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**BY E-FILING**

Ms. Cynthia T. Brown, Chief  
Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0012

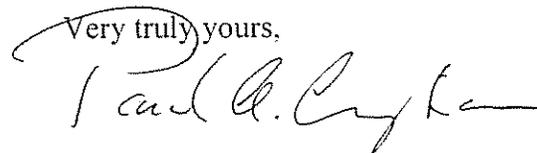
**Re: *In re National Railroad Passenger Corporation: Section 213  
Investigation of Substandard Performance on Canadian National  
Railway Company Rail Lines (STB Docket No. NOR 42134)***

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find the Response of Canadian National Railway Company, Grand Trunk Western Railroad Company, and Illinois Central Railroad Company to Amtrak Petition Under Section 213 of PRIIA.

Please note that this document contains several pages with color tables and graphics. For the convenience of the Board's staff, the e-filing of this document includes a separate PDF file containing only those pages of the document which include material in color.

Very truly yours,



Paul A. Cunningham

Counsel for Canadian National Railway Company,  
Grand Trunk Western Railroad Company, and  
Illinois Central Railroad Company

Enclosures

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Ms. Cynthia T. Brown, Chief

March 9, 2012

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cc: David W. Ogden, Esquire  
William Herrmann, Esquire

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Docket No. NOR 42134**

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**IN RE NATIONAL RAILROAD  
PASSENGER CORPORATION:  
SECTION 213 INVESTIGATION OF  
SUBSTANDARD PERFORMANCE ON  
CN RAIL LINES**

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**RESPONSE TO AMTRAK PETITION  
UNDER SECTION 213 OF PRIIA**

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March 9, 2012

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Docket No. NOR 42134**

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**IN RE NATIONAL RAILROAD  
PASSENGER CORPORATION:  
SECTION 213 INVESTIGATION OF  
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CN RAIL LINES**

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**RESPONSE TO AMTRAK PETITION  
UNDER SECTION 213 OF PRIIA**

**INTRODUCTION**

On January 19, 2012, National Railroad Passenger Corporation (“Amtrak”) filed a “Petition” seeking an investigation, pursuant to 49 U.S.C. § 24308(f) (enacted by Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”)<sup>1</sup>) into why Amtrak trains on service routes that Amtrak operates in part over the rail lines of Grand Trunk Western Railroad Company (“GTW”) and Illinois Central Railroad Company (“IC”) (the two, collectively, hereinafter, “CN”) did not meet the metrics and standards established under Section 207 of PRIIA for on-time performance (“OTP”) and delays in Fiscal Year 2011.<sup>2</sup> CN hereby responds.<sup>3</sup>

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<sup>1</sup> Pub. L. No. 110-432, Div. B, 122 Stat. 4848, 4907.

<sup>2</sup> Amtrak operates over CN, pursuant to an operating agreement with IC and GTW (“Operating Agreement”), two indirectly owned rail operating subsidiaries of Canadian National

### **Motion To Hold The Proceeding In Abeyance.**

As a preliminary matter, in a separate Motion for Abeyance, CN requests that the Board hold this proceeding in abeyance pending the District Court's ruling on the pending cross-motions for summary judgment in *Association of American Railroads v. Department of Transportation*, No. 11-cv-1499 (D.D.C. filed Aug. 19, 2011) ("AAR Suit"). The AAR Suit presents a substantial challenge, on behalf of all the Class I railroads, including CN, to the constitutionality of PRIIA, and thus to the legal premises of Amtrak's Petition.

### **Summary of Response**

On the merits, CN agrees that Amtrak's performance could be improved, and CN remains, as it has always been, willing to work with Amtrak to help improve that performance. CN rejects, however, Amtrak's claim that Amtrak's longstanding and systemic operating problems are attributable to a failure by CN to accord Amtrak's trains preference.

Amtrak does not achieve its goal of 80% on-time performance on most of its routes outside the Northeast Corridor. Its on-time performance varies among routes and route segments in response to a complex array of factors including, for example, the levels of capital investment by Amtrak, the nature of Amtrak's schedules, the level of congestion on the lines in questions,

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Railway Company ("CNR"). CNR, however, is not a host railroad for any of the services operated by Amtrak that are identified in the Petition.

<sup>3</sup> Amtrak cites 49 C.F.R. § 1117.1 as the basis for its Petition. No Board rule or order specifies the appropriate form of response to such a pleading. Nor is the analogy to a court complaint apt. Under 49 U.S.C. § 24308(f)(1), while a complaint can trigger an investigation, the subject matter of the investigation is defined by the statute, not by the allegations of the complaint. (For example, regardless of whether Amtrak or the host railroad files the complaint, the statute calls upon the Board to investigate all causes of relevant delays, regardless of which party is responsible for them.) Accordingly, this Response proceeds in the manner that CN believes will be most helpful and informative for the Board.

the number of host carriers on the route, the number of interlockings along the route,<sup>4</sup> maintenance and weather issues, and other route- and track-specific characteristics. Amtrak's nationwide problems are complex, and they are likely to require multi-faceted solutions, involving funding, maintenance, operational and scheduling improvements and improved communication and collaboration with host railroads.

- **Amtrak's Petition relies on a false premise about the preference that freight railroads must accord Amtrak's trains.**

While Amtrak's Petition makes sweeping claims that CN has violated the statutory "preference" to which Amtrak is entitled from its host freight railroads under 49 U.S.C. § 24308(c), *see generally* Pet. ¶¶ 82-103, Amtrak offers no definition of preference. Its claims appear to assume that preference means that, except in emergencies, Amtrak has the absolute right to move unimpeded over the main lines of host carriers, and that its rights may be limited only if a host carrier is accorded relief after filing a petition under section § 24308(c) alleging that preference would "materially . . . lessen the quality of freight transportation."

Amtrak's view misreads the law, is impractical, and is inevitably self-defeating. Congress has not given Amtrak the right to operate unimpeded as if it were the only user of the freight rail system. Nor has it guaranteed operating results. It has instead given Amtrak a right to preference in sound dispatching decisions; and that right is contextual. It does not mean, for example, that an on-time freight train must be held up for hours in order to make absolutely certain that it will add no delay to an untimely, unpredictable Amtrak train.

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<sup>4</sup> An interlocking is an arrangement of signals and signal appliances so interconnected that their movements must succeed each other in proper sequence. An interlocking is designed so that it is impossible to give clear signals to trains unless the route to be used is proved to be safe.

Implementing preference necessarily involves numerous fact-specific dispatching judgments, reflecting the realities of modern railroading in which host railroads must not only give Amtrak preference, but also ensure safety, serve the public interest, and meet their commercial, regulatory, and legal obligations to their customers. Amtrak's view would compel host railroads to seek relief under § 24308(c) whenever sound dispatching judgment might warrant delays to an Amtrak train, saddling the host railroads and the Board with an unmanageable burden.<sup>5</sup>

CN takes Amtrak's preference rights seriously, and in the thousands of dispatching decisions they make every year, CN's dispatchers routinely afford Amtrak trains preference as they go about the enormously complex task of coordinating with Amtrak's trains, other passenger trains, CN's freight trains, other carriers' freight trains on CN's lines, and joining and interlocking railroads. CN is committed to collaborating with Amtrak to improve the timeliness and reliability of passenger service, while continuing to run CN's efficient modern freight railroad service. But with unilateral demands for unrestrained operations over a host railroad's line, Amtrak will achieve nothing but rail network disruption and gridlock.

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<sup>5</sup> As the U.S. Department of Transportation's ("DOT") Office of Inspector General noted in its 2008 report on root causes of delays to Amtrak trains:

Theoretically, the freight railroads could avoid a shutdown [that would otherwise result from Amtrak's broad definition of preference] by seeking an exemption from their preference obligations, as permitted under the statute. As a practical matter, it is unclear how well this provision would work given the dynamic nature of the rail network, which requires frequent, real-time decisions to address unplanned events.

Office of Inspector General, DOT, ROOT CAUSES OF AMTRAK TRAIN DELAYS at 5 n.15 (Report No. CR-2008-076) (Sept. 8, 2008) ("IG Report").

- **Amtrak’s Petition relies on Metrics and Standards with limited utility, and a few anecdotes, that do not demonstrate the poor performance on CN lines that Amtrak claims or provide a basis for damages under 49 U.S.C. § 24308(f)(2).**

Further, the specific factual allegations of Amtrak’s Petition do not support its broad claims of poor performance by CN.

*First*, Amtrak places undue reliance on the metrics and standards it jointly promulgated with FRA under Section 207 of PRIIA (“Metrics and Standards”) as indicating causes of delay. The Metrics and Standards serve as the statutory predicate for Board investigation, but they provide little insight into the causes of delay:

(1) **Endpoint OTP.**<sup>6</sup> Amtrak complains that its routes that include CN lines fare poorly on its Endpoint “OTP” metric, which reflects how frequently a service reaches its destination on time but says nothing about the cause or location of delays. Amtrak complains that its routes that include CN lines fail to meet Amtrak’s 80% OTP standard, but Amtrak failed in Fiscal Year 2011 to meet that standard on 30 of its 39 routes nationwide. The longest CN route encompassed in its Petition, the City of New Orleans Route, is one of Amtrak’s best performing long distance routes in terms of OTP. And for five of the routes addressed in the Petition, even according to Amtrak’s data, less than 30% of delay on the route occurs on CN lines. Amtrak’s performance on CN lines cannot fairly be judged based on how often trains that mainly run on, and are mainly delayed on, other hosts’ (including Amtrak’s own) lines reach their endpoint late. Yet Amtrak records a failure to meet Endpoint OTP against CN even when time is made up for a late-arriving Amtrak train while on CN’s lines, if it nonetheless misses its

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<sup>6</sup> Amtrak also cites All-Stations OTP, but as explained below, in Section II.A, that Metric has the same limitations as Endpoint OTP, plus additional problems, and was not in force during the period encompassed by Amtrak’s Petition.

scheduled endpoint time (with permissible tolerance). Amtrak and CN record much better on-time performance numbers when using an agreed-upon contractual metric that, unlike Endpoint OTP, isolates what happens on CN's lines.

(2) **Delay.** Amtrak alleges high levels of "Host-Responsible Delay" ("HRD"), including "Freight Train Interference" ("FTI") on CN's route segments. HRD and FTI, however, are unreliable metrics. They reflect Amtrak's unilateral view of cause, which is uninformed, since it relies on Amtrak's Conductor Delay Reports ("CDRs"), which record what Amtrak train conductors see rather than root causes of delay. And Amtrak frequently refuses to make corrections in the CDRs, even when CN demonstrates other causes of delay that Amtrak acknowledges for contractual purposes. The HRD and FTI Metrics also exaggerate delay problems. Amtrak's conductors record delays even when, as above, they are made up elsewhere so that the train leaves the CN segment of the line on time or even early. And the per-mile aspect of the HRD Metric unduly magnifies small delays on short segments. For example, on the Cardinal Route, where CN is the host carrier for 5.8 of the Cardinal's 1,140 route miles, Amtrak cites CN for having 2,062 HRD minutes per 10,000 miles, but that amounts to just 1.2 minutes per train (without offsetting for making up time), and less than 1% of total delay minutes on the route.

*Second*, out of thousands of train movements and tens of thousands of dispatching decisions annually, Amtrak identifies just a handful of specific examples of alleged preference violation. Far from demonstrating a disregard for Amtrak's statutory preference, these examples illustrate the challenges faced by dispatchers, primarily due to congestion, infrastructure constraints, and unanticipated events, and their largely successful efforts nonetheless to keep Amtrak trains running on time.

Accordingly, Amtrak's case for compulsory relief against CN under 49 U.S.C. § 24308(f)(2) rests on its exaggerated view of its right to preference and on inferences unsupported by its data and specific allegations. The Petition provides no basis upon which the Board could, pursuant to 49 U.S.C. § 24308(f)(2), determine "that delays or failures to achieve minimum standards investigated [in this proceeding] are attributable to [CN's] failure to provide preference to Amtrak over freight transportation as required under [49 U.S.C. § 24308(c)]."

- **The key to solving Amtrak's delay problems is close collaboration between Amtrak and its host railroads, which the Board can facilitate.**

Amtrak's problems with on-time performance are substantial and complex. The problem of how to run a long-distance passenger service efficiently over multiple freight railroads cannot be solved by presuming, without examining root cause, that every external problem encountered by a passenger train on a host railroad amounts to "Freight Train Interference" and raises an inference of unlawful preference violation. It likewise cannot be solved by Amtrak remaining aloof and demanding that the host railroad fix everything. As Congress has indicated, such problems can only be solved by collaboration in the hard work of managing thousands of daily events on a vast multi-railroad network, including communicating effectively and candidly about delays and other issues, and making the necessary capital investments. *See* 49 U.S.C. § 24101(a)(4) ("A greater degree of cooperation is necessary among Amtrak, other rail carriers [and other parties] to achieve a performance level [for Amtrak] sufficient to justify expending public money.").

CN is a willing collaborator, but Amtrak has thus far been less so. The Board can play a vital role in facilitating, if not mandating, the collaboration that is necessary to improve Amtrak's performance. Along with all the other Class I railroads, CN has raised specific constitutional objections to PRIIA. But CN strongly endorses the basic notion underlying Section 213 of

PRIIA – that the Board can facilitate the parties’ efforts to look behind the PRIIA data to the underlying realities and to examine in an even-handed manner all the causes of the problems, and can make helpful recommendations. 49 U.S.C. § 24308(f)(1).

For this reason, whether or not PRIIA is constitutional, and whether or not the Board agrees to hold this proceeding in abeyance pending the District Court’s ruling on the AAR Suit, the Board can make the greatest contribution to solving the real-world problems at issue by initially supervising a mediation, as suggested below in Part III.

## **OUTLINE OF RESPONSE**

In Part I of this Response, we outline the legal and factual background and the public policy implications of the Petition, which raises significant issues regarding the relationship among Amtrak, the freight railroads, and the commuter railroads.

In Part II, we address Amtrak’s specific allegations. Few of those allegations address the root causes of the delays of which Amtrak complains, and those that do suggest no CN pattern or practice of denying Amtrak trains preference. Moreover, Amtrak’s implicit understanding of its statutory right to “preference” (49 U.S.C. § 24308(c)) seems to confuse “preference” – prioritization in dispatching decisions – with an absolute guarantee of unimpeded passage on a host railroad’s mainline – a statutory interpretation that would cause havoc and impose excessive costs on both freight traffic and Amtrak itself. The allegations thus provide no basis upon which the Board could, pursuant to 49 U.S.C. § 24308(f)(2), determine “that delays or failures to achieve minimum standards investigated [in this proceeding] are attributable to [CN’s] failure to provide preference to Amtrak over freight transportation as required under [49 U.S.C. § 24308(c)].” Nonetheless, the Petition provides the Board the opportunity to play an important

role in facilitating cooperative efforts to find practical solutions to real problems, by means of mediation and/or recommendations pursuant to 49 U.S.C. § 24308(f)(1).

In Part III, we discuss CN's Motion for Abeyance and the potential benefits of mediation, and we suggest a procedural approach for the Board's investigation, recognizing that the Board will ultimately craft its own approach.

## **PART I – LEGAL AND FACTUAL BACKGROUND**

### **A. The Statutory Framework**

#### **1. RPSA and operating agreements under RPSA provide the framework for the relationship between Amtrak and the freight railroads**

The relationship between Amtrak and the freight railroads over which it operates is primarily defined in the Rail Passenger Service Act of 1970 ("RPSA"),<sup>7</sup> as amended prior to PRIIA, and more particularly in operating agreements entered into pursuant to RPSA between Amtrak and each of the freight railroads over which it operates.

Because Amtrak owns few rail lines outside of the Northeast Corridor, RPSA authorizes it to enter agreements with freight railroads, providing for operation of its passenger trains over those railroads' lines, for the purpose of providing the nationwide system of intercity rail passenger service intended by Congress when it enacted RPSA. 49 U.S.C. § 24308(a)(1). If the parties are unable to agree on compensation, or on other terms and conditions for Amtrak's use of a host railroad's lines, then the Board may prescribe those terms and conditions. In doing so, it must provide for compensation of the host railroad for at least all the incremental costs incurred as a result of Amtrak operations. 49 U.S.C. § 24308(a)(2)(B); *Application of Nat'l R.R.*

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<sup>7</sup> Pub. L. No. 91-518, 84 Stat. 1327 (generally codified as amended at 49 U.S.C. §§ 24101-24711).

*Passenger Corp. under 49 U.S.C. 24308(a) – Springfield Term. Ry.*, 3 S.T.B. 157, 158 (1998).

Host railroads, when negotiating operating agreements with Amtrak, may therefore insist on compensation for at least their incremental costs, confident that in the event of impasse the Board will not prescribe compensation below that level. But if the parties arrive at an agreement, that contract will govern, as RPSA does not authorize the Board to override the provisions agreed to by the parties themselves.

RPSA requires Amtrak operating agreements to include “a penalty for untimely performance.” 49 U.S.C. § 24308(a)(1).<sup>8</sup> And, because RPSA requires the Board, in the event of impasse, to consider service quality as a “major factor” in setting compensation above incremental costs, *see id.* § 24308(a)(2)(B), agreements typically provide for incentive payments above incremental cost on the basis of service quality. But the statute allows the parties to determine which elements of service quality they regard as most relevant, and how they will measure that quality.

RPSA provides that, except in emergencies, Amtrak passenger trains have “preference over freight transportation in using a rail line, junction, or crossing.” *Id.* § 24308(c).<sup>9</sup> This

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<sup>8</sup> Timeliness may be measured against run time or Amtrak’s schedules. For purposes of PRIIA OTP, timeliness is measured against Amtrak’s schedules. Amtrak’s schedules are subject to negotiation between Amtrak, the host railroad(s), and (where relevant) states sponsoring Amtrak routes. *See* Federal Railroad Administration (“FRA”), Metrics and Standards for Intercity Passenger Rail Service at 13 (Docket No. FRA-2009-0016) (“Metrics and Standards”) (“The setting of schedules is primarily a matter between Amtrak, its host railroads, and any sponsoring States.”), *available at* [http://www.fra.dot.gov/rpd/Downloads/Section\\_207\\_Metrics\\_and\\_Standards\\_2010-05-05\\_Final.pdf](http://www.fra.dot.gov/rpd/Downloads/Section_207_Metrics_and_Standards_2010-05-05_Final.pdf).

