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November 17, 2014

237055

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

ENTERED
Office of Proceedings
November 17, 2014
Part of
Public Record



Re: STB Finance Docket No. NOR 42141, National Railroad Passenger Corporation—Investigation of Substandard Performance of the Capitol Limited

Dear Ms. Brown:

Enclosed for filing is the National Railroad Passenger Corporation’s Complaint to Initiate Investigation and accompanying Memorandum of Law in Support of Complaint to Initiate Investigation. Also enclosed is a check for the \$350 filing fee for this complaint.

If you have any questions, please contact me.

Respectfully submitted,

Linda J. Morgan
Attorney for National Railroad Passenger Corporation

Enclosures

FEE RECEIVED
November 17, 2014
SURFACE
TRANSPORTATION BOARD

FILED
November 17, 2014
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42141

**NATIONAL RAILROAD PASSENGER CORPORATION -- INVESTIGATION OF
SUBSTANDARD PERFORMANCE OF THE CAPITOL LIMITED**

COMPLAINT TO INITIATE INVESTIGATION

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November 17, 2014

COMPLAINT TO INITIATE INVESTIGATION

The National Railroad Passenger Corporation (“Amtrak”) hereby submits this Complaint, pursuant to 49 U.S.C. § 24308(f), to initiate an investigation by the Surface Transportation Board (“Board”) of the substandard performance of Amtrak’s Capitol Limited service between Chicago, IL and Washington, D.C.

1. Amtrak’s Capitol Limited service provides intercity passenger service between Chicago, IL and Washington, D.C. with major intermediate stops at Toledo, OH, Cleveland, OH, and Pittsburgh, PA, over tracks of CSX Transportation, Inc. (“CSXT”) and Norfolk Southern Railway Company (“NSR”).¹

2. CSXT is a rail carrier and a host rail carrier, pursuant to 49 U.S.C. § 24308(f), over which Amtrak operates the Capitol Limited service.

3. NSR is a rail carrier and a host rail carrier, pursuant to 49 U.S.C. § 24308(f), over which Amtrak operates the Capitol Limited service.

4. The on-time performance of the Capitol Limited service has averaged less than 80 percent for two (2) consecutive calendar quarters. If All-stations on time performance is defined as the percentage of station arrivals (and departure from origin station) that occur within 15 minutes of the times on the public schedule, then in the quarter ending September 30, 2014, the All-stations on time performance of the Capitol Limited service was 20.4 percent and it was 27.8 percent in the previous quarter.² If Endpoint on time performance for long distance trains (such as the Capitol Limited service) is defined as the percentage of times those trains arrived at their terminal station within 30 minutes of the arrival time on the public schedule, then in the quarter

¹ A route map of the Capitol Limited is attached as Exhibit A.

² On-time performance for Capitol Limited from the Fourth Quarter of 2011 to the Fourth Quarter of 2014 is attached as Exhibit B.

ending September 30, 2014, the Endpoint on time performance of the Capitol Limited service was 2.7 percent and it was 33.6 percent in the previous quarter.

REQUEST FOR RELIEF

5. Amtrak respectfully requests that the STB initiate an investigation of the substandard performance on the Capitol Limited service pursuant to 49 U.S.C. § 24308(f).

6. Amtrak further requests that, if the Board determines that delays to Amtrak Capitol Limited service are attributable to a host railroad's failure to provide preference, as required by 49 U.S.C. § 24308(c), the Board award damages and other relief it determines to be reasonable and appropriate, pursuant to 49 U.S.C § 24308(f)(3).

Respectfully submitted,



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/s/William H. Herrmann

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November 17, 2014

CERTIFICATE OF SERVICE

I certify that on November 17, 2014 a true copy of the foregoing National Railroad

Passenger Corporation's Complaint to Initiate Investigation and accompanying Memorandum of Law in Support of Complaint to Initiate Investigation was served via email upon the following counsel of record:

