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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 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**

COMMENTS OF CSX TRANSPORTATION, INC.

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Dated: February 8, 2016

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CSX Transportation, Inc. (“CSXT”) respectfully submits these comments in response 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*. CSXT welcomes the opportunity to participate in this rulemaking and provide comments to the Board.¹

The Board’s proposed rule is of significant importance to all host railroads, including CSXT. The Board should revise its proposed rule in several ways, including by:

- Determining whether schedules are realistic;
- Incorporating exemptions for safety-related delays;
- Removing the cap on 30 minutes of tolerance for long-distance routes;
- Calculating performance of host railroads separately; and
- Recognizing when a host railroad receives trains late from other railroads or Amtrak.

First, CSXT urges the Board to keep four foundational factors in mind when promulgating a rule that defines On-Time Performance. The rule 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. A final On-Time Performance definition must account for these

¹ Before proceeding, it is important to recall that the Association of American Railroads petitioned the Board to instigate this rulemaking only if the Board did not grant Canadian National’s petition for reconsideration of the Board’s December 19, 2014 decision in the Illini/Saluki matter (Docket No. NOR 42134) or the motions to dismiss that were filed by CSXT and Norfolk Southern in the Capitol Limited matter (Docket No. NOR 42141). For the reasons expounded in those filings, the Board should reconsider its conclusion that it has the power to create its own On-Time Performance standard and can then use the new, Board-created standard as a triggering mechanism to launch a Section 213 investigation.

principles, and promote a national rail network that balances passenger, freight, and public interests.

Second, the Board's Notice of Proposed Rulemaking makes no attempt to explain why its decision to graft the ICC's 1973 On-Time Performance standard onto PRIIA makes sense in today's complex (and capacity-constrained) surface transportation environment. The proposed rule ignores a host of important considerations, calling its effectiveness at identifying substandard passenger train performance into question. The Board has not provided CSXT or the public with an adequate explanation of why the proposed rule is reasonable for the purpose for which it will be used.

Third, the Board should reconsider its proposed definition of On-Time Performance and promulgate a different rule that would suit today's environment, effectuate the goals of PRIIA, and enforce statutory preference requirements. CSXT encourages the Board to conduct a detailed analysis of these and other elements of a potential definition of On-Time Performance in Section 213.

Fourth, the Board should reject its proposal to define On-Time Performance based upon a measure of intermediate station stops on an Amtrak route.

A. Reasonable Schedules, Freight Concerns, And Safety Are Of Paramount Importance To The Definition of On-Time Performance In PRIIA Section 213.

1. PRIIA's On-Time Performance Trigger Is A Critical Gatekeeping Mechanism That Should Be A True Test, Not A Speed Bump.

The On-Time Performance definition performs a critical gatekeeping function in PRIIA, and the Board should define On-Time Performance robustly so that the trigger requires the Board to investigate *only* those routes with the most pressing issues.

Section 213 of PRIIA provides that, "[i]f the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters," the Board

“shall initiate” an investigation at Amtrak’s request “to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators.” 49 U.S.C. § 24308(f). If the trigger is met, the Board must investigate. As such, the Board should ensure that its definition of On-Time Performance does not sweep too broadly and capture routes for which a costly investigation is unwarranted.

There can be no dispute that a Board investigation pursuant to PRIIA Section 213 is a significant undertaking. Even a cursory review of the pleadings submitted by Amtrak and Canadian National in the Illini/Saluki case (No. NOR 42134) illustrates the number of disputed issues involved, and the potential for long, drawn-out discovery disputes—as does the somewhat-related Amtrak and Canadian National contract dispute that is also ongoing, *Application of the Nat’l R.R. Passenger Corp. under 49 U.S.C. § 24308(a)—Canadian Nat’l Ry. Co.*, No. FD 35743.

Each investigation will consume large portions of the Board’s scarce resources, including time currently devoted by the Board’s members and their staffs to other critical issues. And each investigation will consume resources of the parties involved. Indeed, pursuant to PRIIA, the Board must consider the conduct of all parties, including Amtrak, when conducting an investigation: “[The Board must] determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators.” 49 U.S.C. § 24308(f)(1).