<sup>9</sup> The Board may grant a host railroad relief from this provision if it determines that granting the required preference to Amtrak would “lessen the quality of freight transportation provided to shippers.” 49 U.S.C. § 24308(c). Because host railroads have never understood preference in the manner now suggested by Amtrak’s Petition, no railroad has ever sought such

requirement long predates PRIIA.<sup>10</sup> The U.S. Department of Justice (“DOJ”) may sue for injunctive relief to enforce this requirement. *Id.* § 24103(a)(1)(C). DOJ brought one such action in 1979, but that case was settled without a judicial ruling interpreting the statutory requirement.<sup>11</sup> CN is unaware of any other attempt to enforce the preference requirement in the nearly 40 years it has been in force.

Preference has never been authoritatively defined,<sup>12</sup> and Amtrak’s Petition does not propose a definition. Amtrak, however, makes sweeping allegations of violations of preference that appear to assume an extraordinarily broad, rigid and self-serving notion of preference that is contrary to the understanding of CN and other freight railroads. *See generally* Pet. ¶¶ 82-103. Amtrak appears to suggest that any time an Amtrak train is delayed or impeded in its use of a host carrier’s main line due to the presence of other rail traffic (passenger or freight), including cross traffic beyond the control of the host carrier, that delay gives rise to an inference that preference has been denied by the host carrier. As numerous witnesses testified before the Board in 2009, and as the DOT Inspector General’s office has agreed, Amtrak’s then-proffered interpretation of preference (which seems implicit in the Petition) lacks authoritative support and

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relief from the Board or from the U.S. Department of Transportation (“DOT”), which until enactment of PRIIA was authorized to grant relief.

<sup>10</sup> The preference requirement was added to RPSA by the Amtrak Improvement Act of 1973, Pub. L. No. 93-146, § 10(2), 87 Stat. 548, 552.

<sup>11</sup> IG Report at 4 n.13.

<sup>12</sup> The uncertain and disputed nature of preference was noted in the 2008 report of the DOT Office of Inspector General. IG Report at 3-5. Most recently, following hearings on preference in 2009, the Board declined to define it. *Review of the Surface Transp. Bd.’s Gen.’ Costing Sys.*, STB Ex Parte No. 431 (Sub-No. 3) (STB served Jan. 19, 2010) (discontinuing ten proceedings, including *Passenger Rail Investment and Improvement Act of 2008*, STB Ex Parte No. 683).

would create tremendous network inefficiencies that could ultimately result in gridlock.<sup>13</sup> It is CN's dispatching policy and practice to provide Amtrak's passenger trains with preference, but preference is not a guarantee that passenger trains will never be impeded by the presence of other rail traffic. For example, preference does not require host railroads to sacrifice safety or all network fluidity, or to spare no expense to open a path for Amtrak in circumstances such as when a street crossing is blocked or a train suffers a mechanical breakdown. Preference must be interpreted in a manner that allows reasonable, successful co-existence between passenger and freight traffic sharing a complex network.

However, CN believes that it is unnecessary for the Board to define preference at the initial stages of this proceeding (indeed, it may be unnecessary altogether) if the Board adopts the procedures CN suggests in Part III, below. The first and foremost task set for the Board by Congress is to critically review and assess the PRIIA data and all relevant facts in order to determine the nature and causes of the delays for the trains encompassed by the Petition, with a view to making constructive, forward-looking "recommendations." 49 U.S.C. § 24308(f)(1). While a general understanding of the law will inform the Board's recommendations, specific conclusions regarding the meaning of preference would become necessary only if the Board found that (1) CN dispatching practices were responsible for certain delays, and (2) there was a

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<sup>13</sup> Hearing Transcript 265:19-266:1, 272:7-12, 286:18-287:4 (Feb. 11, 2009) (testimony of John M. Gibson, Jr., CSX Transportation, Inc.); *id.* 312:5-12 (testimony of Jeffrey Elliott, Oliver Wyman) (Feb. 11, 2009), *Passenger Rail Investment and Improvement Act of 2008*, STB Ex Parte No. 683; IG Report at 5.

In addition, the written statements submitted by several parties in the Board's proceeding in STB Ex Parte No. 683 explained for the record that "preference," as understood by Amtrak, would have serious adverse consequences for the nation's rail network, and in some instances would bring it, or portions of it, to a halt. *See* Written Testimony of AAR at 14-15 (filed Jan. 28, 2009); Supplemental Comments of AAR at 9-10 (filed Mar. 13, 2009).

proper basis for moving beyond constructive recommendations under 49 U.S.C. § 24308(f)(1) to consideration of punitive remedies under 49 U.S.C. § 24308(f)(2). The Petition provides no basis for such findings.<sup>14</sup>

**2. PRIIA was intended to illuminate and spur solutions to Amtrak’s operating problems.**

Congress enacted PRIIA in 2008 to “strengthen[] the US passenger rail network by tasking Amtrak, [DOT], [FRA], States, and other stakeholders in improving service, operations, and facilities.”<sup>15</sup> Consistent with that purpose, and consistent with Congress’s longstanding recognition that “cooperation” between Amtrak and host railroads is essential, *see* 49 U.S.C. § 24101(a)(4), the Board’s primary function under Section 213 of PRIIA is to undertake a practical inquiry into the nature and all the causes of the inadequate performance of Amtrak trains, with a view to constructive solutions or “recommendations.” 49 U.S.C. § 24308(f)(1). The Board also has the power to address the narrower set of issues relating to preference, but can only do so in light of the results of its broader analysis. *Id.* § 24308(f)(2). In Part III, below, we suggest procedures for fulfilling the Board’s two distinct functions under 49 U.S.C. § 24308(f).

In addition to empowering the Board, PRIIA also, in the provision that is the subject of the AAR Suit’s constitutional challenge, authorized Amtrak and FRA to jointly “develop new or improve existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, including . . . on-time performance and minutes of

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<sup>14</sup> Should the Board at any point in the proceeding contemplate adopting a broad definition of preference as Amtrak implicitly urges, CN would seek relief from such preference obligations under 49 U.S.C. § 24308(c) on the ground that granting preference as so defined would materially interfere with its freight operations on behalf of shippers.

<sup>15</sup> FRA, Overview, Highlights and Summary of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) at 1 (Mar. 10, 2009), *available at* <http://www.fra.dot.gov/downloads/PRIIA%20Overview%20031009.pdf>.

delay.” PRIIA § 207(a). Congress directed that the metrics and standards include, “at a minimum, . . . measures of on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier.” *Id.* The statute did not specify the methodology for measuring on-time performance, the data to be used to determine delays, the categories of delays, or the methodology for correcting data errors. Amtrak and FRA issued the final version of the Metrics and Standards effective May 11, 2010.<sup>16</sup>

Section 207(c) of PRIIA provides that “[t]o the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards developed under subsection (a) into their access and service agreements.” In doing so, it plainly contemplates negotiation, including as to what form “incorporation” should take and what is “practicable.”<sup>17</sup>

#### **B. CN’s Operations and Amtrak’s Service Routes and Operations over CN**

CN has extensive freight railroad operations in the United States, totaling approximately 7,400 route miles. The passenger operations that are the subject of the Petition run on those lines and are listed in the following table.

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<sup>16</sup> FRA published a notice of its issuance of the final Metrics and Standards in the next day’s Federal Register. Metrics and Standards for Intercity Passenger Rail Service under Section 207 of the Passenger Rail Investment and Improvement Act of 2008, 75 Fed. Reg. 26,839 (FRA May 12, 2010).

<sup>17</sup> In the AAR Suit, the Government has argued that the “nature of the incorporation is not clear – and could vary by contract.” AAR Suit, D.E. 10, Mem. at 14 n.3 (attached as Exhibit 3 to Motion for Abeyance). Congress has clearly directed that there should be “incorporat[ion]” “to the extent practicable.” PRIIA § 207(c). However, for example, nothing in Section 207(c) compels an absurd result such as measuring and compensating CN performance based on the Endpoint OTP of the whole route on a route such as the Cardinal Route, where less than 1% of the route miles and delays are on CN lines.

**TABLE 1**

Service	Service Endpoints	Service Route Miles	CN Segment Endpoints	CN Segment Route Miles	Number of Trains and Frequency of Operation	Number of Railroads Other than CN in Route (including Amtrak)
Blue Water	Chicago to Port Huron	318.5	Gord to Port Huron	158.7	2 daily	2
Cardinal	New York to Chicago	1146.5	Maynard to Thornton Jct.	5.8	2 (each operated 3x per week)	8
City of New Orleans	Chicago to New Orleans	933.8	Clark Street to Southport Jct.	927.9	2 daily	1
Hoosier State	Chicago to Indianapolis	195.9	Maynard to Thornton Jct.	5.8	2 (each operated 4x per week)	7
Illini/Saluki	Chicago to Carbondale	308.9	Clark Street to Carbondale	306.7	4 daily	1
Lincoln	Chicago to St. Louis	284.1	21st Street to Joliet	35.7	8 daily	3
Texas Eagle	Chicago to San Antonio	1305.4	21st Street to Joliet	35.7	2 daily	4
Wolverine	Chicago to Pontiac	304.1	Pontiac to Vinewood; Gord to Baron	26.5	6 daily	3

CN does not operate 100% of the route for any of these services. As the route schematics (attached as Exhibit A) reflect, in all instances, Amtrak's operations over CN lines are preceded or followed (or both) by operations over a line segment controlled by Amtrak or another freight railroad. CN lines comprise less than 50% of the total route miles for six of the eight services, and less than 13% for five of them. All eight services begin or end at Amtrak's Union Station in the congested Chicago terminal area, passing along short Amtrak-owned segments where delays

are common. Each of them also passes through numerous interlockings controlled by a variety of carriers other than CN.

These structural features of Amtrak's operations over CN lines give rise to additional dispatching challenges resulting from late or unpredictable arrivals of Amtrak trains due to delays in operations over lines of Amtrak or other freight railroads beyond CN's control and often not made known to CN in a timely manner.

When Amtrak began operating in 1971, it assumed operations of only 8 trains on IC and none on GTW. As shown in Table 1, above, Amtrak is now operating 12 trains on GTW and 16 trains on IC (a total of 26 to 28 trains per day, since the Cardinal and Hoosier State do not operate daily). Despite this dramatic increase in traffic, Amtrak has never paid for any capacity improvements on CN's lines.

After CNR acquired IC in 1998, CNR adopted and expanded use of the "scheduled" or "precision" railroading approach that IC had begun to develop for freight operations, and which is now used by CNR throughout its system.<sup>18</sup> As Amtrak notes (Pet. ¶ 82), scheduled railroading entails a rigorous and systematic approach to maintaining rail operations on a realistic schedule and meeting that schedule. Freight trains depart on schedule, and adhere to it, even if the train is not sufficiently built up to be at the optimum length. This contrasts with the more traditional or common practice sometimes called "tonnage based dispatching," in which freight trains are run only when a target amount of freight has accumulated. In addition, there is a more rigorous focus on assuring that crew and power are available in the right place at the right time so as to be able to depart and operate on schedule.

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<sup>18</sup> See <http://www.cn.ca/documents/Investor-Annual-Report/Model.pdf>.

CN's scheduled railroading approach should benefit all involved – not only CN, but shippers, receivers, employees, connecting freight railroads, and Amtrak. It means that Amtrak can proceed with greater assurance that if its train arrives and departs on time while operating over its own or another railroad's lines, then its scheduled slot will be available for it when it reaches the CN line. However, the benefits of scheduled railroading can only be realized with close coordination among hosts and carriers (both passenger carriers such as Amtrak and freight carriers including the host and other freight railroads using trackage rights). This is particularly true for Amtrak's passenger trains, which generally have higher speeds and tighter schedules than freight trains.<sup>19</sup>

Amtrak implies in its Petition that there is a tension between CN's scheduled railroading approach and preference. *See* Pet. ¶¶ 12, 82-84. There is not. CN dispatchers afford preference to Amtrak trains regardless of whether they arrive in their scheduled slot, albeit an Amtrak train that arrives out of slot and without warning is more likely to encounter a freight train somewhere ahead of it than one that arrives in slot. Amtrak complains that CN achieves a 90% on-time record for certain freight deliveries while Amtrak trains on routes including CN lines achieve lower on-time percentages under the PRIIA Endpoint OTP Metric. *Id.* But that is an apples-to-oranges comparison. Certain freight deliveries may qualify as on-time if they arrive at their destination within a number of hours (*e.g.*, third morning) or even a whole day. By contrast, on-time performance for Amtrak typically involves a tolerance of a few minutes.

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<sup>19</sup> Contrary to Amtrak's suggestion (Pet. ¶ 83), CN does not "deliver" either Amtrak's trains or those of other freight carriers that use CN's lines. Instead, CN dispatches both types of trains, which operate under the control of their own crews in response to such dispatching.

## C. CN's Relationship with Amtrak

### 1. The Amtrak/CN Operating Agreement and Amtrak's Performance on CN's lines

The Amtrak/CN Operating Agreement defines the terms and conditions under which CN makes its lines, along with related facilities and services, available to Amtrak. The Operating Agreement obligates CN to make reasonable efforts to (i) deliver Amtrak trains to all scheduled passenger stops on CN's lines by the times set forth in schedules agreed to by the parties and incorporated in the Agreement, (ii) avoid excessive delays to those trains, and (iii) regain time lost as a result of delays on CN's lines or those of other railroads.<sup>20</sup> These obligations are backed up by detailed contractual provisions for incentive payments to reward CN for timely handling of Amtrak trains, and (as required under 49 U.S.C. § 24308(a)(1)) for penalties resulting from delays to those trains resulting from causes within CN's control.<sup>21</sup>

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<sup>20</sup> Operating Agreement, § 3.5.B. Consistent with PRIIA § 207(c), the Operating Agreement also provides that the parties will negotiate amendments that will, “[t]o the extent practicable” and “consistent with the requirements of PRIIA and the operational and administrative requirements of both Parties to [the Operating Agreement],” reflect the PRIIA Metrics and Standards. *Id.* § 3.4.D. Amtrak did not propose any amendments to reflect the Metrics and Standards, or call for negotiations regarding such amendments as contemplated by Congress and the Operating Agreement, before filing its Petition.

If the Board wishes to review the Operating Agreement, CN is willing, subject to any objection of Amtrak that the Board might wish to hear, to provide a copy to the Board under seal.

<sup>21</sup> Operating Agreement, App. V; *id.*, App. VI, Part A.

CN earns incentive payments for trains on IC lines if 80% of the trips of a train arrive within an agreed-upon tolerance at designated checkpoints along the route, with adjustments for delays not within CN's control (and incurs penalties if 70% or fewer of the trains arrive at those checkpoints within that tolerance, with any applicable adjustments). *Id.* App. V, Parts A-C. This 80% OTP standard under the Operating Agreement has certain similarities with the All-Stations OTP standard under PRIIA, but the Operating Agreement avoids the shortcomings of that standard by providing for adjustments based on such factors as late departure from the origin on CN and delays resulting from causes beyond CN's control.

These provisions, negotiated and agreed to by Amtrak and CN taking into account specific operating characteristics of the relevant IC and GTW lines, reflect the parties' judgment as to the extent to which CN should be regarded as responsible for delays to Amtrak's trains on its lines. Consequently, for example, they do not attribute responsibility to CN for delays caused by other railroads at crossings and interlockings not controlled by CN.<sup>22</sup> In contrast, as elaborated in Section II.A, below, Amtrak unreasonably counts such delays as "Host-Responsible Delay" for purposes of the PRIIA Metrics and Standards, which it relies upon in its Petition. In addition, although Amtrak's CDRs are the initial source of data for calculating delays attributable to CN, they are not the last word under the Operating Agreement. Under the Agreement, in the case of disagreement as to the cause of a delay, the parties are obligated to work jointly to resolve problems concerning the clarity or accuracy of that data. Operating Agreement, App. V, Part A.3; *id.* App. VI, Part B. In this respect too, the Operating Agreement contrasts with what Amtrak does in implementing the PRIIA Metrics, under which Amtrak imposes an arbitrary seven-day deadline for challenging the CDRs' attributions of delay responsibility. *See* Section II.A, below.

Amtrak's Petition relies on the PRIIA Metrics but ignores the more meaningful and accurate measures of CN performance the parties agreed to in the Operating Agreement. Under the latter, CN's performance is generally good and, as the result of focused efforts by CN, is

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The structure of incentives and penalties for Amtrak trains on GTW lines is set up on an all-or-nothing basis. If an Amtrak train incurs no more than an agreed-upon maximum of delay minutes resulting from causes within CN's control, then CN is entitled to compensation for handling that train. On the other hand, if the train incurs more than the maximum number of "CN Delay" minutes (or, in the case of the Blue Water trains, if the train both incurs an excessive number of CN Delay minutes and moves over the relevant CN line in more than the contractually agreed-upon run time), then CN earns no compensation for the train. *Id.* App. VI, Parts A, C.

<sup>22</sup> *Id.* App. V, Part A.1.g.; *id.* App. VI, Part D.10.

getting better. CN's on-time performance under the Operating Agreement in Fiscal Year 2011 ranged from approximately 80% to 90% for the various routes encompassed by the Petition. *See* Section II.A, below. And in recent months, CN has achieved in the neighborhood of 90% average on-time performance under the Agreement.<sup>23</sup> In February 2012, for example, only one train (Lincoln Service Train #303) was below 80% for the month, and CN earned a record for incentive payments, even with the short month.

As CN's performance under the Operating Agreement demonstrates, CN takes seriously its obligation under that Agreement to handle Amtrak's trains expeditiously. CN takes just as seriously its obligation under RPSA to give Amtrak trains preference over freight trains, reminding its employees of that obligation and, where appropriate, disciplining them for its violation.<sup>24</sup> In the same way, CN takes seriously Amtrak's concerns about delays on CN's lines and has spent its own time and money looking for solutions to problems of delay.<sup>25</sup>

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<sup>23</sup> Exhibit B sets forth, in tabular form, the on-time performance percentages, under the Operating Agreement, for Amtrak trains on CN's lines during January and the first half of February 2012. A similar table, showing on-time performance under the Operating Agreement between January 2010 and September 2011, was attached to the October 11, 2011 letter of Mark Nordling (Manager, Passenger Operations and NRPC Operations Officer, CN) to Paul Vilter (Assistant Vice President – Host Railroads, Amtrak) (Oct. 11, 2011) (“Nordling Letter”) (Exhibit C hereto).

