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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

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Re: In Re: Policy Statement on Implementing Intercity Passenger Train On Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f) (STB Docket No. EP 728)

Dear Ms. Brown,

The Association of Independent Passenger Rail Operators (AIPRO) appreciates the opportunity to comment on the Surface Transportation Board's (STB) proposed *Policy Statement on Implementing On Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f)*, STB Docket No. EP 728 (Policy Statement), and to comment as to how it relates to the overall objective of on time performance (OTP) of intercity passenger trains in congested, shared-use rights of way.

The policy guidance states the STB should utilize a 'systemic, global approach in determining whether a host carrier has granted the intercity passenger trains preference.' While we appreciate Amtrak's desire to maximize on time performance, we do not believe there should be an absolute station-to-station priority at the expense of other passenger trains. Our members operate approximately 250,000 commuter trains each year carrying more than 80 million passengers. For purposes of the law, a commuter train is treated the same as a freight train. In the implementation of the law common sense needs to prevail.

The "global approach" provides a framework for a practical methodology that balances the interests of Amtrak, commuter trains, and alternative passenger operations moving across host railroads within the restrictions of current OTP law. There are many complications in a system of shared rights of way used by multiple operators. The key is to create an environment that is not dominated by one operator with an outdated legal claim, but rather promotes common sense fluidity across the network. We believe the proposed STB Policy Statement will lead to a

flexible operating environment for all trains resulting in improved on time performance for all.¹ Therefore, AIPRO strongly supports the global approach to “Preference” as proposed by the Surface Transportation Board.

We offer the following additional points in support of the Surface Transportation Board Policy Statement on Implementing Intercity Passenger Train On Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f) (*STB Docket No. EP-728*):

AIPRO believes a rigid “all station Amtrak preference” ruling will disadvantage independent operators providing commuter service or operating intercity passenger trains. For purposes of the law, a commuter train is treated the same as a freight train. In the implementation of the law common sense needs to prevail. “Absolute Amtrak Preference” could unwittingly harm commuter rail trains operated by AIPRO members or any non-Amtrak operator. This is not in the best interest of our members. As a public policy matter we believe a rigid regime is not in the best interests of passenger riders on commuter trains. An OTP regulatory regime with an absolute preference requirement on dispatchers could result in major rush hour disruptions in urban areas such as San Francisco, Chicago, Washington, D.C. and elsewhere. The STB Policy will promote a more fluid operating environment for all passenger trains and will benefit host railroads, commuter trains and even Amtrak.

AIPRO agrees with comments offered by the Association of American Railroads and the Host Railroads in these proceedings. AIPRO finds its interests in this matter aligned with those of the freight railroads that host passenger service. CSX states that preference “must be applied in the context of particular trains and particular routes, taking into account not just the needs of Amtrak and its passengers, but also the millions of commuter rail passengers and the millions of consumers and businesses who depend on an effective freight rail network.”² NS “strongly agrees that the preference obligation is not “absolute.” Not only would an absolute view of preference fail to “promote efficient passenger service” in many situations, it would have severe and unintended consequences for the freight system, other commuter operators, and even Amtrak itself. Norfolk Southern suggests that the Board provide guidance that preference is instead “situational.”³ The Union Pacific concludes, “All Stations OTP would not be a reasonable trigger for Board performance investigations. ...” The UP proposes to “incorporate contractual standards” as the “vastly superior way” to address passenger concerns.⁴ AIPRO fully concurs with the comments of CSX, Norfolk Southern and the Union Pacific. We believe their views on OTP represent the best path to expanded passenger railroading across private rights of way.

¹ AIPRO also endorses the reply comments filed by the Association of American Railroads,

² See Comments of CSX at re: Docket No. EP 728 at 2.

³ See Comments of Norfolk Southern re: Docket No. EP 728 at 4.

⁴ See Comments of Union Pacific re: Docket No. EP 726 at 8.