The definition of On-Time Performance should account for these considerations. Without a valid and robust trigger to function as a gatekeeping mechanism, the real potential exists for the Board and host railroads to be overwhelmed by a flood of mandatory investigations.

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

On-Time Performance cannot be defined in the abstract. Instead, this measure is the comparison between a train's performance and a baseline. Nothing is more central to the determination of On-Time Performance than setting the correct baseline—a train's schedule. An unreasonable schedule can make a well-performing train appear chronically delayed or a poorly performing train appear routinely on time.

The relevant statutory and existing contractual language—as well as past ICC pronouncements—indicates that Amtrak's schedules must be fact-based and realistic to be enforceable. The statute is clear on this subject: Amtrak must implement schedules that “can be achieved with a degree of reliability.” 49 U.S.C. § 24101(c)(6). The operating agreement between CSXT and Amtrak provides that Amtrak's “routes, schedules, and consists shall be compatible with the physical capabilities of CSXT.” And the ICC made clear that “[a] carrier should not make promises it cannot keep. If it cannot, for example, complete a scheduled 230-mile, 3-hour trip within 10 minutes of the posted time (barring some unforeseen safety hazard which requires slow operation on a one-time basis), it should not publish such a schedule.” *Adequacy of Intercity Passenger Rail Serv.*, 344 I.C.C. 758, 777 (ICC 1973).

Amtrak's current schedules—many of which have not been adapted or changed to reflect current capacity and infrastructure challenges—were not designed to achieve a high level of timeliness (and certainly not 80 percent On-Time Performance as measured at a route's endpoint

with a low level of tolerance and without relief for late trains and safety concerns, as suggested by the Board). Instead, they were designed as aspirational and built using pure running time between stations, an estimate of dwell at stations, and a degree of segment or endpoint recovery time.

Amtrak has admitted that its schedules do not reflect present day realities. For example, in its FY2014 Budget and Business Plan and FY2015 Budget Request Justification, Amtrak listed a “goal” of **62 percent** endpoint On-Time Performance for its long-distance routes for fiscal year 2014, escalating to **65 percent** in fiscal year 2015.² Amtrak’s refusal to consider a fact-based, real-world approach to schedule-setting is the root cause of this issue. Many of Amtrak’s schedules include insufficient station dwell time and insufficient recovery time to account for all of the obstacles along the route. Many of the current schedules were established at a time when host railroads had greater capacity and less traffic from commuter railroads and freight. These schedules do not comport with the reality of a revitalized economy, more freight and commuter rail traffic, and host railroads’ common carrier obligations.

CSXT has long advocated that Amtrak set realistic, fact-based and experience-based schedules for passenger trains that operate on CSXT rails—an approach that has worked with commuter lines. Unfortunately, Amtrak has rebuffed CSXT’s approach to scheduling at every turn—even demanding removal of time from certain schedules with the full understanding that doing so would materially affect that train’s performance. The ICC decades ago acknowledged that “[r]ealistic scheduling is more than a mere nicety, inasmuch as the passenger and persons

² Nat’l Passenger R.R. Corp., *FY2014 Budget and Business Plan, FY2015 Budget Request Justification, and FY2014-2018 Five Year Financial Plan* at Exhibit 6.5 (“Statistics and Key Performance Indicators—Long-Distance Services”) (Apr. 2014), available at <https://www.amtrak.com/ccurl/458/748/FY14-Budget-Business-Plan-FY15-Budget-Justification-FY14-18-Five-Year-Financial-Plan.pdf> (last accessed Jan. 27, 2016).

meeting them rely on the published schedules in making their arrangements.” *Adequacy of Intercity Passenger Rail Serv.*, 344 I.C.C. at 758. Indeed, passengers—particularly those riding long-distance routes that may take a full day or longer to reach their terminus—favor accurate schedules over shorter yet unreliable schedules. This fact should be undisputed, and the ICC recognized it long ago:

John Stanley of Riverside, Calif., a frequent traveler across the country on Amtrak trains is a strong supporter of Amtrak. He personally traveled some 10,000 miles on Amtrak trains in 1974, at least half of it with his family, which includes two young children. . . . Mr. Stanley’s comments about on-time performance warrant repetition here: “In my experience it is not the slowness of the train per se that generates the most anxiety about failure. It is the failure to meet the schedule on the timetable. Most people gear themselves to an expected lengthy ride. If they expect to drive or ride for 10 hours, then they are geared for that.”