<sup>24</sup> *See, e.g.*, E-mail from Donnell Day (Central Division Chief Dispatcher, CN) to Don Secret *et al.*, re “Passenger Train Delays” (Jan. 29, 2011) (attached as Exhibit D); letter from Roger Frasure (Senior Chief Dispatcher, CN) to [redacted] (Jan. 11, 2010) (letter of caution for failing to give preference to Amtrak train; identifying information redacted) (attached as Exhibit E); Waiver of Investigation (Jan. 18, 2011) (accepting five-day suspension for delaying Amtrak train; identifying information redacted) (attached as Exhibit F). Amtrak has no basis for its repeated assertions that CN follows a “pattern and practice of prioritizing freight trains over Amtrak passenger trains.” *See* Pet. ¶¶ 2, 4, 81, 84, 88, 90, 93, 94, 97, 98, 118-19.

<sup>25</sup> Thus, for example, as noted in Section I.C.2, below, CN developed at its own expense detailed proposals for nine specific infrastructure improvement projects on CN lines that Amtrak had identified as ones where it experiences some of the greatest number of FTI delay minutes.

CN's relationship with Amtrak requires a lot of work on behalf of both carriers to coordinate Amtrak's operations on busy CN lines through congested areas on CN's disciplined, high-performance network. CN has urged a cooperative approach to solving problems so as to facilitate optimal use of its network for Amtrak and freight traffic. Amtrak, however, has not been as forthcoming in helping to meet the challenge of ensuring that its train operations on CN's lines are integrated efficiently with those of CN and other carriers.<sup>26</sup>

Amtrak, for example, has difficulty ensuring that its trains arrive onto CN's lines on time. While CN always prioritizes accommodating Amtrak's trains, it is no small matter to slot a late train into a stream of other trains that are running on schedule. And when Amtrak's trains arrive erratically and late for movement onto CN's lines, there is a greatly increased risk that its performance under the Metrics and Standards will suffer. For example, if an Amtrak train fails to arrive on time at the beginning of a CN segment, but a freight train subsequently arrives on time while CN is waiting for the Amtrak train, that freight train may be permitted to proceed on that segment if necessary to maintain the fluidity of the network or it appears that doing so is unlikely to significantly impede the Amtrak train, if and when it arrives (some Amtrak trains are

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<sup>26</sup> In the Chicago area, where the need to coordinate operations between railroads is especially compelling, Amtrak has failed to join CN and most of the other freight railroads in efforts to implement the Common Operational Picture ("COP"), a train monitoring system that provides information about operations on multiple carriers. Through the use of secure Internet connections, this system is designed to receive data from the computer-aided dispatching systems of the participating railroads, convert them to a commonly-accessible format, and provide participating railroads' dispatchers (again through secure Internet connections) with a graphic display, visible on computer monitors, laptops, or other screens, of track occupancies, track authorities (*i.e.*, clearances for trains to proceed), switches, signal lamps, location names, and train IDs on the lines of multiple railroads.

In declining to participate in COP, Amtrak has ignored the potential that this program offers to provide information that will enable dispatchers to move Amtrak's and other carriers' trains more expeditiously through the Chicago terminal. This is just one example of Amtrak's failure to take any responsibility to address the communications challenges shared by the Chicago-area railroads. Pet. ¶¶ 106-09.

aborted by Amtrak). If and when the Amtrak train arrives, it will be given access to the segment (and, if a freight train is also seeking access, will be given preference over that freight), but it may find itself behind a slower-moving freight train until CN can use sidings of suitable location, length, and availability so that the Amtrak train can pass. Amtrak nonetheless typically characterizes the delay to its train as “Freight Train Interference,” even though one significant underlying cause of the delay was Amtrak’s own failure to make use of the slot provided for it, and will demand that CN find a way to eliminate such delays.<sup>27</sup> In addition, the fluidity of CN’s lines is often impaired when Amtrak suffers mechanical breakdowns (due to the age and condition of its equipment) on CN’s lines,<sup>28</sup> when its locomotives run out of fuel,<sup>29</sup> or when its crews expire under the Hours of Service Act.<sup>30</sup>

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<sup>27</sup> For example, late arrivals of Amtrak trains to CN tracks on the Blue Water and Wolverine eastbound services are now a regular occurrence, causing difficulties when they arrive out of slot, but Amtrak attributes many of the resultant problems to “FTI.” *See* Section II.B.3, below.

<sup>28</sup> For example, on November 11, 2011, Amtrak Train #58 (New Orleans to Chicago) experienced engine problems shortly after departing New Orleans. Instead of returning to New Orleans to service its equipment, the train proceeded to Jackson, MS (approximately 180 miles from New Orleans), where CN provided it with a freight engine. Because freight engines are not designed to run at passenger speeds, the train experienced delays for the remainder of the route. Likewise, on June 1, 2011, Train #59 (Chicago to New Orleans) experienced engine problems between Hazelhurst, MS, and Brookhaven, MS, and required a freight engine to complete its movement to New Orleans.

<sup>29</sup> As a result of Amtrak failing to properly fuel its locomotives, this has been a recurring problem, particularly in the area of Champaign, IL. [For example, on September 4, 2011 Train #58 (New Orleans to Chicago) was delayed for half an hour in Champaign while it was refueled after it left Carbondale, IL, with insufficient fuel to make it to Chicago. Similarly, on July 5, 2011, Train #391 (Chicago to Carbondale) ran out of fuel on a single-track segment just south of Delrey (between Chicago and Champaign), causing more than 15 hours of delay to itself, another Amtrak train, and four freight trains.

<sup>30</sup> *See, e.g.*, E-mail from Mark Nordling to M. Savoy *et al.* (June 22, 2011) (Exhibit G hereto). In addition, on September 23, 2011 Train #393 was held for 20 minutes at a location south of Champaign, IL to recrew its engineer, and on September 15, 2011 Train #59 was held

Delays that result from Amtrak's own errors of omission or commission cannot reasonably be attributed to CN. Amtrak, however, has generally been unwilling to (a) discuss ways of improving its on-time arrival to CN's lines so that CN's system can work efficiently for the benefit of Amtrak, CN, and CN's other users; (b) commit itself to give CN accurate information about its late arrivals, so as to permit CN dispatchers to make accommodations that would permit all trains to move even more efficiently over the network; (c) make adjustments to its schedules, either to take account of its increased run time on NS's line or, more generally, to provide for more realistic and attainable run times on CN's lines; or (d) make investments in infrastructure improvements that, while not needed for CN's freight operations, would benefit Amtrak's operations and would, therefore, constitute incremental costs.

**2. Since The Publication Of The PRIIA Metrics And Standards, Amtrak Has Been Unwilling To Work Productively With CN To Try To Improve Passenger Train Performance.**

Upon issuance of the Metrics and Standards, FRA declared (consistent with 49 U.S.C. § 24101(a)(4)) that “[g]ood-faith collaboration between Amtrak and host railroads, as well as State and other stakeholders as appropriate, will be needed to ensure that the implementation of the above Section 207 standards is a success.”<sup>31</sup> FRA “encourage[d] the stakeholders to work through [issues relating to attainment of the standards] in a collaborative manner,” noting that “there is no substitute for teamwork and goodwill among the parties” in addressing such issues.<sup>32</sup>

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for 45 minutes in Carbondale, IL, for recrew. Ironically, Amtrak alleges that the occasional expiration of CN crews under the Hours of Service Act constitutes “operational negligence” and a failure of the “exercise of due care.” Pet. ¶¶ 113-15.

<sup>31</sup> Metrics and Standards at 33.

<sup>32</sup> *Id.* at 13. This language appears in a discussion specifically addressing railroads' concerns regarding the need to adjust unrealistic Amtrak schedules, but it is illustrative of FRA's

CN has continually sought, as advised by FRA, to work with Amtrak to address issues regarding application of the PRIIA standards to Amtrak trains operating on CN lines. Yet Amtrak’s approach in its discussions with CN on these issues has instead been to assume that attainment of the standards is the exclusive responsibility of CN. Thus, for example, in an e-mail message sent in June 2011, Amtrak demanded that CN “provide . . . in writing what immediate actions CN plans to take to reduce [HRD] so that all Amtrak trains operating on CN meet the PRIIA standard.”<sup>33</sup>

In response to the demand in that e-mail, CN suggested that Amtrak and CN personnel instead meet face-to-face to discuss outstanding issues regarding Amtrak performance on CN’s lines. Amtrak agreed, and the meeting was held on August 19, 2011, at CN’s U.S. headquarters in Homewood, IL.

At the August 19 meeting, Amtrak explained how it uses CDRs as the source of data on HRD, including FTI. Amtrak explained that it instructs its conductors to report only what they see, without attempting to find the root causes of any delays observed.<sup>34</sup> In response to an offer by CN to have its Rail Operations Center (“ROC”) contact Amtrak and inform the conductor of

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general policy of expecting Amtrak and host railroads to work cooperatively on all issues relating to attainment of the standards.

<sup>33</sup> E-mail from Paul Vilter (Assistant Vice President – Host Railroads, Amtrak) to Paul Ladue (Regional Director, Contracts and Administration, CN) and Mark Nordling (Manager, Passenger Operations and NRPC Operations Officer, CN) re “Delays to Amtrak Trains on CN” (June 24, 2011) (attached as Exhibit H).

<sup>34</sup> Thus, for example, if an Amtrak train was delayed by a freight train stopped ahead of it on the line, the conductor would attribute the delay to FTI, regardless of what (*e.g.*, a crossing accident caused by a third party) might have required the freight train to stop.

the actual cause of the delay, Amtrak declined, explaining that the conductor is instructed and expected to report only the cause that was directly observed.<sup>35</sup>

CN explained why it regarded the PRIIA standard for HRD minutes (including FTI) as being of limited value for identifying delays that could reasonably be addressed by the host railroad. CN noted that Amtrak's conductors frequently attribute delays to FTI that are not within CN's control, and that Amtrak has effectively admitted as much by agreeing under its Operating Agreement that many delays categorized as FTI in CDRs are beyond CN's control and therefore will not be counted against CN in computing incentive payments to CN for on-time performance. CN provided Amtrak with its recalculation of HRD per 10,000 Train-Miles, excluding delays that were not attributed to CN under the Operating Agreement, for the first three quarters of FY 2011, demonstrating that CN's performance, if measured on the basis contractually accepted by Amtrak, was considerably better than reported under PRIIA.

CN also presented nine detailed proposals it had developed (at its own expense) for infrastructure improvements on the three segments of CN's Chicago-to-New Orleans line on which, according to Amtrak's data, CN was incurring the greatest number of HRD minutes per 10,000 Train-Miles. CN's presentation included cost estimates for track and signal work, and detailed the benefits that could be anticipated from each.<sup>36</sup> Amtrak insisted, however, that, regardless of relative cost-effectiveness, investment by Amtrak in infrastructure improvements should only be considered as a last resort, after improved maintenance, schedule modifications,

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<sup>35</sup> Thus, in the example just given, if the conductor were informed that the freight train blocking the Amtrak train had stopped because it had struck a trespasser, a delay that one would expect to properly be attributed to causes for which third parties are responsible, such as "TRS" (Trespasser Incident), the conductor would still attribute the delay to FTI.

<sup>36</sup> A PowerPoint presentation describing the nine proposals, which was distributed at the meeting, is attached hereto as Exhibit I.

and operational changes had been considered and implemented to the maximum extent feasible. CN explained that there were no permanent slow orders in effect, so that increased maintenance would be unlikely to reduce delays. CN displayed string line service design graphs, indicating times at which the line would be less congested and might better accommodate trains, but it was determined that neither CN nor Amtrak had much flexibility to adjust their schedules, given existing commitments to shippers and requirements of passenger convenience. CN pointed out that operational changes and infrastructure improvements were closely related and could not be reasonably be considered in isolation from each other.

In response to CN's proposal for further, high-level meetings between CN and Amtrak, Amtrak's Paul Vilter wrote to CN on September 30, 2011, rejecting that proposal and renewing Amtrak's demand that CN, and CN alone, address Amtrak's failure to meet the PRIIA standards, and indicating that Amtrak had attended the August 19 meeting with the expectation that CN would "provide . . . a plan" that would provide for "operating improvements to reduce delays."<sup>37</sup> Mr. Vilter dismissed CN's suggestion that the parties focus on HRD within CN's reasonable control, arguing that "Section 207 does not entitle a host railroad to exclude certain delays." *Id.* He dismissed CN's suggestion of particular infrastructure improvements on the ground that CN had not been willing to guarantee that the proposed improvements "would result in CN meeting the PRIIA Section 207 standards" and "were the only way to meet the PRIIA section 207 standards," and that CN did not have "a plan for how to bring itself into compliance with the PRIIA Section 207 standards on . . . any . . . CN lines over which Amtrak operates." *Id.* at 1-2.

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<sup>37</sup> See Letter from Paul Vilter (Assistant Vice President – Host Railroads, Amtrak) to Paul Ladue (Regional Director, Contracts and Administration, CN) and Mark Nordling (Manager, Passenger Operations and NRPC Operations Officer, CN) at 1 (Sept. 30, 2011) ("Vilter Letter") (Exhibit J hereto).

Mark Nordling, CN's Manager, Passenger Operations and NRPC Operations Officer, responded to Mr. Vilter's letter on October 11, 2011.<sup>38</sup> He reiterated CN's view that the PRIIA standards were "ill-suited to demonstrate that Amtrak or a host railroad has acted unreasonably." Nordling Letter at 2.

Mr. Nordling further restated the reasons (which we elaborate in Section II.A, below) why CN believes that HRD, as reported for purposes of PRIIA, are of limited value in identifying delays that can reasonably be addressed by the host railroad. *Id.* Mr. Nordling, however, reiterated CN's hope that more appropriate and useful measures of delay could be developed. He also expressed disappointment at Amtrak's dismissal of CN's capital investment proposals, pointing out that it was unrealistic to insist, as Amtrak had, that the investments not even be considered unless CN would guarantee that they would resolve, not merely the FTI that Amtrak had identified in the problem locations, but "all delay issues on these routes." Nordling Letter at 3. He explained why significant reductions in delays were unlikely to result from two of Amtrak's proposed alternatives to capital improvements – improving maintenance and altering schedules – and why Amtrak's third alternative – operational changes – should be considered in tandem with, rather than in isolation from, infrastructure improvements. He also noted that Amtrak had failed to identify any "concrete operational improvements" or "meaningful changes" that it believed CN should make, but had laid the entire responsibility for developing solutions to Amtrak's problems on CN. Nordling Letter at 3 (quoting Vilter Letter at 2).

Mr. Nordling acknowledged CN's responsibility to work to maintain Amtrak's schedules, but indicated that Amtrak's "delay and OTP problems require the attention and cooperation of

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<sup>38</sup> See Nordling Letter.

both Amtrak and CN.” Nordling Letter at 4. Mr. Nordling expressed the hope that Amtrak and CN could “make[] a joint, comprehensive approach to Amtrak performance issues,” *id.*, consistent with FRA’s expectations upon publication of the Metrics and Standards.

Instead of taking up CN’s offer to work together to solve problems with Amtrak’s train performance, Amtrak has responded to that offer by filing its Petition, in which it again assigns the entire responsibility for solving those problems to CN.

## **PART II – AMTRAK’S ALLEGATIONS**

### **A. The PRIIA Standards, Metrics, and Data Have Limited Utility and Do Not Demonstrate Poor Performance by CN**

Amtrak’s Petition relies heavily on three of the Metrics included in the Amtrak/FRA regulations under section 207(a) of PRIIA – Endpoint OTP, All-Stations OTP, and HRD per 10,000 Train-Miles. Two of those Metrics – Endpoint OTP and Host-Responsible Delays per 10,000 Train-Miles – properly function as statutory predicates for a Board investigation. (All-Stations OTP does not here, because it was not in force during the period covered by Amtrak’s Petition.) However, under 49 U.S.C. § 24308(f)(1), Congress assigned to the Board – not Amtrak or its conductors – the task of analyzing cause and making recommendations as to whether the performance of a particular service is reasonably susceptible to improvement by the host railroad or by Amtrak. Moreover, when the Board performs that function, Congress explicitly instructed it to view the Standards and Metrics critically. *Id.* (“As part of its investigation, the Board has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays.”). Moreover, here, as we elaborate below, examination of these three Metrics reveals that they provide little, if any, information about how, if at all, CN’s performance affected the timeliness of Amtrak’s trains. Thus, insofar as the Petition suggests that the Metrics and Standards themselves give rise to a

presumption of poor performance or preference violation by CN, that suggestion is both legally and factually unsound.

*Endpoint OTP*, which is measured and reported for each Amtrak train and service, is calculated by dividing the total number of trains in a given quarter that arrive at the route's terminus at the scheduled time (or within a specified tolerance that varies by route length) by the total number of trains that operated in that quarter and reporting the quotient as a percentage.<sup>39</sup> It speaks only to when an Amtrak train reaches its destination – not why, and not where or by whom it was delayed. Thus, it provides no basis for any causal inference or attribution of responsibility.

Moreover, the Metric measures performance over the entire route, which may involve multiple host railroads with control over segments of variable length; it does not measure performance on specific route segments. (Thus, notwithstanding Congress's instruction, it does not “measure[] on-time performance . . . on the rail lines of each rail carrier.” PRIIA § 207(a). By contrast, the OTP metric used under the CN/Amtrak Operating Agreement, which Amtrak's Petition ignores, does measure OTP on a CN-specific basis.) A train or service meets the PRIIA Standard if its Endpoint OTP exceeds 80%.<sup>40</sup> On a multi-host route, it may fail to do so despite never being delayed on the segment owned by a particular host.