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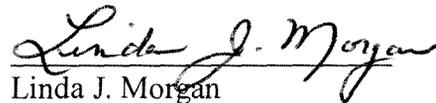
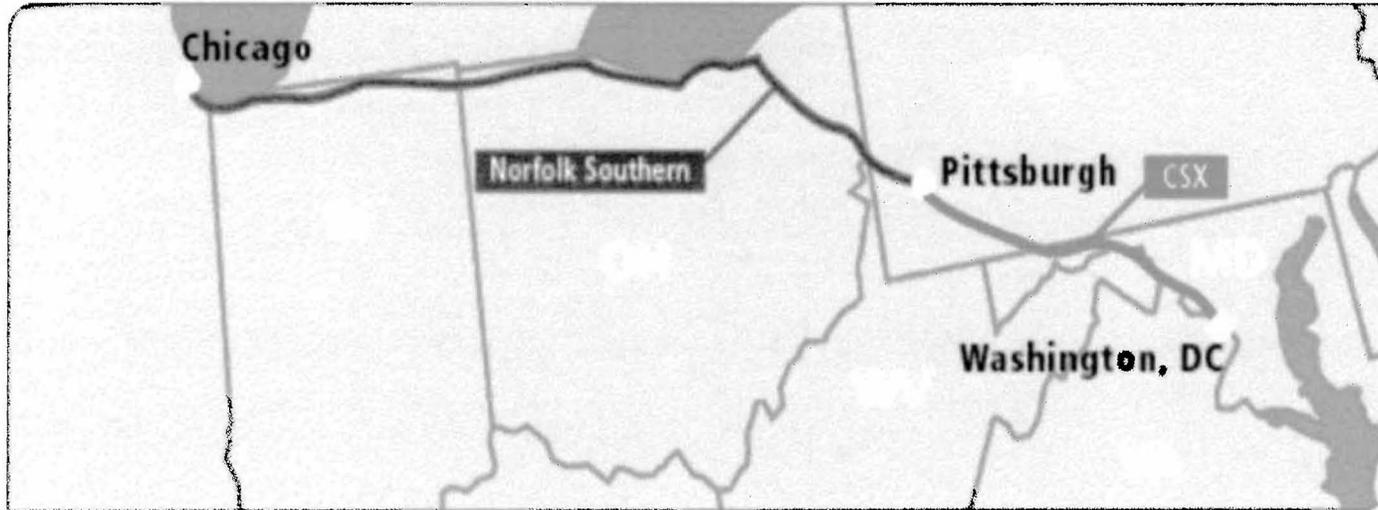

Linda J. Morgan

Exhibit A

Capitol Limited Route Map³



³ This map does not show stations; it shows the portion of Amtrak Capitol Limited service of each of NSR and CSXT.

Exhibit B

OTP for Capitol Limited

	FY 11 Q4	FY 12 Q1	FY 12 Q2	FY 12 Q3	FY 12 Q4	FY 13 Q1	FY 13 Q2	FY 13 Q3	FY 13 Q4	FY 14 Q1	FY 14 Q2	FY 14 Q3	FY 14 Q4
	Jul. 2011 - Sep. 2011	Oct. 2011 - Dec. 2011	Jan. 2012 - Mar. 2012	Apr. 2012 - Jun. 2012	Jul. 2012 - Sep. 2012	Oct. 2012 - Dec. 2012	Jan. 2013 - Mar. 2013	Apr. 2013 - Jun. 2013	Jul. 2013 - Sep. 2013	Oct. 2013 - Dec. 2013	Jan. 2014 - Mar. 2014	Apr. 2014 - Jun. 2014	Jul. 2014 - Sep. 2014
All- Stations OTP	33.5%	42.0%	65.8%	55.3%	45.8%	65.2%	66.8%	53.2%	44.1%	55.3%	40.0%	27.8%	20.4%
Endpoint OTP	47.8%	54.3%	85.2%	80.2%	72.8%	85.8%	84.4%	72.0%	62.5%	66.8%	42.7%	33.6%	2.7%



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42141

**NATIONAL RAILROAD PASSENGER CORPORATION -- INVESTIGATION OF
SUBSTANDARD PERFORMANCE OF THE CAPITOL LIMITED**

**MEMORANDUM OF LAW IN SUPPORT OF
COMPLAINT TO INITIATE INVESTIGATION**

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November 17, 2014

**MEMORANDUM OF LAW IN SUPPORT OF
COMPLAINT TO INITIATE INVESTIGATION**

The National Railroad Passenger Corporation (“Amtrak”) has filed a Complaint to Initiate Investigation with the Surface Transportation Board (“Board”) for investigation of the substandard performance of Amtrak’s Capitol Limited service between Chicago, IL and Washington, D.C. (the “Complaint”). Amtrak hereby submits this Memorandum of Law in Support of the Complaint.

Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”), codified at 49 U.S.C. § 24308(f), “[i]f the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters . . . upon the filing of a complaint by Amtrak . . . the Board shall initiate . . . an investigation” into the causes of delays incurred by Amtrak passenger trains operating over a rail carrier's lines. 49 U.S.C. § 24308(f).

Amtrak measures All-stations on time performance as the percentage of station arrivals (and departure from origin station) that occur within 15 minutes of the times on the public schedule. Amtrak measures Endpoint on time performance for long distance trains (such as the Capitol Limited service) as the percentage of times Amtrak trains arrive at their terminal station within 30 minutes of the arrival time on the public schedule. Using either of these measures, the on-time performance of the Capitol Limited service has averaged less than 80 percent for two (2) consecutive calendar quarters. (Complaint, at page 2, paragraph 4.)

The term “on-time performance” is not defined in section 24308(f). However, the Board has ample authority to construe “on-time performance” and its cases and those of the Interstate Commerce Commission (“ICC”) have construed the term on many occasions in other contexts. In the context of terms and compensation cases under 49 U.S.C. § 24308(a), the ICC has

prescribed incentive payments using a definition of on-time performance based on adherence to public schedules. *See e.g., Nat'l Rail Passenger Corp. Application Under Section 402(a) of the Rail Passenger Service Act*, 1985 ICC LEXIS 318, at *32, *35-36 (ICC served July 5, 1985) (prescribed incentive payments to the host railroad based on 80 percent “on-time performance,” defined as arrival on or before the schedule arrival plus a 5 minute tolerance); and *Nat'l R.R. Passenger Corp. and Union Pac. R.R. Co., Use of Tracks and Facilities and Establishment of Just Compensation*, 348 I.C.C. 926, 950-51 (ICC served April 14, 1977) (prescribed incentive payments based on 80 percent “on-time performance,” defined as “within the schedule time plus ten minutes”).

The Board has broad authority to construe provisions of statutes that it administers. The Board has construed undefined but essential terms in the Rail Passenger Service Act. *See e.g., Nat'l R.R. Passenger Corp. and Union Pac. R.R. Co., Use of Tracks and Facilities and Establishment of Just Compensation*, 348 I.C.C. 926, 937-949 (ICC served April 14, 1977) (construed the term “incremental costs” in terms and compensation case); and *Application of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24308(a)—Union Pac. R.R. Co. and S. Pac. Transp. Co.*, 1998 STB LEXIS 144, at *18 (STB served May 28, 1998) (construed the term “express” as part of a determination of the scope of Amtrak’s statutory rights under 49 U.S.C. § 24305).¹

Amtrak’s definitions of on-time performance are reasonable. Furthermore, 49 U.S.C. § 24101(c)(4) provides that “Amtrak shall ... operate Amtrak trains, to the maximum extent

¹ In other proceedings, the Board has directed rail carriers to take actions based on on-time performance. *See CSX Corp. and CSX Transp., Inc., Norfolk S. Corp. and Norfolk S. Ry. Co.—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, 1998 STB LEXIS 1559, at *391 (STB served July 20, 1998) (in a consolidation, ordered the railroads to report on, among other things, on-time performance at connections measured based on whether the gateway connections were made within two hours of schedule).

feasible, to all station stops within 15 minutes of the time established in public timetables.” This provision was enacted by Congress (and originally codified as 45 U.S.C. § 501(a)(6)) in 1970 – 38 years before enactment of PRIIA section 213. PRIIA amended other subsections of section 24101(c), but did not change subsection (c)(4). Clearly, Congress was aware of its own goal of on-time performance at all stations within 15 minutes of the time established in the timetable—the same measurement used today by Amtrak for All-stations on time performance. Thus, Amtrak’s measurement of All-stations “on-time performance” under section 24308(f), besides being reasonable, also fosters an on-time performance policy goal established by Congress at the inception of Amtrak.

In 49 U.S.C. § 24308(f)(1), Congress explicitly directs the Board to initiate an investigation upon complaint of Amtrak when on-time performance falls below 80 percent and in “carrying out such an investigation” to “obtain information from all parties involved.” Just as in the other areas where Congress has vested the Board with broad investigatory powers, Congress gave the Board the authority to investigate substandard Amtrak performance and directed the Board to seek out the information it needs to conduct an investigation.

For the foregoing reasons, for purposes of this complaint, the Board should construe the term “on-time performance” in section 24308(f) to match Amtrak’s definitions and initiate the investigation of the substandard performance of Amtrak’s Capitol Limited service.

Respectfully submitted,



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