Adequacy of Intercity Passenger Rail Serv., 351 I.C.C. 883, 945 (ICC 1976). CSXT agrees wholeheartedly with the ICC’s advocacy of—as well as passengers’ preference for—realistic, fact-based scheduling that values achievability, reliability, and predictability.

The Board’s Notice of Proposed Rulemaking does not include any analysis or discussion of whether Amtrak’s current passenger train schedules are reasonable. The Board should not move forward with promulgating a definition of On-Time Performance until it has developed a mechanism—to employ before it launches a costly and resource-consuming Section 213 investigation—by which it can determine whether a schedule for an Amtrak route subject to a Section 213 complaint is reasonable. Such a procedure is firmly rooted in precedent; the ICC considered On-Time Performance in the context of the reasonableness of the schedule and the specific characteristics of the route when it possessed the authority to do so. *See, e.g., Nat’l R.R. Passenger Corp. v. Interstate Commerce Comm’n*, 610 F.2d 865, 876 (D.C. Cir. 1979) (“The Commission considered the applicable speed limits, the high volume of freight traffic between Texarkana and Fort Worth, and the limited number of sidings available along the route and

established a running time of 345 minutes as the on-time baseline figure to be used in measuring quality of performance.”); *id.* at 876 n.19 (“[W]e consider that under the circumstances presented a 20-minute (maximum) schedule reduction represents the best balancing of the interest of the traveling public in obtaining shorter schedules and the interest of the railroad in providing efficient freight service over a heavily used line.”).

3. The Definition Of On-Time Performance Must Balance Passenger Train And Freight Rail Performance.

The Board’s Notice of Proposed Rulemaking states that Amtrak “was established by Congress in 1970 to preserve passenger services and routes on the Nation’s railroads.” While certainly true, this statement omits perhaps the most important reason for Amtrak’s establishment: the congressional desire to preserve the private freight railroad network in the United States, which was buckling under the strain of providing passenger service. *See Application of the Nat’l R.R. Passenger Corp. under 49 U.S.C. 24308(A)—Union Pac. R.R. Co. and So. Pac. Trans. Co.*, Fin. Docket No. 33469, 1998 STB LEXIS 144, at *11 (STB served May 29, 1998) (“[To] reliev[e] the freight railroads of their obligation to provide passenger service—service that produced losses at levels *threatening the viability of their freight operations*—Congress created Amtrak” (emphasis added)). In exchange for permitting Amtrak to operate on their tracks, “railroad companies languishing under the prior regime” were permitted to “shed their cumbersome common carrier obligation to offer intercity passenger service.” *Ass’n of Am. R.R. v. Dept. of Transp.*, 721 F.3d 666, 668-69 (D.C. Cir. 2013), *rev’d on other grounds*, 135 S. Ct. 1225 (U.S. 2015).

The Board must keep in mind Congress’s dual purposes behind Amtrak’s creation as it formulates the definition of On-Time Performance. Congress struck a balance that sought to preserve viable passenger service *and* a robust freight rail network. The Board should strike a

similar balance that ensures the efficient operation of our nation's railroads and considers the interests of host railroads and shippers alongside Amtrak and its passengers.

4. On-Time Performance, While Important, Must Yield To Safety.

As the Board defines On-Time Performance for the purpose of a Section 213 investigation, it is critical to remember that passenger train performance must always yield to passenger train safety. CSXT dispatchers work daily to ensure that Amtrak trains operate efficiently and, more importantly, safely across the CSXT network. Slow orders, heat orders, the operation of defect-detection cars, maintenance of the signals and rails, and other safety measures are of critical importance to operating a safe network. Indeed, the ICC made clear decades ago that safety was paramount as it promulgated regulations on passenger train arrival and departure times:

“Where safe operation permits” has been added to make it clear that neither this Commission nor the public can expect the impossible, but that our concern is with the safety and comfort of the passenger. The public should be able to rely on the established train schedule so that plans can be made with a modicum of certainty and trains may once again be attractive to travelers for whom on-time performance is imperative. Yet due deference must be given the old adage: “better late than never.” Bad weather, for example, may make an on-time arrival incompatible with a safe arrival. In such cases a safe but late arrival would not be penalized. Moreover, where trains are late repeatedly, either operational efficiency is lacking, or the timetable needs revision.