Because all of Amtrak's trains operating over CN use routes that include lines of other

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<sup>39</sup> Federal Railroad Administration, Proposed Metrics and Standards for Intercity Passenger Rail Service at 14 (Docket No. FRA-2009-0016) (Provisional Staff Exposure Draft Mar. 13, 2009) (“Proposed Metrics and Standards”), *available at* [http://www.fra.dot.gov/downloads/rrdev/metrics\\_and\\_standards\\_draft.pdf](http://www.fra.dot.gov/downloads/rrdev/metrics_and_standards_draft.pdf).

<sup>40</sup> Beginning in FY 2014, the standard for Endpoint OTP will rise to 90% for all “corridor” routes (including the Blue Water, Hoosier State, Illini/Saluki, Lincoln, and Wolverine routes) outside the Northeast Corridor and 85% on all “long-distance” routes (including the Cardinal, City of New Orleans, and Texas Eagle routes) outside that Corridor. Metrics and Standards at 26 & n.18.

railroads (indeed, of the eight services encompassed by Amtrak's Petition, CN owns less than 15% of the track on five, and less than 50% on six), Endpoint OTP for those routes is significantly affected by the performance of Amtrak's trains on non-CN lines. For example, if Amtrak Train #300, a Lincoln Service train that operates daily from St. Louis to Chicago, were already running 25 minutes behind schedule when it to CN from UP, then even if CN were to move the train over the remaining 35.7 miles from Joliet to Chicago five minutes faster than provided for in the schedule, the train would be counted as late on its arrival to Chicago Union Station, because it would not have arrived within the applicable 15-minute tolerance. Moreover, even if the train were on time after completing the combined UP and CN portion of the route, if the train was delayed more than 15 minutes on Amtrak's own 1.6-mile segment at the end of the route (from 21<sup>st</sup> Street to Union Station in Chicago), the train would be counted as late. In both instances, the late arrival would be reflected in Amtrak's Endpoint OTP data. In both instances, CN would not have delayed the train at all, let alone delayed it unreasonably or failed to accord it the statutory preference. For that reason, FRA acknowledged, when promulgating the Metrics and Standards, that "Endpoint OTP says nothing about responsibilities for late delivery of trains at intermediate junctions between hosts." Metrics and Standards at 17.

The implications for Endpoint OTP of delays on the short Amtrak segment in the example above are by no means hypothetical. In fact, the limited available data suggest that they are highly significant. All of the trains at issue in this proceeding either originate or terminate in Chicago, where they operate over approximately two miles of Amtrak's own tracks. Amtrak does not publish data with regard to hosts (including itself) that have less than 15 route miles on a given service, but short segments can in some instances contribute significantly to total delay.

For example, CN data for February 2012<sup>41</sup> shows that 27 of 29 (93%) of the daily movements of Train #393 (Illini/Saluki Service) in February 2012 were delayed on Amtrak's 2.2-mile segment from Union Station in Chicago before they reached CN's segment. Similarly, the February Data shows that 28 of 29 (97%) of the daily movements of Train #58 (City of New Orleans) were delayed on Amtrak's 3.7-mile segment between the New Orleans station and Southport Junction (where the train is handed off to CN).

Not only is the Metric for Endpoint OTP of limited use, the Amtrak/FRA performance Standard is unrealistic absent the active collaborative management and the Amtrak investments required to accommodate Amtrak's schedules to the realities of the freight system. Absent that management and investment, there is no reasonable basis to expect that Amtrak will be able to meet the 80% PRIIA OTP Standard (rising to 85% and 90% in FY 2014, depending on the route) unless Amtrak's schedules are significantly modified. As AAR explained in its comments on the proposed PRIIA rules, since its inception, Amtrak has achieved 80% OTP only twice on routes over 400 miles, and less than half the time on shorter routes.<sup>42</sup> In sum, the PRIIA Endpoints OTP Metric and Standard reflect unrealistic expectations, they say nothing about cause, and they substantially reflect delays that occurred when trains were not even on CN's tracks.

*All-Stations OTP*, which is also measured and reported for each Amtrak train and

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<sup>41</sup> After the complaint was filed, CN undertook to create better data sources to monitor and analyze the performance of Amtrak trains on its lines. Beginning February 1, CN began recording, for each Amtrak train that operated, (1) the time the train arrived at the beginning of the CN portion of the route, (2) the time the train arrived at the end of the CN portion of the route, and (3) the source and length of any delays that occurred on the CN portion of the route. For purposes of this response, this will be referred to as "the February Data."

<sup>42</sup> Comments of the Association of American Railroads at 6 (Mar. 27, 2009), Proposed Metrics and Standards for Intercity Passenger Rail Service, Docket No. FRA-2009-0016 (attached hereto as Exhibit K).

service, measures how often a train arrives on time (defined as being within 15 minutes of its scheduled arrival time) at every station along the route.<sup>43</sup> It is calculated by dividing the total number of stations arrived at “on time” in a given quarter by the total number of stations arrived at in that quarter and reporting the quotient as a percentage. Like Endpoint OTP, All-Stations OTP is measured and reported for the entire Amtrak route at issue and is not calculated separately for the individual host railroads in that route, and it says nothing about the cause of any delays. Thus, every point made above about the limited utility of Endpoint OTP applies equally to All-Stations OTP.

In addition, during the period addressed by Amtrak’s Petition – FY 2011 – there was no Standard for All-Stations OTP and the data collected on this Metric were reported for informational purposes only. (Starting in FY 2012 a train or service will meet the Standard if its All-Stations OTP exceeds 80%<sup>44</sup> – an expectation that is just as unrealistic under current conditions as the Endpoint OTP Standard, for the same reasons.) The Amtrak/FRA regulations delayed the effectiveness of the All-Stations OTP Standard in order to give Amtrak an opportunity to make necessary adjustments to its schedules and operations – most significantly, to distribute recovery time more evenly over each entire route.<sup>45</sup> Amtrak still has not done so.

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<sup>43</sup> Metrics and Standards at 27.

<sup>44</sup> Metrics and Standards at 27. As with Endpoint OTP, this standard will rise in Fiscal Year 2014 to 90% on corridor routes outside the Northeast Corridor and 85% on long-distance routes outside that Corridor. *Id.*

<sup>45</sup> Metrics and Standards at 18. “Recovery time” is time included in a train schedule, over and above the minimum time needed to move an unimpeded train over the route. Recovery time is added to the schedules to take account of the fact that, in practice, trains can expect to be impeded on at least part of their routes. Amtrak’s schedules tend to “back-load” recovery time toward the end of a train’s route, with the result that trains are less likely to arrive at stations earlier on the route within its on-time tolerance. For example, on the City of New Orleans service over 50% of the total recovery time is allocated to two stations – Memphis (the midpoint) and the endpoint (either Southport Junction or Clark Street) and a train delayed early in the route

Accordingly, references in Amtrak's Petition to All-Stations OTP during FY 2011 should be viewed as irrelevant as a matter of law and highly suspect as an aid to factual analysis.

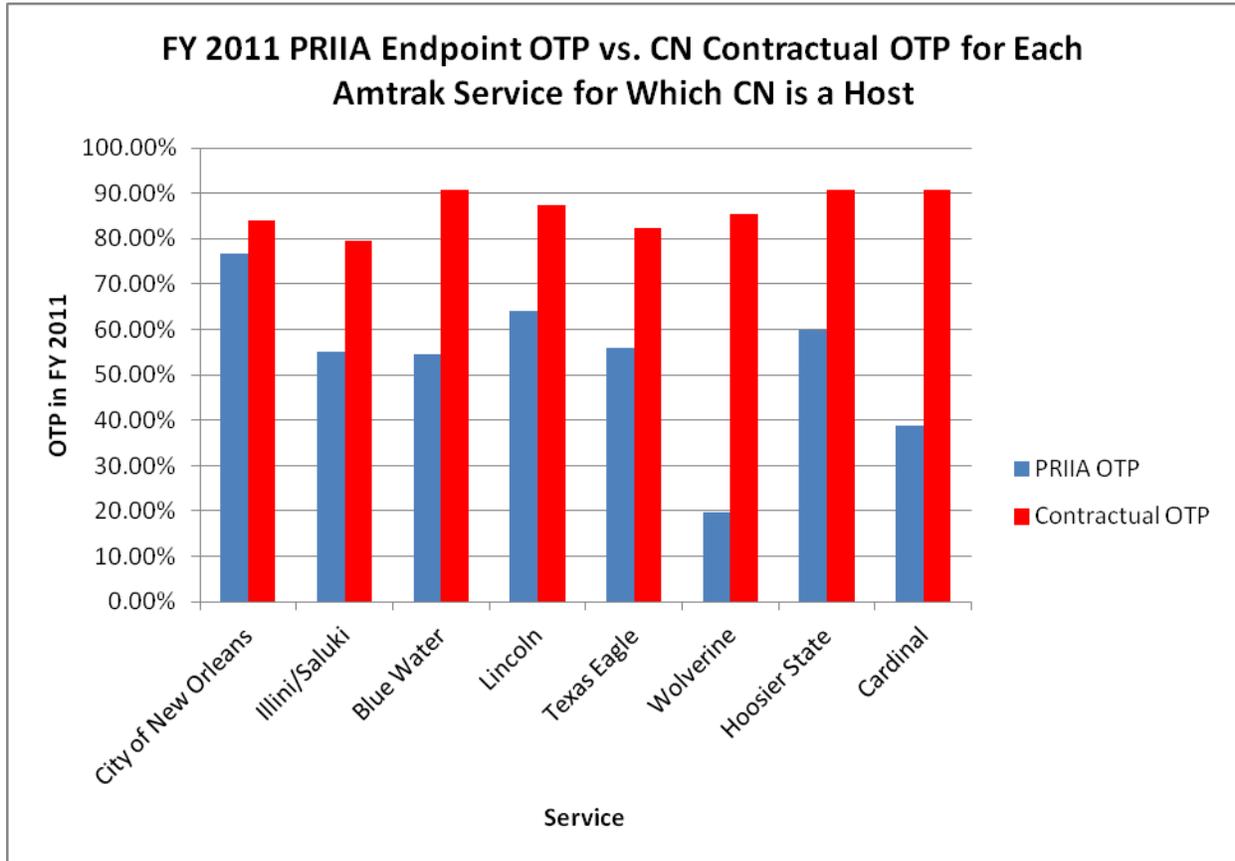
Because of these issues, the PRIIA OTP Metrics provide no insight into whether and to what extent CN's performance causes Amtrak trains to fail to arrive at stations and destinations on-time. There is, however, a metric that does address that issue, and it is one to which Amtrak and CN have agreed: contractual OTP under the Operating Agreement.

The following chart shows how CN performed under its Operating Agreement in terms of endpoint OTP (*i.e.*, how often the trains arrived on time (as defined by the agreement) at the endpoint of the CN segment) compared to the Endpoint OTP percentages recorded by Amtrak under PRIIA:

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could be counted as late at each intervening station, even though because of the backloaded recovery time it would reach the endpoint on time. Amtrak's failure thus far to agree to adjust the schedules or tolerances therefore significantly distorts the All-Stations OTP data on which it relies.

FIGURE A



*HRD per 10,000 Train-Miles*, is also measured and reported for each Amtrak train and service, but is calculated separately for each host railroad on each route.<sup>46</sup> This Metric measures how much a train deviates from its “pure run-time.”<sup>47</sup> Each route is divided into segments, and

<sup>46</sup> Metrics and Standards at 28.

<sup>47</sup> Proposed Metrics and Standards at 15. “Pure run-time” is defined as “the fastest possible trip time for an Amtrak train over a route, with no interference or delays.” *Id.* at 15 n.13.

Congress mandated that “minutes of delay” be included among the PRIIA metrics and standards. PRIIA § 207(a). However, Congress did not define “delay.” Nor did it provide for any role for the joint FRA/Amtrak Metrics and Standards in determining cause of delay, although in a different provision, Section 207(b), it called upon FRA (not Amtrak) to report on causes of delay.

each segment is assigned a pure run-time. While the train is being operated, the Amtrak conductors record on a Conductor Delay Report (“CDR”) deviations from pure run-time between two points. For each such deviation, the conductor records the number of minutes of delay and categorizes the delay using one of 26 delay codes, ten of which are used to identify delays that Amtrak classifies as “Host-Responsible Delays,” although without regard to the actual root cause or causes of the delay. *See Metrics and Standards at 28 n.23.*

At the end of the quarter, the total number of delay minutes reported on the CDRs for a given route and host railroad are divided by the train miles operated by Amtrak trains on that route on the host railroad’s lines, and then adjusted so that the number is expressed per 10,000 train miles. A host railroad’s portion of a service meets the Standard adopted by FRA and Amtrak if there are fewer than 900 minutes of HRD per 10,000 Train-Miles. *Metrics and Standards at 28.*

The HRD Metrics and Standards have significant shortcomings, and there are several flaws in their use in the Petition, including the following:

*General Flaws in the Metric*

- The 900 minute delay per 10,000 route mile Standard is arbitrary, since number of miles is just one of many variables that affects delays. Handoffs between different hosts create delays regardless of segment length, and shorter route segments and route segments that are urban and/or congested, and that have lots of interlockings or suffer from inclement weather – all characteristics of CN’s lines around Chicago – typically experience more delays in terms of this Metric.
- In particular, the Metric unduly magnifies small delays on short segments. For example, on a 35-mile segment, an average delay per train of just 3.2 minutes is sufficient to exceed the 900 minute Standard. *See Figure G, below (showing how even relatively minor delays on short segments can be magnified by the Metric).*
- Amtrak does not publish delays that occur on route segments shorter than 15 miles, although significant delays may occur on the routes of such carriers that contribute to a failure to meet OTP (*e.g.*, Amtrak movements in and out of Chicago Union Station).

- The Metric is based on information recorded by Amtrak conductors on CDRs, but those conductors have a strong personal and institutional bias against coding delays as being attributable to Amtrak. And, while Amtrak nominally has a process for correcting improper attributions of delay causes, that process is unreasonable,<sup>48</sup> and Amtrak frequently refuses to reasonably correct its data to reflect the host's lack of responsibility for a delay.

*Flaws Related to Amtrak's Categorization of Delays*

- The recording and categorization of HRD minutes based on the immediate causes observed by individual conductors aboard trains rather than root causes. For example, an Amtrak train may be stopped behind a freight train that is in turn stopped because it struck a trespasser. Instead of categorizing the delay as a third-party trespasser strike, the conductor, knowing only that he was stopped behind a freight train, would record the delay as "FTI."<sup>49</sup> See Fig. F, below (showing an instance when a conductor could attribute a delay to a reason other than its root cause).
- The classification by Amtrak of delays as "host-responsible" and the categorization of delays as FTI is done inconsistently, often depending upon the judgment of individual conductors, and the particular categories of delay are not a reliable indication of the cause of delay; instead, they are, in FRA's words, "provided as metrics for informational purposes only." Metrics and Standards at 21.

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<sup>48</sup> Conductors typically fax the CDRs to the relevant host railroads for their review at the end of the trip of the train, and Amtrak will consider adjustment to the CDR data based on corrections submitted by the host railroad during the seven days following the train's origination date. Given the volume of CDRs and the amount of research required to determine the accuracy and root cause of a delay, it is often not possible to provide a response with the seven-day period, and Amtrak refuses to make changes after this period, even if it concedes that the delay was improperly coded.

<sup>49</sup> As the DOT Inspector General's office has noted, "Amtrak's conductor delay data . . . provides only a limited perspective on [the root causes of delays]." IG Report at 19. FTI, or freight train interference, is a misleading label for a broad category of delays attributed to host carriers. Amtrak includes within the category delays that do not involve interference by a freight train on the host carrier's route, including delays caused by cross traffic on other carrier lines that are beyond the control of the host carrier. In addition, because HRD are not based on root causes, Amtrak includes within this category other delays beyond the control of the host carrier. Prior to Amtrak's Petition, CN offered to provide Amtrak with root cause information for particular delays, but Amtrak declined to accept that information.

- Some delays categorized by Amtrak as “host-responsible,” including FTI, may be out of the control of the host railroad. For example, Amtrak includes within the FTI code delays caused by its failure to receive an immediate signal at rail crossings controlled by other non-host railroad carriers, even when those signals are automatic (first come, first served) and, where not, even in the absence of any evidence of host responsible error in requesting the signal.<sup>50</sup> See Fig. G, below (showing how delay due to cross traffic at interlocking not controlled by the host railroad can be attributed to that railroad).
- Considering HRD (or subsets such as FTI) in isolation does not aid understanding of the relative contribution of delays during Amtrak movements over various host carriers to Endpoint OTP.
  - On a route with two hosts, one of which controls 30 miles and the other of which controls 1,100 miles, a 6-minute delay on the short segment would be treated under the PRIIA delay Metric as the equivalent of a 220-minute delay on the latter – they both equate to 2,000 minutes of delay per 10,000 train miles. See Figure B, below (showing how on short routes very minor delays can exceed the Standard).
  - As illustrated by Figure F below (in Section II.B.3), delay minutes do not necessarily equate to lost time because Amtrak does not credit against such supposed “delays” any time made up against the schedule (often a considerable amount) as Amtrak proceeds over the carrier’s lines.

*Flaws Related to Amtrak’s Use of the Metric in its Petition*

- In a number of instances, Amtrak compares delay per 10,000 train miles (or FTI per 10,000 train miles) across carriers and among routes. However, comparisons of delay metrics among routes are generally meaningless, and are almost entirely meaningless when compared solely on the basis of approximate route lengths as Amtrak does. The factors that are critical drivers of delays are route and movement specific, such as traffic density, crossing carrier interference, route infrastructure, and control and coordination issues, including at entry and exit points.

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<sup>50</sup> CN calls other carriers as a matter of course to inform them of the position of Amtrak’s trains, but sometimes CN’s calls to other carriers are not picked up, and CN cannot control when other carriers, despite timely notice by CN, run trains that interfere with Amtrak’s desire for a signal, as often occurs on busy lines when Amtrak arrives with little warning or substantially out of schedule.