In the commuter world where AIPRO companies operate today, performance standards are all the result of commercial negotiation with the host railroads. They are our partners—not our adversaries. There is no regulatory cram down or forced access. AIPRO strongly asserts this to be the only way to reach a robust passenger future on common rights of way. A regulatory regime to enforce rigid OTP “all station standards” would be a step backward. Investigations, penalties and inevitable litigation would result. This would be incredibly expensive, time consuming and foster a hostile atmosphere between passenger and freight stakeholders. It is not the answer. It is the solution of a bygone era.

AIPRO submits absolute Amtrak preference over commuter or other passenger trains is out of date. In 1973, essentially all commuter systems were operated by Amtrak or the legacy self-operated commuter systems. Amtrak has now largely exited from commuter service. Today, commuter rail provides the overwhelming passenger rail public benefits such as congestion relief in urban areas and a reduction of energy usage. Further, AIPRO members operate more trains and transport more passengers than does Amtrak. In 2016, there are 25 commuter operations and Amtrak runs only 2. One of those two is out for competitive procurement to select a new operations contractor. Yet a statutory mandate which passed Congress more than two decades ago gives OTP preference only to Amtrak. By law, commuter trains not operated by or for Amtrak have the same rights as a coal train. As we progress into the new century the proposed STB Policy Statement represents a solid step toward a rational program of establishing a logical new system for increasingly dense passenger and freight trains on shared-use rights of way.

AIPRO submits the absolute all station Amtrak preference is not viable in today’s passenger and freight environment. Logging absolute Amtrak preference depends largely on Amtrak conductor reports. These employees are often limited in their situational awareness due to their operational perspective. In most instances they have no ability to pinpoint the real cause of a delay that may be hundreds of miles distant.

As the industry enters the new age of Positive Train Control on virtually all passenger lines, volumes of real time data will become available. This data can be marshalled to cause a dramatic increase in network fluidity with a total ability to give preference to those priority passenger or freight trains that need preference. The STB Statement on Passenger Preference opens the door to such a system.

AIPRO believes STB Policy Statement should be the first step in a living process. The STB Policy Statement represents a solid first step toward a rational program that can begin to address a multitude of issues necessary in the smooth operation of a high performance passenger and freight trains on shared rights of way. This STB Policy Statement on OTP and Preference should not be contained in a vacuum detached from the multitude of larger issues surrounding the operation of passenger and freight on common rights of way. AIPRO submits this statement should be a part of a larger process unfolding through recent Congressional directives. The FAST Act was signed into law by the president on December 4, 2015. This is the first comprehensive

transportation bill to contain a Rail Title. It creates the opportunity for a new paradigm in rail passenger service.

The FAST Act mandates an important *Shared-Use Study*⁵ that specifically engages the issues raised by the STB Policy Statement. Within 3 years of enactment, USDOT is required to, in consultation with Amtrak, commuter passenger rail authorities, other rail carriers such as AIPRO operators, and the track owning railroads to complete a study that ‘*evaluates the shared use of right-of-way by passenger and freight rail systems, and the operational, institutional, and legal structures that would best support improvements*’ to both. Areas of consideration include access agreements and associated costs, and the dispute resolution processes including the process by which delays are recorded and how responsibility is assigned.

The STB Policy should be a springboard for future proposals within the framework of the FAST Act Shared-Use Study. The Shared-Use Study in turn can be the beginning of important progression toward creating a new paradigm that will lead to smoothly functioning high performance passenger and freight rail operations on jointly used rights of way.

In conclusion, AIPRO strongly supports the proposed Policy Statement on Implementing Intercity Passenger On Time Performance and Preference Provisions of 49 U.S.C. § 24308(c) and (f) (STB Docket No. EP-728).

Sincerely,



Ray Chambers, President



Eric Forbes, Executive Director

⁵ See Pub. L. No. 114-94 § 11311