Adequacy of Intercity Passenger Rail Serv., 344 I.C.C. at 776.

The Board should be mindful of the ICC's pronouncement and craft an On-Time Performance trigger that does not penalize host railroads for ensuring the safe operation of Amtrak trains. Amtrak and CSXT recognized this important concern in their operating agreement, which does not count certain trains delayed for safety reasons when calculating performance for purposes of their contract. The Board should revise its rule accordingly to specify that trains delayed by heat orders, the operation of defect-detection cars, maintenance of

the signals and rails, or other safety measures are not counted against a host carrier's On-Time Performance.

B. The Board Provides No Analysis Supporting Its Proposed Definition Of On-Time Performance, And Ignores Its Deficiencies.

1. The Board's Selection Of The ICC's On-Time Performance Standard Is Arbitrary And Unsupported.

The Board's Notice of Proposed Rulemaking (at 4) acknowledges that "the proposed rule's definition of on-time performance . . . is derived from a previous definition of on-time performance used by the Interstate Commerce Commission." Under the proposed definition, "a train would be considered on time if it arrives at its final terminus no more than five minutes after its scheduled arrival time for each 100 miles the train operated, or 30 minutes after its scheduled arrival time, whichever is less." *Id.* at 5. But by simply adopting the ICC's 1973 standard, the Board made no attempt to analyze and determine whether this standard and its tolerance levels are relevant, applicable, or well-suited for modern-day rail infrastructure and operations. Absent such an analysis, the Board cannot say that its selection of the ICC's decades-old standard is anything but arbitrary.

Adopting the ICC's standard from 1973 as a meaningful indicator of on-time performance makes little sense. The prior ICC standard was promulgated during a very different era in the history of passenger and freight rail transportation when the industry faced innumerable problems—not the least of which was tremendous *over*-capacity. To assume that a standard that may have been reasonable in that environment must perforce have some legitimate basis for application in the 21st century, when the industry faces tremendous limitations on capacity, is manifestly unreasonable. As the Board is also aware, higher-speed intermodal trains did not exist in 1973, and the volume of commuter traffic sharing freight lines used by intercity passenger traffic was a shadow of what it is today. Indeed, freight volumes were dramatically

lower in 1973 than they are today. Only in the past 25 years, the weight of freight shipments has increased from 1.580 billion tons in 1993 to 2.018 billion tons in 2012. A 2012 projection of freight volumes estimates that 2.770 billion tons of freight will be shipped by rail in 2040.³ At the same time, commuter rail service volumes have spiked, particularly near large metropolitan areas that often serve as the starting and endpoints of Amtrak’s long-distance routes (such as Washington D.C. and Chicago for Amtrak’s Capitol Limited route).⁴

In light of this, it is no mystery why the Board acknowledged that the world has changed significantly since 1973: “Due to increased traffic density, the rail operating environment has become more complex since Congress first established a preference requirement in 1973.” Notice of Proposed Statement of Board Policy, *Policy Statement on Implementing Intercity Passenger Train On-Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, Docket No. EP-728, at 4 (STB served Dec. 28, 2015).⁵ Yet, despite this acknowledgment, the Board made no attempt to analyze the ICC’s decades-old standard in light of today’s rail reality. The Board cannot conclude that the ICC’s 1973 standard of “On-Time Performance” is applicable or appropriate in a world of drastically larger shipping volumes without having considered this issue or analyzed whether the levels of tolerance originally set by the ICC are appropriate today. The Board should therefore seek more evidence on what

³ See U.S. Dept. of Transp., Bureau of Transp. Statistics, *Freight Facts and Figures 2013* at 3, Table 2-1 (Jan. 2014), available at http://www.ops.fhwa.dot.gov/freight/freight_analysis/nat_freight_stats/docs/13factsfigures/pdfs/fff2013_highres.pdf (last accessed Feb. 4, 2016).

⁴ Commuter rail passenger trips more than doubled between 1974 and 2013. See Am. Pub. Transp. Ass’n, *2015 Pub. Transp. Fact Book, App. A: Historical Tables* at 26-27 (June 2015), available at <http://www.apta.com/resources/statistics/Documents/FactBook/2015-APTA-Fact-Book-Appendix-A.pdf> (last accessed Feb. 4, 2016).