- Because Amtrak’s categories of delays are neither inherently accurate indicators of the causes of delay, nor objectively applied, Amtrak often attributes delays to host carriers that are beyond a host carrier’s reasonable control. Moreover, FTI includes delays that clearly are not indicative of a failure by a host railroad to accord preference, including delays caused by Amtrak, other non-host carriers, accidents, weather, and other circumstances that are beyond the host carrier’s reasonable control, and supposed “delays” (e.g., uses of sidings) that may actually expedite Amtrak’s trains. For this reason, concluding, as Amtrak does, that high levels of FTI are indicative of a pattern and practice of preference violations is a particularly misleading use of the Metric.
- Amtrak’s references to the percentage of passenger trains with some FTI and to the number of FTI “incidents” per train are particularly meaningless as they are not accepted PRIIA measures or standards, say nothing about the length or nature of such delays, and provide no indication that such delays in any way involved a failure to accord statutory preference.

The following tables provide an indication of some of the limitations of the HRD Metric.

Table 2 shows, for each Amtrak service encompassed by the Petition, the number of minutes of delay per train on CN segments that equates with the PRIIA Standard of 900 HRD minutes per 10,000 miles.

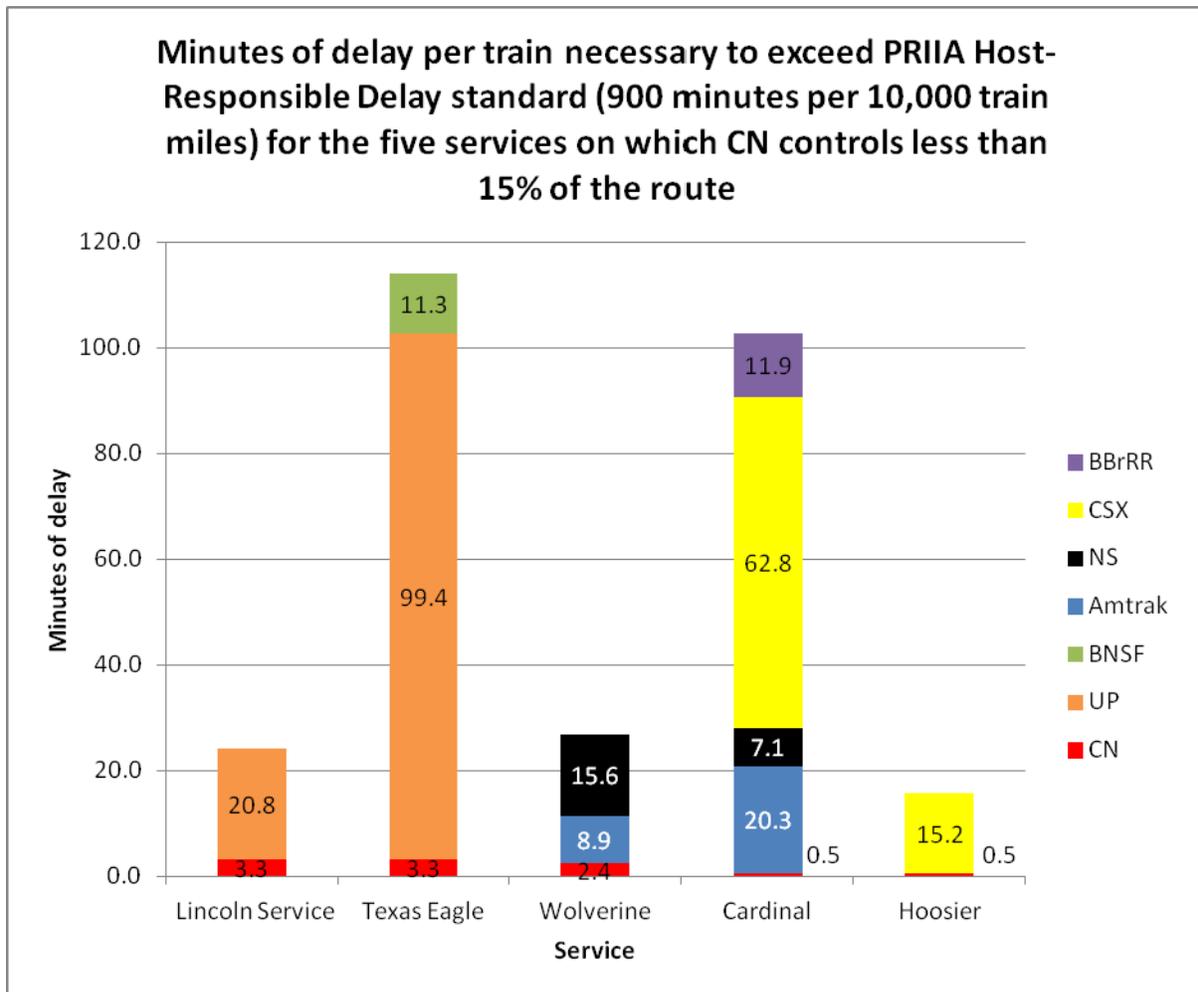
**TABLE 2**

Route	CN Route Miles	Delay Minutes per Train that Would Exceed PRIIA Standard
Blue Water	159	14
Cardinal	5.8	0.5
City of New Orleans	930	84
Hoosier State	5.8	0.5
Illini / Saluki	306	28
Lincoln Service	37	3
Texas Eagle	37	3
Wolverine	27	2

The data in Table 2 are represented graphically in Figure B for the five services for which CN controls less than 15% of the route, with the delay minutes per train that would exceed PRIIA the Standard based on the route miles of the other hosts on each route shown for

comparison purposes.

**FIGURE B**



In other words, on the Texas Eagle service, a mere 3.3 minutes of delay per train on the CN portion would be equivalent, under the PRIIA HRD Metric, to 900 minutes of delay per 10,000 train miles.

For each host on each CN route for which there is published data (*i.e.*, those that have more than 15 route miles), Table 3 shows the Amtrak-reported HRD per 10,000 train miles and then uses the route miles of each segment to translate that number into average minutes of delay per train and, on that basis, calculates the percentage of total HRD attributed by Amtrak to each

**TABLE 3**

<b>Amtrak Service</b>	<b>Host</b>	<b>Route Miles</b>	<b>HRD (FY 2011)</b>	<b>Minutes per Train</b>	<b>% of Total Delay</b>
Blue Water	Amtrak	99	773	8	14.48%
	CN	159	1,459	23	43.89%
	NS	61	3,606	22	41.63%
	Total	319		53	
City of New Orleans	CN	930	1343	125	100.00%
Illini / Saluki	CN	306	1325	41	100.00%
Lincoln	CN	37	2,546	9	27.86%
	UP	231	1,056	24	72.14%
	Total	268		34	
Texas Eagle	BNSF	126	2,255	28	10.83%
	CN	37	1,905	7	2.69%
	UP	1104	2,056	227	86.49%
	Total	1267		262	
Wolverine	Amtrak	99	851	8	13.87%
	CN	27	2,588	7	11.51%
	NS	173	2,619	45	74.62%
	Total	299		61	
Cardinal	Amtrak	226	1,176	27	19.31%
	CN	5.8	2,062	1.20	0.87%
	BBrRR	132	2,600	34	24.95%
	CSX	698	943	66	47.84%
	NS	79	1,224	10	7.03%
	Total	1140.8		138	
Hoosier State	CN	5.8	3,071	1.78	9.24%
	CSX	169	1,035	17	90.76%
	Total	174.8		19.27	

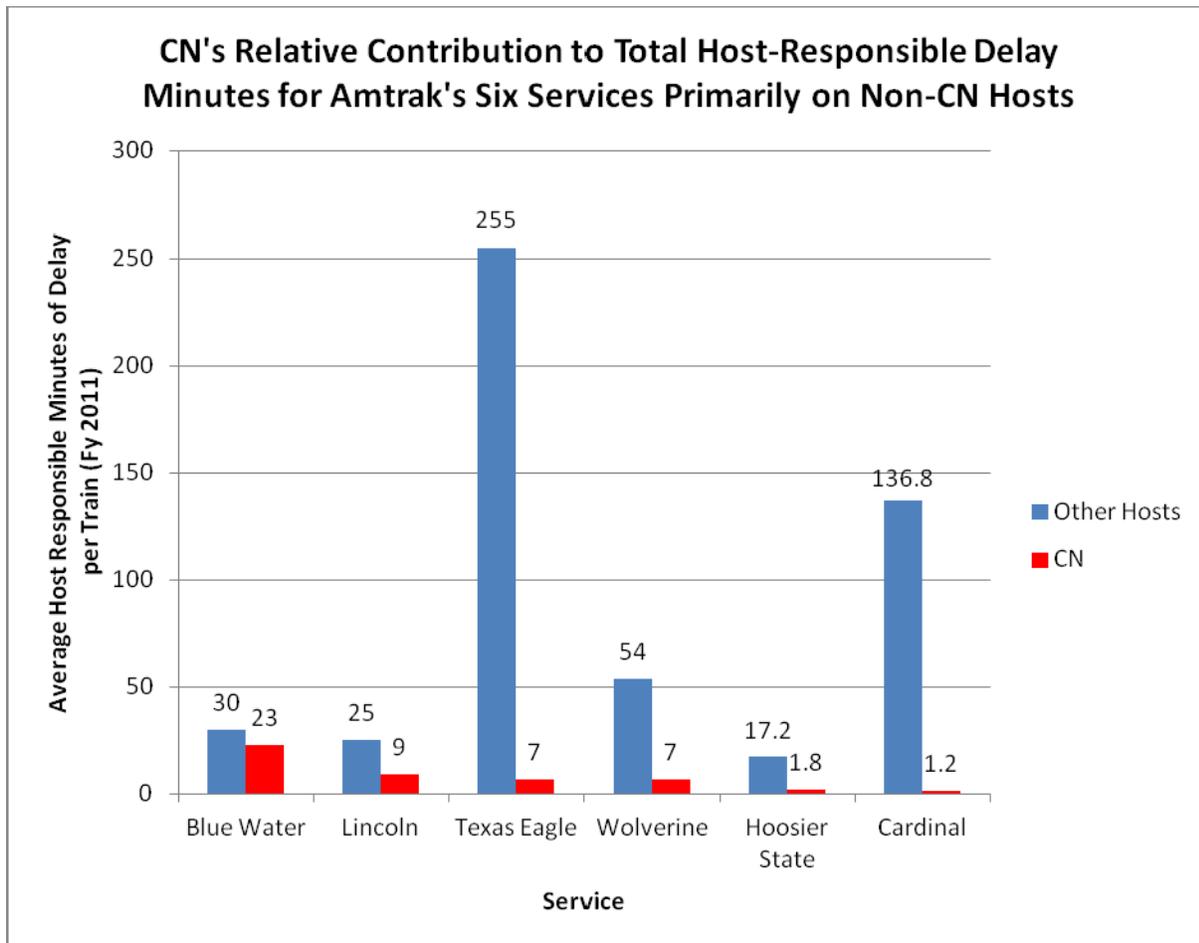
As the table shows, comparing HRD as measured by the PRIIA Metric can often be misleading, as, for example, CN’s relatively minor delay on the Wolverine service (7 minutes

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<sup>51</sup> Because each route includes segments (in most cases, Amtrak’s own) less than 15 miles for which Amtrak does not report HRD, the percentage of Amtrak-reported HRD attributed to each host is necessarily higher than if HRD were reported for the entire route.

per train) is roughly comparable under the PRIIA Metric to the relatively substantial delay on the NS portion of the route. Figure C below represents this table graphically for each of the six services for which CN controls less than 50% of the route.

**FIGURE C**



As these graphs plainly demonstrate, even if it relied on accurate and consistent data, Amtrak’s HRD per 10,000 train miles Metric would not provide a useful indication of where the most significant delays on a multi-host route are. If the objective is to get passengers to their destination on time on the Cardinal Route, for example, an investigation of the causes of the alleged average 1.2 minutes per train delay on CN’s lines will not achieve the objective. This is not to suggest that the Board should investigate the 99% of delay on the Cardinal Route that

occurs over other host carriers' lines. But the Board should be aware that CN's performance is of little if any consequence to PRIIA OTP on most of the routes encompassed by Amtrak's Petition, and that focusing on CN's performance on those routes would be missing the forest for a small tree.

**B. Amtrak's Route-Specific Allegations Concerning its Operations over CN Provide No Evidence of Poor Performance by CN.**

Although the Metrics and Standards do not provide useful indications of cause and responsibility for delays, Amtrak's Petition relies heavily on them. Once it moves beyond the Metrics and Standards, Amtrak's Petition has few specific allegations about causes of delay, and it fails to demonstrate poor performance by CN.

**Amtrak's Route-Specific Allegations.**

1. Illini/Saluki (Chicago to Carbondale, IL) (¶¶ 50-56, 87-93)

In general, CN agrees that Amtrak's performance on this service could be improved. As discussed in Section I.C.2., CN has, in fact, proposed that Amtrak consider a number of infrastructure improvements intended to address Amtrak's concerns in areas where Amtrak's service is experiencing significant delays, including delay Amtrak categorizes as FTI delay. Thus far, however, Amtrak has declined to consider such investments, even though they would address persistent problems and significantly improve Amtrak performance.<sup>52</sup>

The Petition alleges that the tracks utilized by this route are "owned almost entirely by CN." Pet. ¶ 51. The "almost" is important here. As shown on the schematic attached as Exhibit

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<sup>52</sup> Amtrak notes that there was additional financial support for doubling the service in this area. Pet. ¶ 52. Insofar as CN is aware, however, no corresponding money was allocated for infrastructure improvements to CN's lines in order to support that additional service. This has been the typical pattern CN has experienced with Amtrak – additional service is requested or added, but it is not accompanied by capital dollars.

A, Amtrak controls a 2.2 mile-segment that its trains must traverse to get between Chicago Union Station and the connection to CN's line at Clark Street. This segment is a frequent source of delay, as demonstrated by an analysis of the February Data.

In that month, on average, the two trains coming out of Chicago on Amtrak's short line were delivered 10 minutes late (Train #391) and 4 minutes late (Train #393).<sup>53</sup> By contrast, on the CN segment of this service Amtrak trains *made up* delay time on all four trains in this service, traversing the CN segment on average 9 minutes *faster* than scheduled. The experience of Train #391 on February 7, 2012, is illustrative. After just 2.2 miles of service on Amtrak's line, CN received the train 21 minutes late. Thus, even if the train performed as anticipated by its schedule on the CN portion of the route, it would fail the Endpoint OTP Standard and the All-Stations OTP Standard. On the CN segment, however, the train made up 7 minutes against the schedule.

Amtrak's allegation of a total of 24,666 minutes of FTI delay during FY 2011 on the CN segments of the Illini/Saluki Service, Pet. ¶ 55, must be understood in this context. This cumulative number of delay minutes amounts to approximately 17 minutes of FTI delay against pure run-time per Amtrak train. CN has not been able to develop the data for FY 2011, but based on the February Data, which shows that on average CN made up more time than it caused delays on this service, it appears that Amtrak's FTI figure greatly overstates any negative effects performance on CN lines likely had on Amtrak's ability to arrive on schedule. Indeed, it may well be that in FY 2011, as in February 2012, gains on the CN segment offset not just FTI but all HRD.

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<sup>53</sup> The Amtrak segment in Chicago may well have experienced similar delays on the inbound trains, but since such delays would have occurred after CN handed off the trains to Amtrak, those data are not available to CN.

In addition, Amtrak's poor performance on its short segment of this route illustrates how the HRD Metric is misleading. Even a relatively modest number of delay minutes is quickly magnified by the HRD Metric to show an enormous number of delay minutes per 10,000 train miles. This effect would be powerfully illustrated in the published PRIIA data by Amtrak itself if that data included segments less than 15 miles long, which would then include additional Amtrak host segments. The following figure illustrates this graphically. It shows the average delays in February for the two trains on the Illini/Saluki service that first move over Amtrak's 2.2 miles before connecting to CN's lines (10 minutes and 4 minutes) converted into minutes of delay per 10,000 train miles, and compares those figures to CN's average delay per 10,000 train miles for these same trains during FY 2011.

**FIGURE D**



This figure shows that when measured in terms of delays per 10,000 miles Amtrak’s own performance for movements out of Chicago’s Union Station appears far worse than CN’s for that service, in fact, by more than a factor of 20. Moreover, because published PRIIA data exclude host segments of less than 15 miles, Amtrak’s contribution to the overall performance of this service is not included in that data, leaving the false impression that the overall performance of this service is entirely attributable to CN.

In sum, the PRIIA data presented by Amtrak do not accurately reflect CN's performance for this service. Under the PRIIA Metrics and Standards, (a) there is no guarantee that the route will be credited with good OTP even though its performance on the CN segment was typically faster than scheduled, (b) HRD and FTI will be recorded on the CN segment with no credit for CN's success in making up time, and (c) if the PRIIA HRD Standard is to be considered, Amtrak fails to meet it by a far larger margin than it alleges CN has failed with respect to any service.

A better gauge of CN's performance is its Operating Agreement with Amtrak, which shows that it performs reasonably well on this service. During FY 2011, 79.14% of the trains arrived within their contractually allowed tolerance over CN's portion of the route, and CN earned incentive payments for trains in this service totaling \$323,172. Thus, in FY 2011, trains on this service averaged just under 80% OTP (within an agreed upon tolerance of just 10 minutes, unlike the PRIIA 15-minute tolerance) for the portion of the Illini/Saluki service that CN controls.

