if arrives within 10 minutes of its scheduled time and uses exactly the amount of dwell time provided for in the schedule. If the schedule included negative recovery at other stations before Okeechobee, that would further reduce the amount of tolerance allotted for that train. For these reasons, current schedules that employ negative recovery time at intermediate stations are not designed for or conducive to meeting an all-stations performance metric. Amtrak's practice of employing negative recovery at intermediate stations casts doubt on the position that arrival at intermediate stations at precise times is as important as Amtrak and other commenters suggest.

3. Designing An Amtrak Schedule To Meet An All-Stations Metric By Distributing The Current Amount Of Recovery Time More Evenly Throughout The Schedule Is Not Feasible.

Taking the alternative approach—distributing recovery time more evenly in a train's schedule—is not readily feasible with current Amtrak schedules. Building a schedule designed to meet an all-stations metric would require more recovery time than is currently employed on most routes—even for trains that now achieve greater than 80 percent endpoint on-time performance—and for that recovery time to be distributed more evenly in the schedule. Further, while placing more recovery earlier in a schedule would increase the likelihood that a train will meet an all-stations metric, it would also increase the likelihood that the train would arrive at a station early and would need to "kill time" by holding at that station before departing. Recovery time used holding at a station cannot be used to offset delays encountered *en route*, and holding at stations to "kill time" can obstruct network fluidity and cause delays to other passenger and freight trains. For most schedules, distributing existing recovery time more evenly would not result in significant increases in all-stations on-time performance and would likely reduce endpoint on-time performance for the reasons discussed above.

4. An All-Stations Metric Results In False Positives For Trains That Routinely Depart Late From Amtrak Terminals.

Unlike CSXT's proposal for measuring on-time performance—which provides tolerance for trains that arrive at a host's segment behind schedule—Amtrak's proposed all-stations performance metric will result in a number of false positives for trains that depart late from notoriously congested Amtrak terminals. Under an all-stations performance metric utilizing 15 minutes of tolerance, a train that departs 30 minutes late from an Amtrak terminal and thereafter moved exactly as planned would arrive at every intermediate station "late"—until the schedule provides for a net total of 15 minutes of recovery time that is not needed to compensate for a

delay. Most schedules provide for recovery time equal to only six to eight percent of pure running time.[2] For example, assuming a hypothetical train with five hours of pure running time, recovery will equal only 24 minutes (assuming eight percent recovery time). Assume also that the 24 minutes of recovery time for this hypothetical train is divided in half, with 12 minutes distributed evenly between intermediate stations and 12 minutes added to its endpoint. If this train departs from its origin 30 minutes late, it will not receive sufficient recovery time until it reaches its endpoint, even if it encounters ***no*** additional delays *en route*. Like knocking over a series of dominos, this train's original delay will ripple through its route and result in a late arrival at ***every intermediate station*** through no fault of its host railroad.

5. Many Intermediate Stations Are Used By Relatively Few Passengers.

Many commenters, including Amtrak, noted that an endpoint on-time performance metric would measure performance at only 10 percent of all Amtrak stations. However, many intermediate stations are used by fewer passengers relative to endpoint stations. For example, Washington has 19 Amtrak stations in total, of which one is an endpoint station (Seattle). However, 50 percent of all passengers—604,832 of the state's 1,208,540 passengers in 2015—boarded or alighted in Seattle.[3] Illinois has 30 Amtrak stations in total, of which three are endpoint stations (Chicago, Carbondale, and Quincy). However, 72 percent of all passengers—3,459,558 of the state's 4,816,886 passengers in 2015—boarded or alighted in Chicago,

[2] CSXT's position—which it has expressed repeatedly to Amtrak—is that recovery time equal to six to eight percent of pure run time is woefully inadequate in today's environment.

[3] Amtrak Government Affairs, Fact Sheet—Fiscal Year 2015, State of Washington (Nov. 2015), *available at* https://www.amtrak.com/pdf/factsheets/WASHINGTON15.pdf (last accessed Mar. 6, 2016).

Carbondale, or Quincy.[4] Louisiana has seven Amtrak stations in total, of which one is an endpoint station (New Orleans). However, 85 percent of all passengers—189,456 of the state's 223,864 passengers in 2015—boarded or alighted in New Orleans.[5] New York has 26 Amtrak stations in total, of which three are endpoint stations (Albany-Rensselaer, New York-Penn Station, and Niagara Falls). However, 89 percent of all passengers—11,046,705 of the state's 12,350,248 passengers in 2015—boarded or alighted in Albany-Rensselaer, New York-Penn Station, or Niagara Falls.[6] In addition, most passengers connecting from one Amtrak train to another will do so at a train's endpoint station or another major station. Most intermediate stations provide for no connecting service at all. Thus, employing an on-time performance metric that measures performance at endpoints will capture performance that is experienced by the majority of Amtrak passengers in many states.[7]

Moreover, under CSXT's proposed definition of on-time performance, performance would be measured at more locations than merely a train's endpoint for routes with more than

[4] Amtrak Government Affairs, Fact Sheet—Fiscal Year 2015, State of Illinois (Nov. 2015), *available at* https://www.amtrak.com/pdf/factsheets/ILLINOIS15.pdf (last accessed Mar. 6, 2016).