⁵ As discussed, Amtrak’s schedules have not kept pace with—or even acknowledged—this dramatic increase in traffic density, freight volumes, and operational complexity.

reasonable performance and tolerance are today, rather than reaching back to a bygone era for a standard that is no longer useful.

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 will subject many well-performing routes to a costly "preference" investigation. Indeed, Amtrak is on record that its On-Time Performance goal for 2015 was 65 percent for its long-distance routes. In this environment, an 80 percent On-Time Performance metric that accepts current schedules without scrutiny, caps tolerance at 30 minutes, and lumps together all host railroads on a single route does not provide an accurate test to identify Amtrak routes worthy of a Board investigation.

2. The Board's Proposed Definition Of On-Time Performance Is Deficient.

The Board's proposed definition of On-Time Performance is deficient in a number of respects—the first of which is that the definition fails to provide a mechanism for the Board to consider whether the Amtrak train's schedule is reasonable and fact-based. The definition provides the Board no ability to determine, for instance, whether an intervening schedule change has impacted On-Time Performance. Setting these serious schedule-related deficiencies to the side, the Board's proposed rule suffers from a number of other significant problems, none of which the Board considered in its Notice of Proposed Rulemaking.

- a. The proposed rule exalts simplicity above all other factors, and in so doing creates a poorly tailored standard. For instance, the proposal treats all segments of track equally based on distance. This one-size-fits-all approach unreasonably and arbitrarily assumes that all rail corridors are the same, regardless of freight traffic density, commuter rail volumes, topography and incline, the presence of single or multiple tracks, congestion caused by the presence of rail switching yards along the route, the number of station stops, and other operational realities.

- b. Modern analytic techniques (*e.g.*, train performance calculators, modeling, and data visualization tools) are available to assist Amtrak, railroads, and other stakeholders in developing reasonable and workable schedules. The Board failed to use any of these tools to determine whether the Amtrak schedules at issue are reasonable, or whether the levels of tolerance it proposed render 80 percent On-Time Performance attainable based on the existing schedules.
- c. The proposed rule provides no relief for railroads even if safety concerns (such as heat orders, the operation of defect-detection cars, maintenance of the signals and rails, or other safety measures) resulted in slower running speeds or delays.
- d. The proposed rule provides no relief for late-incoming trains. Because the definition considers only endpoint on-time performance, it could sweep a well-performing host railroad into a costly and resource-consuming investigation simply because that host receives an Amtrak train on its segment behind schedule from Amtrak or another host railroad. On many routes, certain host railroads have little or no control over performance because they carry Amtrak trains for merely tens of miles. Yet the proposed rule sweeps all hosts on a route, no matter how small the segment in proportion to the length of the route, into a costly and resource-consuming investigation regardless of impact on a train's performance or fault.
- e. The proposed rule pays no heed to the mutually negotiated contractual relationships between Amtrak and host railroads. Most if not all host railroads, including CSXT, have operating agreements with Amtrak that govern the duties and obligations of the parties. The Board's definition excludes entirely from the

On-Time Performance analysis what the parties agreed to as governing their business relationship, and the parties' prior agreements on when not to count trains against On-Time Performance for various reasons.

- f. The Board's proposed rule also fails to specify or consider whether On-Time Performance will be measured against Amtrak's public schedules or the schedules included in Amtrak's various operating agreements with host railroads. In some instances, these two schedules differ and could materially affect an On-Time Performance calculation. A host railroad could fully comply with its operating agreement and even qualify for performance incentives under its operating agreement while still delivering an Amtrak train "late" per Amtrak's ever-changing public schedules. If an operating agreement conflicts with Amtrak's published schedules for a segment of an Amtrak train's route that is the subject of a Section 213 complaint, then the Board should compare the performance of that train to the contractual schedule. Considering performance against the public schedule in this scenario would unfairly prejudice a host railroad and could misdirect the Board's scarce investigatory resources.
- g. The proposed rule does not normalize lateness for distance and improperly caps tolerance for routes measuring longer than 500 miles. Such a mechanism equates routes of disparate lengths and ignores important challenges facing long-distance routes of over 500 miles.