Amtrak also makes a handful of assertions regarding CN's dispatching for this service. It claims that it constitutes "a clear violation of Amtrak's statutory right to preference" any time its train is routed onto a siding while a Q train<sup>54</sup> remains on the main line. Pet. ¶ 56. Amtrak provides no specific dates and points to no specific instances of such an incident. As a matter of policy, CN does not prefer Q trains to Amtrak trains and does not fail to accord Amtrak trains preference to Q trains. And CN strongly disagrees that putting an Amtrak train into a siding to pass or meet with an approaching freight train is inherently a preference violation. As discussed and illustrated below, at times that may be the only option, and frequently it will be the best way

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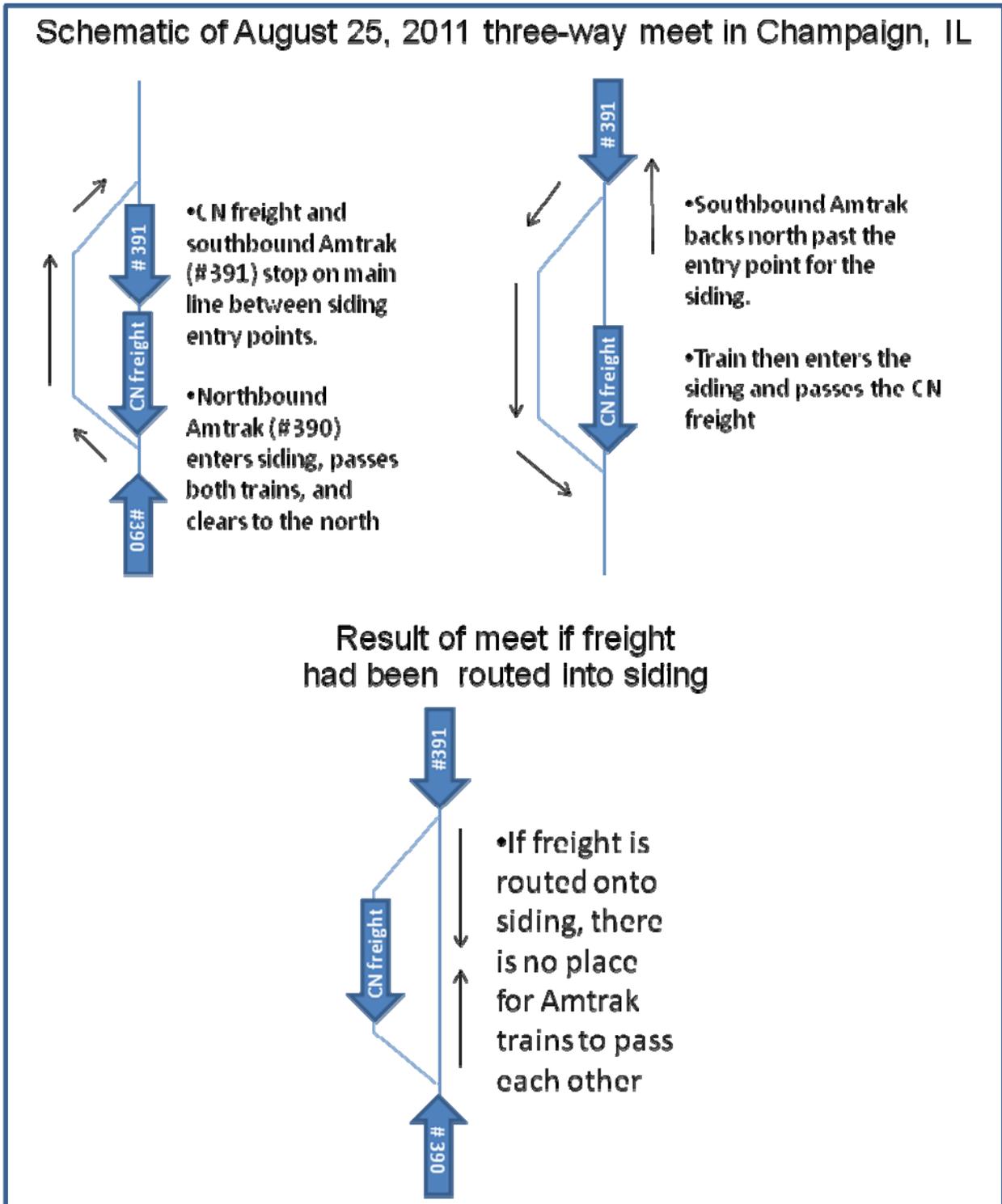
<sup>54</sup> A Q train is a premium intermodal train.

to expedite Amtrak trains (*i.e.*, leaving Amtrak on the mainline would actually lead to greater delay).

While CN strives to give Amtrak a main line, that is not always possible, especially when Amtrak trains arrive late to CN. When a meet with a freight train does occur, it is frequently preferable to keep the freight moving at track speed while utilizing a siding for Amtrak to pass. Because freight trains are generally substantially longer and much heavier than Amtrak passenger trains, they move much more slowly into and out of sidings than Amtrak trains. As a result, the fastest way for an Amtrak passenger train to pass or meet an oncoming freight train will often be for the Amtrak train to use the siding.

The allegation in paragraph 92 of the Petition regarding a particular incident of delay on August 25, 2011, which Amtrak cites as demonstrating mishandling of its trains and a failure to accord preference, actually demonstrates an appropriate use of a siding for an Amtrak train. The incident involved a three-way meet between two opposing Amtrak trains and a southbound freight train. Due to the track configuration in Champaign, the only way to get the two Amtrak trains past each other was to have the southbound Amtrak follow the freight on the main line so that both trains were stopped on the main line between the entry and exit points for the siding. This allowed the dispatcher to route the northbound Amtrak train through the siding, and, once it was clear of the northern exit of the siding, it allowed the southbound Amtrak train to back up, enter the siding, and pass the freight train. Had the freight train entered the siding instead to keep the main line “clear,” there would have been no way for the two Amtrak trains to pass each other. These alternative scenarios are as illustrated in Figure E.

FIGURE E



This is not evidence of a preference violation; if anything, it is an example of skillful dispatching in a difficult scenario.

With respect to the allegations in paragraph 93, the bulletin referenced by Amtrak that prohibits trains from running concurrently over a segment of track south of 16th Street was issued by CN as a safety measure after two incidents in which passing trains clipped each other. (One of those incidents involved two Amtrak trains; the other involved an Amtrak train and a freight train.) CN's policy and practice is to give Amtrak trains preference here as elsewhere. Indeed, there is a low probability of conflicts with freight trains at this location, as very little freight traffic utilizes this segment (approximately four trains per day), and while Amtrak provided no specifics regarding particular instances of delay to their trains, CN generally holds its trains far from this location, at 39th Street, as the arrival time for Amtrak's train approaches.

## 2. City of New Orleans (¶¶ 57-62, 87-95)

Performance on the City of New Orleans service, especially with regard to the Endpoint OTP Metric, has been relatively good, exceeding the PRIIA Standard for two of the last three quarters of FY 2011. This was one of the best performing long distance Amtrak services nationwide during FY 2011 – only two (of 15) long distance trains had better average Endpoint OTP (and only one averaged better than 80% Endpoint OTP for a full year (the Auto Train on CSX)).<sup>55</sup> While 11 other long-distance routes could have been suggested by Amtrak for investigation based on failure to meet 80% Endpoint OTP in two consecutive quarters in FY 2011 (and eight of them failed in every quarter), the City of New Orleans is one of only four

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<sup>55</sup> The Auto Train on CSX was the only long-distance service to exceed the Endpoint OTP Standard in every quarter in FY 2011. Underscoring the lack of connection between the OTP and HRD Metrics, the Auto Train violated the HRD Standard in every quarter of FY 2011. Conversely, the Crescent service – the only single-host long distance route to meet the HRD Standard in every quarter in FY 2011 – failed the Endpoint OTP Standard every quarter.

long-distance trains that did not have two consecutive quarters below 80% Endpoint OTP, and it thus does not qualify for investigation on that basis. Moreover, CN's data under its Operating Agreement with Amtrak shows that 84% of trains on this service during FY 2011 arrived within the agreed tolerance, and CN earned incentive payments for trains in this service totaling \$885,416.59.

The February Data demonstrates that the recent performance on this train is likewise positive. During February 2012, Train #59 arrived an average of 23 minutes early to Memphis (the midpoint station for the service) and 39 minutes early to Southport Junction (where CN's lines terminate, approximately four miles from the New Orleans station). Similarly, northbound Train #58 arrived an average of eight minutes early to Memphis and 30 minutes early to Clark Street (where it moves onto Amtrak lines, approximately two miles from Chicago Union Station). On average, 90% of the trains on this route arrived on time for purposes of the CN-Amtrak Operating agreement.

Largely ignoring this route's relatively good Endpoint OTP, Amtrak criticizes CN's service based on All-Station OTP. As explained above, however, the All-Stations OTP Metric did not apply in FY 2011, and, in any event, it cannot meaningfully be applied until Amtrak allocates recovery time over the route. That problem is significant on this route: over 50% of the total recovery time is allocated to two stations – Memphis (the midpoint) and the endpoint (either Southport Junction or Clark Street).

The City of New Orleans Service is also one of Amtrak's best performing for delay minutes – only three long-distance trains had fewer delay minutes per 10,000 train miles. Amtrak cites some numbers that appear substantial viewed out of context (*e.g.*, 43,780 minutes of total FTI delay for FY 2011), but when that is broken down by train, it equals 62.2 minutes

per train, which is just 5% of the total schedule time. More importantly, it is less than half the delay recovery time provided in the schedule for these trains, and, when considered with all other HRD Amtrak has attributed to CN on this route, total host delays remain below the total recovery time provided for the train.

As for Amtrak's table comparing services of similar length, as discussed above in Section II.A., that exercise is not useful because the on-the-ground facts and circumstances that contribute to delay tend to be unique to individual lines, and not driven by route length. In this case, those on the ground facts help to explain the challenges to hosting Amtrak trains for this route. To remedy some of those challenges, as discussed above in Part I.C., CN has presented to Amtrak nine detailed infrastructure improvement proposals that would significantly reduce delay and improve performance on this route. Amtrak has thus far refused to seriously consider those improvements.

With regard to Amtrak's vague allegations regarding CN's supposedly "unlawful dispatching practices" and "choices" (Pet. ¶¶59, 62), CN cannot respond to nothing, and nothing is all Amtrak offers to support its loose allegations. Amtrak vaguely claims that supposedly high amounts of FTI (as measured in various fashions by Amtrak) "strongly suggest" that CN has engaged in a pattern or practice of failing to accord Amtrak statutory preference, (¶¶94-95), but , as explained above (Part II.A.), Amtrak's FTI data does not measure preference, references to the percentage of passenger trains with some FTI and to the number of FTI "incidents" per train are particularly meaningless as they are not accepted PRIIA measures or standards, say nothing about the length or nature of such delays, and provide no indication that such delays in any way involved a failure to accord statutory preference. With regard to Amtrak's general allegations regarding high amounts of delay and FTI on certain segments of this service south of

Carbondale, these are specific areas where CN identified infrastructure improvements that could address Amtrak's concerns and improve performance.

With respect to the specific allegations in paragraph 95, both the CDR and CN's records indicate that Amtrak Train #59 was delayed on November 22, 2011 between Greenwood and Yazoo City, but for 33 minutes (not 65 as alleged) and due to a meet of two northbound trains, not due to a freight train ahead switching cars.

3. Blue Water (¶¶ 63-67, 96-97)

Unlike the Illini/Saluki and City of New Orleans services, which operate almost entirely over CN, less than half the route miles of the Blue Water service are over lines controlled by CN. Likewise, less than half the total HRD minutes on this service are attributed to CN - just 44%. The published PRIIA data attribute to NS, which has just 19% of the total route (61 of 319 miles), responsibility for approximately 42% of total delay minutes on the route. The remaining 14% of delay is attributed to Amtrak itself (which operates approximately 100 miles of the route). Therefore, there is no evidence that CN is the primary driver of OTP issues for this route.

In fact, in accordance with CN's Operating Agreement with Amtrak, which incorporates agreed upon tolerances, 91% (657 of 723) of Amtrak's trains were on time over CN's segment during FY 2011. CN's performance was strong enough to earn a total of \$507,000 in incentives under that agreement.

A number of issues that affect Amtrak's performance on this service are beyond CN's control. Perhaps most importantly, largely due to Amtrak's inaction, beginning in July 2010, NS downgraded the speed on a portion of its line between Kalamazoo and Battle Creek and between

Battle Creek and Dearborn.<sup>56</sup> NS then instituted a second major downgrade around February 2011. These downgrades severely affected this service: as a result, Amtrak trains began arriving onto CN's lines from NS anywhere between 30 and 90 minutes late. This problem has driven down OTP, and also caused Amtrak Train #364 (traveling east from Chicago to Port Huron) to arrive erratically out of slot, significantly impeding planning and coordination by creating conflicts with both CN's scheduled freight trains and, at times, other Amtrak trains. Consequently, despite CN's best efforts, these trains are frequently unable to move over its line without some delays for meeting and passing freight trains.<sup>57</sup>

The NS track downgrade and resulting decrease in speeds also caused delays for Blue Water Train #365 (which operates west from Port Huron to Chicago), even though that train is handed off from CN to NS near Battle Creek. When Amtrak's Blue Water Train #365 arrives earlier to Battle Creek than Amtrak's Wolverine Train #351 (which arrives in Battle Creek on NS from the Detroit area), Amtrak asks CN to hold Train #365 north of Battle Creek to allow Train #351 to pass through Battle Creek first. The conflict between these two Amtrak trains became a much more common occurrence following NS's downgrade of its line between Dearborn and Battle Creek.

More generally, as discussed above in Section II.A., Amtrak's HRD and FTI data ignore time that a host carrier can sometimes make up en route. For example, during February 2012, 23 of the 28 trains from Battle Creek to Port Huron and 19 of the 28 trains from Port Huron to

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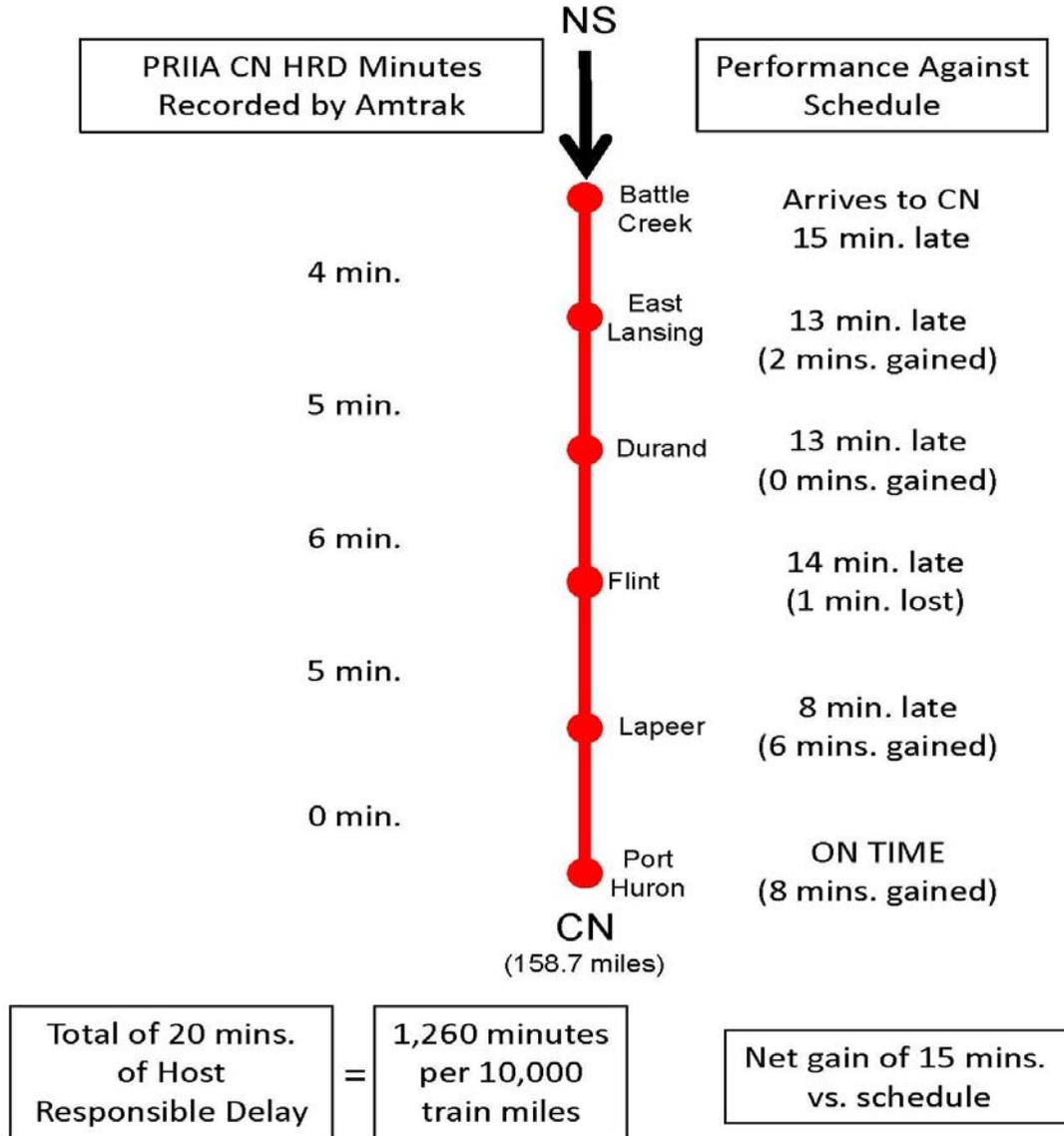
<sup>56</sup> For more than three years, Amtrak had been aware that at the end of 2010, its track maintenance agreement with NS would expire, and that NS would likely no longer maintain its line in Michigan over which Amtrak operates at a level that would permit Amtrak to operate at schedule speed. Amtrak apparently did nothing during these three years to prepare for the inevitable reduction of speeds of its trains on the NS line.

<sup>57</sup> According to the PRIIA data, FTI accounted for, on average, 12 minutes of delay per train on CN's portion of the route during FY 2011.

Battle Creek arrived ahead of schedule. In addition, of the 6 trains CN received more than 5 minutes late in Battle Creek, CN made up time against the schedule on every one. Figure F illustrates how this can occur.

**FIGURE F**

**Host Responsible PRIIA “Delays” Do Not Equal Schedule Delays Because Amtrak Does Not Offset Delays by Segment vs. Schedule Time\*  
[data is illustrative only]**



• Amtrak records delays anytime a train exceeds “pure run time” between two segments, even if that train makes up time against the schedule (which is the sum of pure run time, recovery time & miscellaneous time) or makes up time in a different segment of the route.

Finally, the allegations in paragraph 97 of the petition involve three particular dispatching decisions related to Train #365 on three different days in October 2011. One cannot precisely

recreate the decisions of dispatchers months after the fact, or the real-time network and operating conditions that would have influenced their decisions, but based on information CN has been able to obtain, it is evident that Amtrak's allegations regarding a handful of dispatching decisions out of many thousands do not demonstrate a failure to accord Amtrak its statutory preference even in those cases, much less suggest a pattern or practice of failing to do so.