[5] Amtrak Government Affairs, Fact Sheet—Fiscal Year 2015, State of Louisiana (Nov. 2015), *available at* https://www.amtrak.com/pdf/factsheets/LOUISIANA15.pdf (last accessed Mar. 6, 2016).

[6] Amtrak Government Affairs, Fact Sheet—Fiscal Year 2015, State of New York (Nov. 2015), *available at* https://www.amtrak.com/pdf/factsheets/NEWYORK15.pdf (last accessed Mar. 6, 2016).

[7] In addition, Amtrak does not publish an arrival and a departure time for most intermediate stations in its public schedules. Instead, Amtrak lists only a departure time. *See, e.g.*, Amtrak, Capitol Limited Schedule (Jan. 11, 2016), *available at* https://www.amtrak.com/ccurl/122/207/Capitol-Limited-Schedule-011116.pdf (last accessed Mar. 23, 2016). Intermediate stations without published arrival times are ill-suited for inclusion in a performance calculation for this reason as well. Moreover, the departure times listed for intermediate stations in Amtrak's public schedules sometimes do not account for station dwell and recovery time at a station as provided in Amtrak's contractual schedules with CSXT.

one host. CSXT proposed measuring performance for each host's segment separately. By way of example, the Capitol Limited's performance would be measured at Chicago (for train 29) and Washington, D.C. (for train 30) under the Board's proposal.[8] Under CSXT's proposal, the Capitol Limited's performance would be measured at Field (Pittsburgh) and Chicago (for train 29), and Field (Pittsburgh) and Washington, D.C. (for train 30).

C. If The Board Includes Performance At Intermediate Stations As A Measure Of On-Time Performance, It Should Measure Performance Only At Specific, High-Volume Stations.

The Board should adopt CSXT's proposal of measuring performance at the endpoint of each host railroad's segment. This approach provides for performance measurements at stations other than the endpoint for all trains with more than one host railroad.

However, if the Board elects to amend the proposed rule to include measurements at stations other than the endpoint and does not adopt CSXT's proposal, it should reject an "all stations" metric in favor of measuring performance only at stations where certain criteria are met. First, the Board should measure performance only at stations with reasonable, fact-based schedules. If the Board elects to use this alternative approach, it should establish a procedure—involving both Amtrak and the host railroad—to determine whether such schedules are reasonable. Second, the Board should measure performance only at stations that provide for sufficient recovery time and station dwell time. The Board should avoid measurements at stations with schedules that provide for no recovery time or negative recovery time. Third, the Board should measure performance only at stations where a substantial number of passengers

[8] The Capitol Limited operates over Amtrak-owned rails between Chicago Union Station and 21st Street Crossing in Chicago, over Norfolk Southern's rails between 21st Street Crossing and MP 1.0 (known as "Field,") just east of downtown Pittsburgh, over CSXT's rails between Field and QN Tower in northeast Washington, D.C., and over Amtrak-owned rails between QN Tower and Washington Union Station.

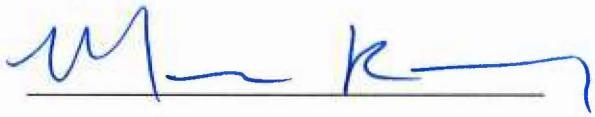
boarded or alighted an Amtrak train. Stations that account for less than 10 percent of all passengers on an Amtrak train during the two consecutive calendar quarters under consideration should not be counted. To be clear, such an alternative approach has serious defects. It would require a process to determine at which stations performance would be calculated and whether schedules at those stations are realistic.

In addition, an even amount of tolerance should not be applied to all intermediate stations. This approach fails to take into account the realities of Amtrak trains operating long distances over a host's rails. Instead, tolerance should be applied to a measurement of performance at an intermediate station based on that station's distance from the start of a host railroads' segment, with a minimum of 15 minutes of tolerance. Just as with CSXT's proposal for measuring on-time performance at the endpoint of a host's segment, tolerance should increase to 20 minutes at 201 miles from the origin, and it should increase by five-minute increments for each additional 100 miles of a segment's length with no upper limit or cap. For example, if the Board seeks to measure performance at an intermediate station 320 miles from the start of a host's segment, it should provide 25 minutes of tolerance at that intermediate station (not 15 minutes for all stations, as Amtrak proposes). Moreover, any relief provided for in operating agreements between Amtrak and a host railroad should be applied to measurements at intermediate stations. And, like with CSXT's proposal for measuring on-time performance at the endpoint of a host's segment, trains arriving at a host's segment more than 30 minutes late should not be counted at all, and tolerance equal to the time of delay should be added at all intermediate stations for trains arriving late at a host's segment by less than 30 minutes.

* * *

CSXT appreciates the opportunity to submit these reply comments for the Board's consideration. The Board should subject its proposed rule to additional scrutiny, as described in CSXT's opening comments, and the Board should modify its 1973-based rule to better reflect the reality of today's freight rail capacity and customer volumes and important considerations like safety. The Board should reject calls to measure performance at all stations. Amtrak's schedules in place today simply were not designed to meet such a metric, and subjecting host railroads to costly and time-consuming investigations for failing to meet an impossible standard would be misguided and run afoul of basic principles of fairness and due process.

Respectfully submitted,



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Dated: March 30, 2016