C. The Board Should Revise Its Proposed Definition Of On-Time Performance.

Before adopting any definition of On-Time Performance, the Board should consider and analyze, with the requisite seriousness and care, alternative definitions of On-Time Performance and select a definition that remedies the proposed rule's deficiencies. The following elements

serve to ameliorate the concerns with the proposed rule highlighted above, and should be fully analyzed by the Board before it rejects them in favor of a decades-old standard with serious shortcomings.

1. On-Time Performance Should Be Measured Separately For Each Host Railroad's Segment Of An Amtrak Route.

On-Time Performance must be measured separately for each host railroad segment on routes with more than one host railroad. Doing so comports with principles of fundamental fairness and due process, and would serve to preclude embroiling a host railroad in an investigation if the performance within the host railroad's direct control meets the applicable standard. Not only is this approach best-suited for analyzing long-distance routes with multiple hosts, but also this approach allows the Board to focus its scarce resources investigating the segments with the greatest performance challenges.

2. On-Time Performance Should Include More Reasonable Levels Of Tolerance Than The ICC's 1973 Standard.

In conjunction with the above proposal, tolerance should be applied to each host segment separately based on that segment's length. The Board provided no basis for capping the amount of tolerance at 500 miles. Under this formulation, routes with wildly different lengths would be treated equally for the purpose of the On-Time Performance trigger. Moreover, the Board stated no basis for providing a mere five minutes of tolerance for routes of less than 100 miles. Instead, 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. This approach better fits the realities of today's complex rail transport environment.

3. On-Time Performance Should Be Measured Against The Run Time For Each Host Railroad's Segment.

First, 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. Second, for trains that arrive at a host railroad's segment behind schedule by less than 30 minutes,⁶ delays incurred before entering a host railroad's segment should not be counted when calculating On-Time Performance for a host railroad's segment of a route. On long-distance routes, often more than one host railroad comprises the length of the route. In order to limit the scope of investigations to those segments most worthy of the Board's attention, delays incurred while a train travels on one host railroad's track should not factor into the On-Time Performance calculation for another host railroad. In other words, for Amtrak trains that arrive at a host railroad's segment behind schedule, the number of minutes behind schedule at the time of the train's arrival should be added to the tolerance for that train.

4. On-Time Performance Calculations Should Exclude Trains Arriving At A Host Railroad's Segment More Than 30 Minutes Behind Schedule.

In order to glean the most-accurate picture of a host railroad's performance, the Board should count certain trains and exclude others in its calculation. 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. CSXT plans many of its freight train departures around passenger train schedules in order to prevent delays to Amtrak trains. When an Amtrak train enters CSXT's segment well after its scheduled arrival, dispatchers are forced to improvise and weave the Amtrak train around freight traffic that it was

⁶ As discussed in Section C(4), *infra*, the Board should not count Amtrak trains that arrive at a host railroad's segment of a route more than 30 minutes behind schedule when calculating On-Time Performance for that host railroad's segment.

not intended to confront if it had arrived on time. Several late trains may, for example, arrive after a cadre of freight and other passenger trains that were designed to follow that Amtrak train, had it arrived on schedule, have departed. Thus, there may be an unavoidable delay to the Amtrak train as a direct consequence of the Amtrak train missing its slot. Moreover, trains depart late from congested terminals, such as Chicago, with some frequency. That Amtrak is unable to have its trains depart on time from its terminals should not be used by Amtrak to initiate an investigation. Furthermore, Amtrak's past practices have led directly to delays. Amtrak has long experienced difficulties boarding and unloading passengers in a timely manner. Poor communication by Amtrak staff and conductors often compounds these delays, leaving CSXT dispatchers in the dark about when a delayed Amtrak train will arrive at CSXT's segment. In short, basic principles of fairness dictate that a host railroad should not be subject to an onerous investigation on the basis of conduct that occurred outside of its segment and control.

5. On-Time Performance Should Embrace, Not Ignore, Amtrak's Operating Agreements With Host Railroads.

CSXT and Amtrak's operating agreement contains a definition of On-Time Performance—including negotiated provisions on which trains are counted in a performance analysis and other forms of relief. The Board's definition of On-Time Performance should include these "relievable delays" as a part of the formula for calculating performance. Depending on the contractual provision, such relief may apply to trains delayed due to Amtrak's equipment failures, excessive station dwell, meets with other Amtrak trains on single-track segments, grade-crossing accidents or trespassers, law enforcement activity, directives from public officials, the temporary closure of a crossing, following commuter passenger traffic, or acts of nature.