The October 13, 2011 incident involved a challenging dispatching decision when two freight trains that were working on the main lines in the Battle Creek yard were unable to complete their work prior to the arrival of the Amtrak train. (The trains had arrived 1½ and 2 hours earlier.) It appears the dispatcher anticipated the trains could complete their work prior to the arrival of the Amtrak train, and when they could not, there was no way to expeditiously clear them off the main line in order to allow the passenger train to pass. CN's dispatcher proposed, and Amtrak's conductor accepted, a more expeditious solution, which was to have the Amtrak train move through the Battle Creek yard, thereby bypassing the freights. This resourceful measure proposed by CN's dispatcher was successful, in that the three passengers who disembarked at the next station – Battle Creek – were delayed by only 2 minutes against the schedule.

The other two incidents each involve the same train in the same area near Port Huron. That particular area presents particularly challenging dispatching issues due to Amtrak's station location,<sup>58</sup> which is located off of one of the four main lines that feed into the single-tracked international Port Huron tunnel. This area can become congested due to waiting to enter the

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<sup>58</sup> The City of Port Huron has expressed an interest in moving the station, for its own commercial development reasons, to a location that should be less challenging from an operational perspective.

tunnel, waiting (for unpredictable lengths of time) to clear customs, and picking up or setting out cars in a nearby yard.

With respect to Train #365 on October 20, 2011, it is correct that departure from the station was delayed, but Amtrak's claim that this delay was due to CN occupying 4 mains is misleading. Amtrak's station is off of the 4th main, but there is only one main on which it can enter or exit the station, and when it does so it quickly occupies a second main. In this case, both mains were not available to Train #365 because of a freight train for which there was no unoccupied siding of sufficient length. Amtrak complains that it had to follow this train upon departing the station, but there is a simple explanation: there was no available siding that Amtrak could have used to pass the freight train (two were occupied and one was too small to fit the freight train). Amtrak, in fact, passed the freight at the earliest opportunity, and despite these initial delays .with the smooth operation that CN was able to afford the train over the rest of its route, Train #365 was able to make up time against its schedule, and arrive at the Battle Creek station 2 minutes ahead of schedule.

Amtrak's last dispatching related complaint, regarding an incident on October 23, 2011, similarly involves a train departing west from the Port Huron station. Amtrak complains that it had to follow a freight train for 17 minutes to Lapeer, despite the availability of sidings between Port Huron and Lapeer. One cannot be assured of the reasoning of the dispatcher in this, or other cases months after the fact, but the dispatcher may well have believed in this case that slowing the freight train to enter a siding to allow Amtrak to pass it would delay the Amtrak train more than allowing them both to run at track speed to Lapeer, at which point the Amtrak would have to slow to a stop at the station. This is especially possible because freight trains on this segment are able to maintain track speed almost as fast as passenger trains (60 mph for freight vs. 65 or

70 for passenger). Moreover, this dispatching decision met with some success, because, like the October 20th train, by the time this train reached Battle Creek (the last station on the CN portion of the line) it was 15 minutes *ahead* of its schedule.

#### 4. Wolverine (¶¶ 68-72)

For FY 2011 Amtrak attributed only 11% of HRD minutes for the Wolverine Service to CN, equal to an average total of seven minutes of HRD minutes per train. The two other carriers involved in the service – NS and Amtrak – both control larger portions of the route and, according to Amtrak, cause more delay. According to Amtrak’s PRIIA data, NS controls 58% of the route and is responsible for 75% of the delay minutes, while Amtrak controls 33% of the route and is responsible for 13% of the delay minutes. Understandably, therefore, Amtrak does not make specific allegations regarding OTP on this route.

Amtrak’s allegations instead focus on its FTI Metric for this service. CN’s 26.5-mile portion of the Wolverine service, however, is one of the shortest segments for which Amtrak publishes PRIIA data.<sup>59</sup> Because of that, it is subject to significant distortion under the PRIIA

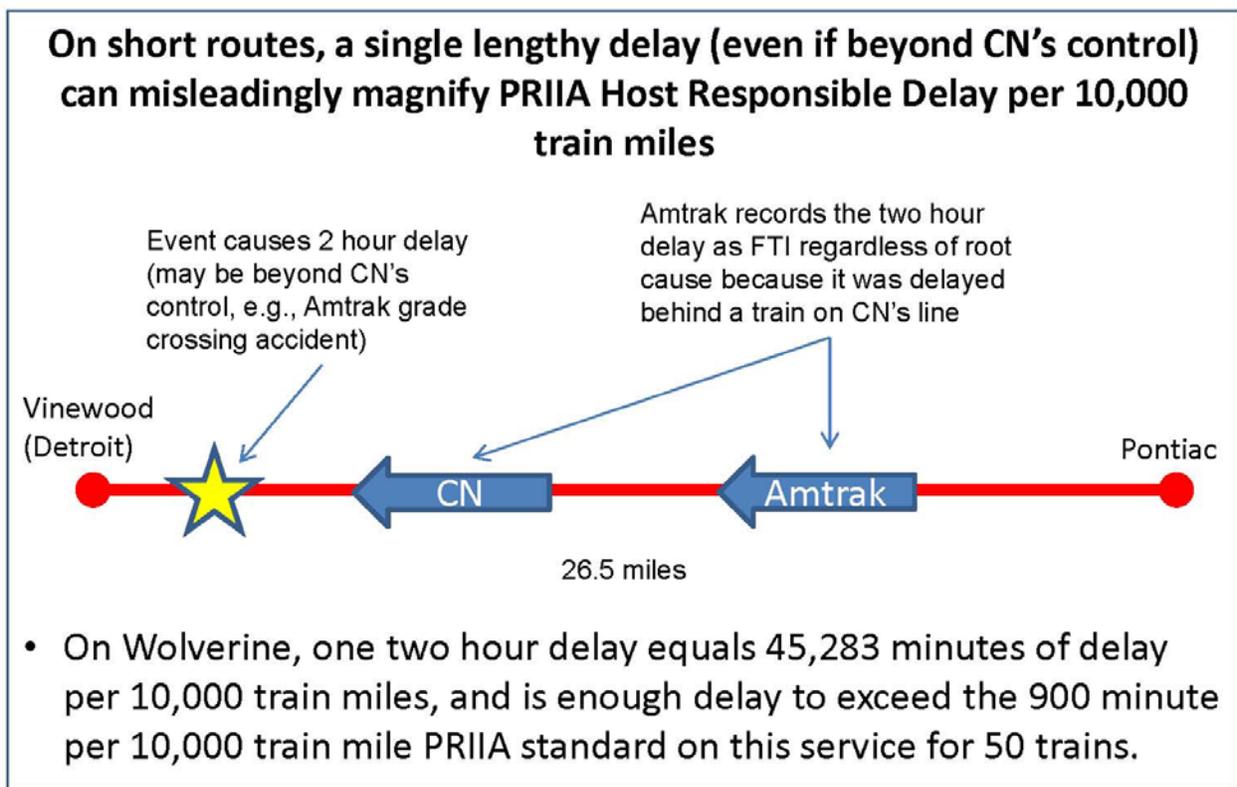
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<sup>59</sup> Only a 22-mile segment of BNSF on the Pacific Surfliner and a 24-mile segment of the Vermont Railroad on the Ethan Allen service are shorter. This illustrates the misleading nature of Amtrak’s repeated use of “national average” on routes “of similar length” in its tables. First, given the magnifying effect of HRD on short lines, the inclusion of lines almost four times as long as the Wolverine (*i.e.*, 100 mile segments) is likely to have a distorting effect. Thus, even assuming that comparing lines by length had been shown to have some validity (which it has not), this grouping would appear invalid. Second, inclusion for comparison of a line such as the Ethan Allen, which is a low density line on a shortline railroad in a rural area, illustrates the fallacy that comparisons based on mileage are somehow particularly meaningful. Such comparisons ignore what are likely to be the most salient features of particular routes with respect to issues of delay, such as the levels of capital investment by Amtrak, the nature of Amtrak’s schedules, the level of congestion on the lines in questions, the number of host carriers on the route, the number of interlockings along the route, maintenance and weather issues, and other route- and track-specific characteristics. The Ethan Allen route on the Vermont Railroad is clearly quite different – it may not have FTI as high as the Wolverine Service, but it has much higher HRD per 10,000 train miles for FY 2011 (9,258 for Ethan Allen versus 2,588 for the Wolverine Service on CN).

Metrics for all of the reasons described above in Part II.A. Delays that are small in terms of minutes per train, in this case, **average FY 2011 FTI per train of two minutes**, appear large when translated into Amtrak’s delay minutes per 10,000 train miles FTI Metric.

As Figure F demonstrates, in addition to short routes being subject to the magnification of delays under the FTI Metric, they are also subject to potential distortion from even a single lengthy delay (which may not even be within the host carrier’s control).

**FIGURE G**



Turning to the more revealing measure of FTI delay minutes per train, in the case of the Wolverine Service, it is remarkable that it experiences such low levels (two minutes per train). Amtrak attributes to CN delays at three interlockings controlled by Conrail along the short route between Pontiac and Vinewood that are beyond CN’s control. As discussed below with respect to the Lincoln and Texas Eagle services, Amtrak does so even when CN has properly requested a

signal and the delay is the result of congestion on Conrail's line or Conrail's failure to respond timely to the signal request.<sup>60</sup>

Amtrak also wrongly attributes delays to CN at Baron and Gord where trains move between the lines of CN and NS. For example, according to a CDR for Train # 355 on November 7, 2011, Amtrak attributed 12 minutes of delay to CN due to signal problems at Gord, which is a signal controlled by NS. In addition, on November 13, Amtrak attributed to CN four minutes of delay to Train #355 at Gord when it was delayed moving off of the CN line to the NS line due to a meet with another Amtrak train. In neither situation did CN cause the delay at issue, and the attribution of delays at these interlockings can misleadingly inflate the delay attributed to CN.

Further, as with the Blue Water service, this service was affected by NS downgrades of portions of its line between Battle Creek and Dearborn beginning in July 2010, and continuing into 2011, which caused Amtrak's trains to arrive erratically out of slot.<sup>61</sup> Nonetheless, Amtrak

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<sup>60</sup> For example, on October 7, 2011, Amtrak cited what it described as "three major FTI delays," which Amtrak Train #351 incurred at Milwaukee Junction, a location controlled by Conrail. These three incidents caused 119 minutes of delay, all of which were counted against CN as HRD. Similarly, on February 7, 2012, Amtrak charged CN with three minutes of HRD (though in this instance it was coded as "DCS" (Signals) rather than FTI) for delay caused by Conrail to Train #350 at Milwaukee Junction. (Due to the shortness of CN's portion of the Wolverine segment, this three-minute delay is equivalent to 1,123 minutes of HRD per 10,000 train-miles.) And on February 23, 2012, Amtrak charged CN with 36 minutes of FTI for a similar delay caused by Conrail to Train #355 – the equivalent of 13,585 of HRD per 10,000 train-miles.

<sup>61</sup> A year after these downgrades began, Amtrak finally indicated that it wished to change its schedules to incorporate the delays on the NS segments of the route. CN analyzed and responded to an initial and then a revised proposed schedule from Amtrak, only to be told last month (*i.e.*, February 2012) that Amtrak now wishes to again withdraw its earlier proposal and have CN analyze a third proposal. Meanwhile, during this process, trains for the Blue Water service have continued to arrive erratically out of slot.

misleadingly attributes to CN, as FTI, delays caused when Amtrak trains arrive late and unpredictably, and thus unavoidably find themselves behind freight trains.

Amtrak's petition also alleges (Pet. ¶ 72) that CN has so little freight traffic between Pontiac and Vinewood that it plans to remove one of its main tracks. CN believes a second track in this area would not be necessary if Amtrak could run its trains on time for the non-CN portions of this route. Amtrak, however, has not been able to do so. Accordingly, recognizing that retention of this line would primarily be caused by Amtrak's service requirements, CN asked Amtrak to contribute to the necessary rehabilitation necessary to retain it. Amtrak refused. Nonetheless, rather than remove the second main, CN absorbed the full cost of rehabilitation itself, with no contribution from Amtrak.

5. Lincoln and Texas Eagle (Chicago to Joliet) (¶¶ 73 – 79)

Amtrak's complaints concerning CN's performance on these services serve mainly to highlight the limitations of the PRIIA data and the misleading nature of Amtrak's petition. CN's participation in these services is limited to a 35.7-mile segment between Chicago and Joliet.<sup>62</sup> That represents less than 13% of the Lincoln route and less than 3% of the Texas Eagle route. Nonetheless, Amtrak seeks to attribute what it views as poor OTP performance for these services to CN's performance on this short segment. Its evidence is CN's FTI delays per 10,000 miles as measured using Amtrak's PRIIA Standards. According to Amtrak, "Host Responsible Delay on CN's 35.3-mile [sic] Chicago-to-Joliet segment is responsible for a significant amount of the delay minutes and lateness that Amtrak trains experience on these routes." Petition at ¶ 77.

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<sup>62</sup> The Petition incorrectly states that this distance is 35.3 miles, while Amtrak's quarterly PRIIA reports state it as 37 miles.

A closer look at data for CN's portion of this route paints a starkly different picture. The asserted delays are not as substantial as Amtrak suggests, and fall within the schedule tolerances for the route: Amtrak's FY 2011 data amounts to assigning to the CN portion of the route an average of just nine minutes of delay per train in the Lincoln service, and an average of just seven minutes of HRD per train for the Texas Eagle service.

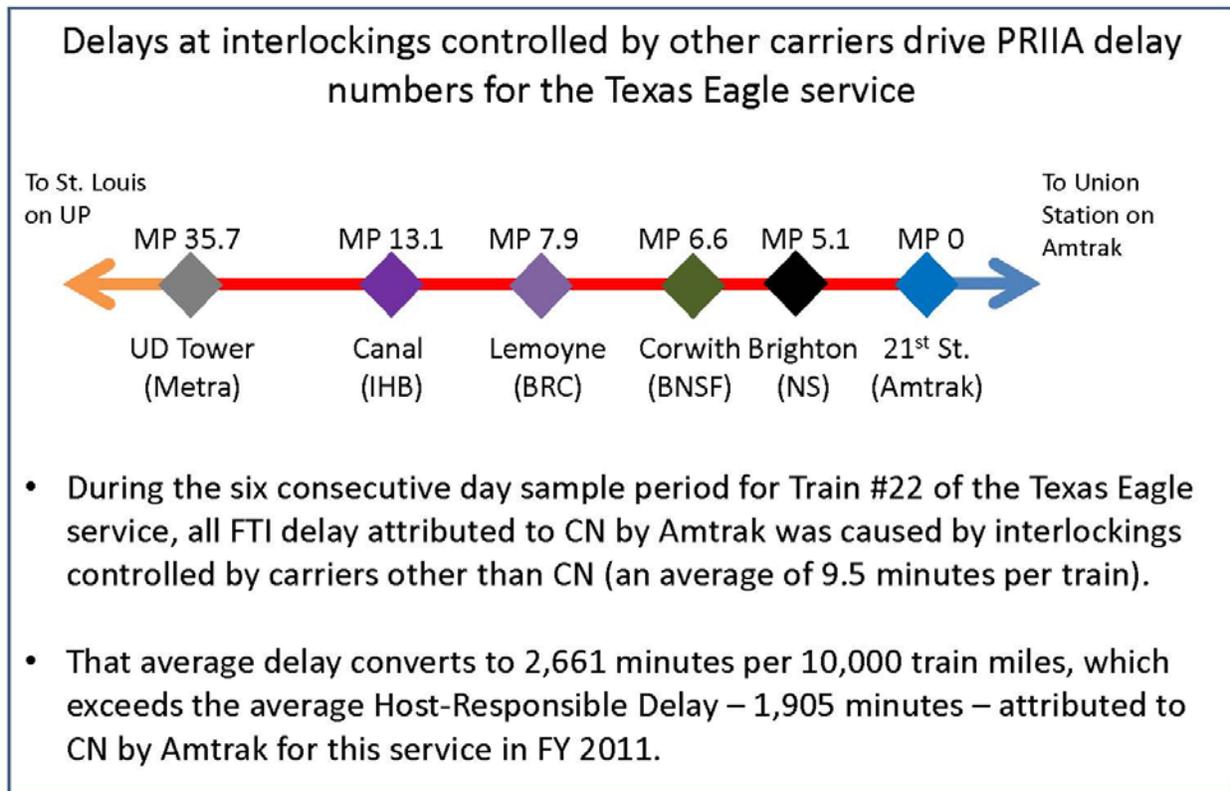
But the more fundamental point is that Amtrak's data are misleadingly inflated. The detailed data gathered by CN for February 2012 show that for the overwhelming majority of trains in this service the CN segment actually *made up time* against Amtrak's schedule. The quality of CN's efforts for these trains is further confirmed as measured by the CN-Amtrak Operating Agreement, under which CN's OTP exceeded 80% for both services during FY 2011, and CN earned incentives totaling over \$200,000.

Moreover, the FTI that Amtrak cites for these services as demonstrating "high levels of CN-responsible delay" (Pet. ¶ 79) consists mainly of delays at interlockings that are beyond CN's control. As can be seen from the schematic below, there are six interlockings along the 35.7 miles of the Joliet Sub (including four within an eight-mile stretch) that are controlled by a variety of other carriers. All CN dispatchers know that it is part of their job to timely request a signal for the Amtrak trains, and they do so as a matter of course. In some cases, that request is automatically received by the other carrier and registers as a light on their dispatching board. In other cases, it requires a phone call from CN. CN's dispatchers not only make an initial call, but if the timing of Amtrak's trains changes appreciably, they make follow-up calls.

Given the short length of the route, delays at these interlockings can quickly magnify when expressed on the basis of delay per 10,000 train miles. CN analyzed the CDRs for Train #22 (a Texas Eagle train that runs from San Antonio (by way of St. Louis) to Chicago) for six

consecutive days (January 5, 2012 through January 10, 2012). The results of the delay from those CDRs are described in the following figure, which also provides a schematic showing the relative location of each of those interlockers along the CN portion of the route.

