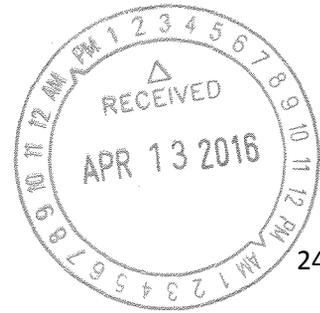


Before the  
SURFACE TRANSPORTATION BOARD



240486

Ex Parte No. 728

POLICY STATEMENT ON IMPLEMENTING INTERCITY PASSENGER  
TRAIN ON-TIME PERFORMANCE AND PREFERENCE PROVISIONS  
OF 49 U.S.C. §24308(c) and (f)

ENTERED  
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REPLY COMMENTS

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April 13, 2016

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SURFACE TRANSPORTATION BOARD

Ex Parte No. 728  
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OF 49 U.S.C. §24308(c) and (f)

REPLY COMMENTS

Samuel J. Nasca,<sup>1/</sup> for and on behalf of SMART/Transportation Division, New York State Legislative Board (SMART/TD-NY), submits these Reply Comments in response to initial comments filed by interested persons in response to the Surface Transportation Board (STB) Notice of Proposed Policy Statement (NPPS) dated December 16, 2015 (served December 28, 2015), 80 Fed. Reg. 80878 (Dec. 28, 2015).

SMART/TD-NY, on February 8 and March 30, 2016, filed initial and reply comments in Ex Parte No. 726, On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008, a proceeding closely related to the instant Ex Parte No. 728, notice also served by the STB on December 28, 2015.

The instant proceeding involves STB's proposed change in passenger policy so as to modify by interpretation the statutory requirement that, except in an emergency, intercity and commuter

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service provided by or for Amtrak be given preference over freight transportation. 49 U.S.C. 24308©. Railroad employees urge strong support for the required Amtrak passenger service, and the legal mandate for preferential treatment vis-a-vis freight trains. A strong passenger service promotes travel and commerce, and is in the best interest of railroad employment.

SMART/TD-NY has reviewed Amtrak's initial submission, and is in general agreement with Amtrak's position concerning the necessity for according passenger train preference.

The failure to provide preference for passenger trains, gives rise to many of the problems connected with on-time performance, the subject of the Ex Parte 726 companion proceeding. The STB's limited concern with terminal on-time performance without consideration of all station stops, runs counter to its predecessor agency rules on this score, and the statutory mandate as well. Adequacy of Intercity Rail Passenger Service, 344 I.C.C. 758 (1973), mod. 351 I.C.C. 883, 910 (1976); 49 U.S.C. 24101(c)(4).

The predecessor I.C.C. had a serious mishandling of passenger train matters, leading to many complaints from the public, resulting in a sweeping Congressional investigation in 1970. Serious charges were lodged against ICC employees, including the agency's Secretary and other personnel, with FBI participation and staff resignation. See: Inquiry into Certain Procedures of the Interstate Commerce Commission. (U.S. House, Committee on

Interstate and Foreign Commerce, Special Subcommittee on  
Investigations, 69<sup>th</sup> Cong., 2<sup>nd</sup> Sess. Jan. 7 thru Aug. 13, 1970).

History suggests the STB should not revise the preference for  
passenger service legislated by the Congress through the guise of  
policy interpretation.

Respectfully submitted,



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