Furthermore, performance should be measured against the run time provided for in the applicable operating agreement when that run time is lengthier than Amtrak's public schedule.

6. On-Time Performance Must Be Calculated Separately For Each Train.

Within each host segment, On-Time Performance should be calculated separately for each train. Simply averaging the performance of all trains that comprise a route obscures key differences between these trains that directly impact train performance. This approach will allow the Board to pinpoint where it should direct its investigations and target its limited resources. This approach will assist the Board in identifying problems with Amtrak's schedule. For instance, in a route with one pair of trains and a congested Amtrak terminal at the route's western end, the performance of the eastbound train is likely to be directly impacted by congestion at the terminal, while the performance of the westbound train is likely to be impacted to a lesser degree. More so than the Board's proposal, this approach also accounts for topographic differences, such as varying track grade and slope, the number and location of interlockings and sidings, the demand for capacity from commuter railroads, and the number and location of freight customers.

7. All Trains That Comprise A Route Must Fall Below The 80 Percent Threshold In Both Quarters In Order For The Board To Launch An Investigation.

Before it launches an investigation, the Board must be satisfied that an Amtrak train has failed to meet 80 percent on-time performance for two calendar quarters. This should be interpreted by the Board to mean that each individually numbered train that comprises a route must fall below the 80 percent threshold in both quarters in order for it to launch an investigation. Failure to adopt this approach contradicts the clear text of PRIIA and would serve to divert scarce Board resources to low-priority investigations.

8. Amtrak Must Demonstrate That A Segment’s Schedule Is Reasonable And Fact-Based.

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 run time for each segment of a route is realistic, fact-based, and can be achieved with reliability. Alternatively, the Board should allow a host railroad to demonstrate, through the use of modern analytic tools or other means, that a segment’s run time is unreasonable given the infrastructure available and the traffic level, seasonality, and operational characteristics of trains on the segment.

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

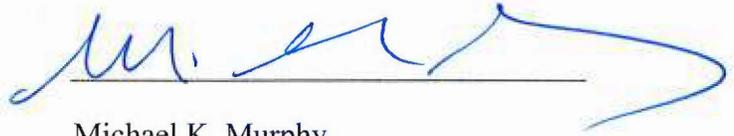
The Board’s Notice of Proposed Rulemaking solicited comments on whether measuring performance at intermediate stations should be incorporated into the Board’s definition of On-Time Performance. It should not. First, an Amtrak train departing late from its origin or encountering an impediment early in its journey will result in an all-stations On-Time Performance measurement that will not accurately reflect the actual performance of the train. Second, existing Amtrak schedules were not designed to meet an all-stations On-Time Performance metric. These schedules often place most of the limited recovery time included therein at the end of a segment. This makes good sense in most instances, because neither Amtrak nor host railroads assumed that On-Time Performance would be measured at all intermediate stations before FRA and Amtrak enacted the Metrics and Standards in 2010. Third, many intermediate stations are used lightly by passengers. Prioritizing performance at these stations serves only to misdirect the Board’s focus.

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CSXT appreciates the opportunity to submit these comments for the Board’s consideration. Defining On-Time Performance for the purpose of Section 213’s investigatory

trigger could have serious repercussions throughout the industry. In so doing, the Board must be mindful of critical touchstones such as reasonable and fact-based schedules, the balance Congress struck when creating Amtrak to preserve both the passenger rail transport and a vibrant freight rail transport industry in the United States, and the importance of safe operations. Adopting a decades-old standard and applying it to today's complex environment would result in countless investigations that divert the Board's scarce resources and unjustly sweep multiple host railroads into costly and burdensome investigations. The Board should avoid such an approach. The importance of this rule demands additional careful analysis from the Board. Such analysis should focus on the elements of a potential definition described above, as well as other elements that serve to ameliorate the proposed rule's problems. CSXT looks forward to working cooperatively with the Board as it works to craft the final version of this rule.

Respectfully submitted,



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