**FIGURE H**



Remarkably, as this figure notes, all FTI delay attributed to CN by Amtrak for Train #22 during the sample period was due to delays at interlockings not controlled by CN. And such FTI was the bulk of all HRD for the movement.<sup>63</sup>

<sup>63</sup> Although also not a rigorous scientific sample, CN reviewed a larger set of additional CDRs, and they showed the same result – 100% of the FTI assigned by Amtrak (for both Trains #21 and #22) was due to delays at interlockings not controlled by CN. Moreover, some non-FTI HRD on these trains was also attributed by Amtrak due to delays (such as signal failures) at these interlockings. When all of these delays that are beyond CN’s control were removed, CN’s total delays per 10,000 train miles for these movements met the PRIIA Standard (*i.e.*, they were well under 900 minutes per 10,000 train miles).

CN has repeatedly pointed out to Amtrak that classifying delays at interlockings controlled by other carriers as HRD/FTI attributable to CN is misleading. Amtrak has acknowledged as much in the Operating Agreement, which for Amtrak trains on GTW provides that such delays are not to count against it, Operating Agreement, App. VI, Part D.10, and for Amtrak trains on IC provides that such delays will not count against CN so long as CN has properly requested a signal, *id.*, App. V, Part A.1.g.

In its Petition, Amtrak asserts that the delays at interlocking not controlled by CN are, in fact, attributable to CN's failure to request passage for Amtrak through those interlockings. Pet. ¶ 78. Amtrak, however, offers no support for that claim. As discussed above, CN, as a matter of course, makes such requests as soon and as clearly as it can. CN should not be held responsible when other carriers are either unresponsive or unable to move Amtrak's trains through busy interlockings without delay.

Moreover, Amtrak's assertions regarding delays at interlockings highlight Amtrak's failure to assume any responsibility to address its own concerns. First, if Amtrak were better able to manage its own schedules coming out of Chicago Union Station or entering CN's lines from the south, it would doubtless help the non-CN carriers that control the interlockings to avoid delaying Amtrak trains. Second, whereas Metra, which operates over much of this same route, has made it a priority to work with the carriers that actually control these interlockings to anticipate and plan for the arrival of their trains, Amtrak has done little or nothing in that regard. Indeed, as discussed in Part I.C.1, Amtrak has even declined to participate in the COP program, which is specifically designed to provide carriers with information concerning the location of their trains within the Chicago Terminal area, where all of these interlockings are located.

6. Cardinal and Hoosier State (Chicago Terminal) (§ 80)

The 1,141-mile Cardinal service and the 175-mile Hoosier State service each run over a 5.8-mile CN segment in the Chicago terminal area.<sup>64</sup> Since CN's portion of the route is 0.51% and 3.32% respectively, it is unsurprising that Amtrak makes no effort to argue that this small segment is a significant contributor to the OTP failings of these services.

Instead, Amtrak cites large numbers of HRD per 10,000 train miles to suggest that CN does not perform adequately. These figures, however, are merely examples of the magnifying effect of Amtrak's HRD per Train-Miles Metric for delays on very short routes that is discussed above with respect to the Wolverine service. On a per-train basis, the HRD claimed by Amtrak is trivial, amounting to an average of 1.2 minutes on the Cardinal service and 1.78 minutes on the Hoosier State service. If FTI were responsible for 67% of that delay, as alleged by Amtrak, then it would account for just 0.8 minutes and 1.19 minutes of delay, respectively. This short segment is not a significant cause of Amtrak's underperformance for these services.

7. Amtrak's miscellaneous allegations and assertions regarding communications and operational protocols (§§ 99-115)

Amtrak's allegations and out-of-context quotes regarding CN's communications or operational protocols are in no way related to any issue concerning statutory "preference over freight transportation in using a rail line, junction, or crossing." *See* 49 U.S.C. § 24308(c). Amtrak's vague suggestions (§§ 100-101) that the substance and tone of CN's communications with Amtrak regarding Amtrak questions concerning past data or delays is somehow indicative of a failure to accord Amtrak trains statutory preference is misplaced. CN has frequently in the

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<sup>64</sup> Because the segment is less than 15 miles long, it is not included in Amtrak's quarterly PRIA reports.

past responded to Amtrak's inquires – although it is under no contractual requirement to do so for every Amtrak request. In any event, post-hoc communications related to past incidents of delay, by their very nature, cannot violate Amtrak's statutory preference, nor do they indicate a pattern or practice of CN disregarding that obligation. Moreover, far from Amtrak being receptive to key information concerning the causes of delays, when CN offered in the past to provide Amtrak with real-time information regarding the root causes of particular delays, so that neither Amtrak nor CN would need to spend time, effort, and money researching those causes long after they had occurred, Amtrak declined CN's offer.

Amtrak's notion (Pet. ¶ 101) that CN has routinely declared itself unencumbered by its statutory obligation to afford preference to Amtrak trains when they arrive out of slot is similarly groundless. Although CN has repeatedly made clear to Amtrak that out of slot trains create additional operating challenges, CN works diligently to move every Amtrak train to its endpoint as close to its scheduled run time as possible, regardless of how late it arrives on CN.

With respect to Amtrak's supposed effort to reach out to CN concerning operating issues (Pet. ¶ 102), as discussed above in Section I.C., since adoption of PRIIA and prior to the filing of its Petition, they largely consisted of requests that CN unilaterally solve Amtrak's operating issues. And when CN offered potential solutions involving particular infrastructure investments, Amtrak refused to seriously explore them. All the while, Amtrak offered no solutions of its own.

In addition to offering possible infrastructure investments, CN has frequently negotiated schedule changes and made operational adjustments to accommodate Amtrak and seek to minimize delays. Amtrak's quotes from the Nordling Letter (at ¶ 102) concerning potential changes to freight schedules is therefore particularly odd. In general, the Nordling Letter speaks for itself. CN notes, in addition, however, that preference has never been interpreted by DOT or

the Board to require railroads to adjust their schedules to accommodate Amtrak without any regard to impacts on their freight service, as Amtrak appears now to suggest.

With respect to Amtrak's allegations regarding the late issuance of bulletin orders (Pet. ¶¶ 110-113), CN has reviewed the bulletins that were sent to the three Amtrak trains, as well as the conversations between the Amtrak conductors and the CN dispatchers, and the facts available to CN paint a starkly different picture from the one described by Amtrak.<sup>65</sup> In all three of the cases described in the Petition, the necessary bulletin orders were sent by CN prior to the Amtrak train's scheduled departure time, and two of the three delays appear to have been caused or exacerbated by communications failures between fax machines.<sup>66</sup>

Amtrak's discussion of these events is misleading, in part because it confuses two types of bulletins - Tabular General Bulletin Orders ("TGBO"), which are sent by CN's dispatchers to each train at its point of departure, and System Operating Bulletins ("SOB"), which are broader in reach, only occasionally updated, and are issued during normal business hours by CN's Division Administration to the Operations Supervisors (including Amtrak's) for each railroad that operates over CN. While it is the responsibility of CN's dispatchers to timely provide TGBOs to each crew prior to its movement over CN, it is the responsibility of Amtrak Operations Supervisors to make the SOBs available to the Amtrak crews at their on-duty locations. Only if the SOBs are not available at their on-duty location do the Amtrak crews contact CN's dispatching center to request them. Moreover, a dispatcher can authorize a crew to

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<sup>65</sup> Late issued bulletin orders are a common enough across the Amtrak system to be specifically provided for in Amtrak's PRIIA codes under "RTE".

<sup>66</sup> In two cases, it appears the issue may have been exacerbated by failures of the fax machines used to send and receive the bulletins. Moreover, because the bulletins are sent to Amtrak via fax, it is also possible that the fax went through, but that an Amtrak employee inadvertently picked it up from the machine and put it in a location where the Amtrak crew could not find it.

proceed without an updated SOB if the information contained in that bulletin does not pertain to their route.

That was the situation with first and third incidents cited by Amtrak in paragraph 111 of its Petition. Those two instances, both involving the Blue Water trains, were related to the relatively unusual situation where a CN SOB was updated while the Amtrak train was en route from Chicago Union Station to Battle Creek. In both instances, the timestamp on the TGBO indicates it was sent to Amtrak well in advance of the Amtrak crew's departure from the station, but it appears that the faxes were, for whatever reason, not where the crew expected them when they arrived at the station. Moreover, in both cases the Amtrak conductor asked for the updated SOB, even though, in both cases, the CN dispatcher informed the conductor that they were not applicable to Amtrak and that the Amtrak train was able to safely proceed without them. Thus, whatever delays were suffered by Amtrak's trains were unnecessarily lengthened by Amtrak itself.

With regard to the instance involving the Illini/Saluki train, while it appears that the initial TGBO erroneously included only the portion of the movement to Champaign, the issue was quickly corrected after a phone call from Amtrak, and an updated TGBO covering the entire route was sent immediately, 12 minutes prior to the train's scheduled departure time, well in advance of the time necessary for a timely departure. Further, the voice recording indicates that the dispatcher neither responded curtly nor hung up on the Amtrak employee.

Finally, Amtrak's allegation (Pet. ¶ 114) that inadvertently allowing a train crew's hours of service to expire on the mainline constitutes "operational negligence" is unfounded.<sup>67</sup> The

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<sup>67</sup> Amtrak itself is far from perfect in not allowing its crews to expire in locations that cause operational issues for other carriers. *See* note 30 *supra*, and Exhibit G (describing an

two examples cited by Amtrak demonstrate how unforeseen events (which are unfortunately inevitable in railroading) can affect even the most highly scheduled railroad. In the first case, an unexpected delay to a train ahead prevented the crew on the following train from reaching Champaign yard for a recrew, while in the second, NS's decision to deny a CN freight the signal at Brighton meant the train could not get to Corwith and clear of Cermak for a recrew. Both circumstances demonstrate common, inevitable, but unforeseeable events that every railroad experiences; neither is an example of "operational negligence" or a preference violation.

In sum, after 119 paragraphs describing events over the course of an entire year, Amtrak is able to point to no specific incident nor general pattern or practice that could plausibly constitute a violation of the statutory preference due an Amtrak train on CN's lines.

### **PART III -- PROPOSED SCOPE AND PROCEDURES FOR THE INVESTIGATION**

Amtrak's Petition presents important procedural and substantive issues of first impression, and the Board's action in response to it is likely to create an important precedent. The Board plainly has discretion regarding how to structure the proceeding. CN respectfully suggests that the Board focus on the following principles in exercising that discretion:

(1) Neither the Board's nor the parties' time should be expended on potentially onerous proceedings that may subsequently be determined to be futile and without lawful authority. Therefore, as we elaborate further in the attached Motion for Abeyance, because the PRIIA statute that provides the legal basis for this proceeding, and the PRIIA Metrics upon which Amtrak bases its Petition, are subject to a substantial constitutional challenge by the

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incident from June 22, 2011 in which an Amtrak crew died on Hours of Service on CN's mainline, causing over 7 hours of delay to CN's freight trains).

Association of American Railroads on behalf of host railroads, including CN, currently pending in the United States District Court, the Board should hold proceedings in abeyance pending that court's constitutional decision.

(2) The oft-stated common-sense premise of the RPSA and PRIIA statutory scheme and related regulations is that the keys to satisfactory performance of Amtrak service outside of the Northeast Corridor are adequate funding for Amtrak investment and infrastructure that it requires and cooperation between Amtrak, which owns the passenger trains, and host railroads, such as CN, over which those trains run. Satisfactory performance requires coordinated scheduling and good communication, which can only be achieved by cooperation, and, in some instances, capital investment, which requires Amtrak funding (insofar as the investment is for purposes of accommodating Amtrak) and host railroad cooperation.

As explained above, the RPSA expressly calls for agreements between Amtrak and host railroads and contemplates that those agreements will determine schedules and set performance standards, including OTP standards, with monetary incentives and penalties that are appropriately tailored to each individual Amtrak-host relationship and route. The rulemaking proceedings leading to the PRIIA metrics are also replete with recognitions that the way to achieve good performance on specific routes and route segments is through cooperation between Amtrak and the host railroad.<sup>68</sup> In this context, Congress's primary goal for the Board's

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<sup>68</sup> See, e.g., Metrics and Standards at 6-7 (stating that "FRA and Amtrak aimed to encourage cooperation between Amtrak and its individual host railroads" and that scheduling is "a topic for collaboration between Amtrak, its host railroads, and any sponsoring States"), 13 (encouraging "teamwork and goodwill among the parties" and that "stakeholders . . . work through [scheduling] issues in a collaborative manner"), 18 (acknowledging need for Amtrak, host railroad, and State sponsors to "collaboratively analyze and, as needed, modify train schedules"), 32 (providing mechanism for collaboration to adjust timetables and delay

investigation is clear: it is that the Board elucidate facts and make “recommendations” (49 U.S.C. § 24308(f)(1)) in order to facilitate cooperation between the parties that will improve performance going forward. Accordingly, the Board should focus primarily on forward-looking recommendations, and it should take every opportunity to enable and encourage the parties to resolve the matter by negotiation and/or mediation.

(3) In order to achieve the objective of “recommendations” that can lead to a cooperative solution, and consistent with the general need for the parties to work together, Congress instructed that the Board should take a broad, constructive look at all the issues, including not just Amtrak’s allegations against CN but also “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,” and “the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays.” 49 U.S.C. § 24308(f)(1). Accordingly, the Board should structure its investigation in a manner that enables it to clarify the nature, extent, and location of delay problems, and then to examine, in a balanced manner, all significant causes of delay. In doing so, insofar as its fact-finding efforts will lead to recommendations intended to serve as a basis for cooperation, the Board can freely use informal, albeit rigorously even-handed and transparent, procedures.

(4) Because the Board is charged with examining all significant causes of the delays and OTP failures encompassed by the Petition, and because the Petition encompasses delays and OTP failures for the route as a whole, including Amtrak itself and, for most of CN’s routes, other

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allowances under certain circumstances), 33 (describing collaborative efforts to attain metrics and standards).

host railroads, the Board's investigation could properly encompass Amtrak delays and, as it deems appropriate, delays on non-Amtrak and non-CN segments of those routes. Accordingly, unless it seeks to limit its inquiry to the nature and causes of delays that occur on the CN segments of the various routes (as to which the PRIIA OTP data relied on in Amtrak's Petition are essentially irrelevant), in order to ensure completeness, fairness, and accuracy, the Board may wish to consider inviting the participation of, and, if appropriate, seek information from, other host railroads (and also other persons whose activities may cause delays on the routes at issue, including railroads that control interlockings along Amtrak's routes).

(5) Because, pursuant to 49 U.S.C. § 24308(f)(1), and in light of the breadth of Amtrak's complaint, the Board's investigation potentially encompasses root causes for delays on eight routes spanning thousands of miles and multiple host railroads, an unstructured investigation has the potential to be unduly burdensome and unproductive. Accordingly, the Board should consider whether, at the outset, or as its inquiry progresses, it may wish, on its own motion or that of a participant, to focus its investigation on a subset of representative routes, route segments and/or issues, which the parties can help the Board identify. The Board could also impose, after consultation with the parties, a topic-by-topic structure for briefing and evidentiary statements. Such focus as is appropriate may yield points of compromise and/or recommendations upon which the parties can build in addressing cooperatively the issues faced across the broader network.

(6) Amtrak's preference-based request for compulsory relief under 49 U.S.C. § 24308(f)(2) raises very different issues from the broader investigation and recommendation process under 49 U.S.C. § 24308(f)(1), such that the two should be handled in separate phases. Under subsection (f)(1), the Board can elucidate the relevant facts and make constructive

recommendations concerning the full range of delay problems on the routes at issue through an informal process that does not require resolution of legal issues. In contrast, Amtrak's request for compulsory relief under subsection (f)(2) implicates a much narrower subject matter – just delays caused by alleged preference violations – and requires a more formal process. Before it could consider awarding compulsory relief under subsection (f)(2), the Board would need to address and allow briefing regarding the meaning of preference and the application of 49 U.S.C. § 24308(c). Then, because Amtrak's "preference" allegations assert a statutory violation and are claimed to provide a basis for imposition of "deterrence damages" (*i.e.*, fines) against CN, any Board findings as to those allegations would require, as a matter of due process and sound administrative procedure, rigorous procedural protections for CN, as the accused facing potential fines, in the nature of a formal adjudicatory hearing. For these reasons, and because the subsection (f)(1) investigation and recommendations may indicate that proceedings under subsection (f)(2) are inappropriate (*e.g.*, because the subsection (f)(1) proceeding indicates that conduct alleged to constitute a preference violation did not cause relevant delays, as required for any relief under subsection (f)(2), or because the Board's recommendations and the parties' responses thereto indicate that there is no need for compulsory remedies for "deterrence" purposes), CN respectfully suggests that the Board should first conduct a Phase I investigation pursuant to subsection (f)(1), and then consider whether a separate, narrower but more formal, Phase II investigation pursuant to subsection (f)(2) is merited.

In light of the foregoing principles, CN respectfully offers the following procedural steps for the Board's consideration:

- 1. After any replies are filed, the Board rules on simultaneously filed Motion for Abeyance.**
- 2. If and when proceeding continues, the Board should issue an order requiring mediation, as outlined below.**

Communications between CN and Amtrak during last summer and fall revealed a number of significant differences between the parties involving definable questions of law or policy suitable for guidance from a mediator (or resolution by the Board), and that do not require an extensive factual record. Those issues present the Board with the opportunity now to help the parties move beyond their impasse and into productive discussions.

In enacting PRIIA, Congress's goal was to establish a framework for the cooperation between Amtrak and host railroads that is necessary to improve the service provided by Amtrak's trains on the hosts' rail lines. To that end, under 49 U.S.C. § 24308(f)(1), Amtrak's Petition triggers a statutory opportunity for the Board to make "recommendations" to the parties. Board-supervised mediation would be entirely consistent with Congress's goal, the Board's role, and the public interest.

CN therefore requests the Board to enter an order requiring mediation and appointing a mediator. The Board could order the parties and the mediator to report on their progress at the end of a specified period, for example, 60 days, at which time the Board could decide on a course of action, which could include further discussions between the parties, the Board's own authoritative resolution of issues that are still causing impasse, or commencement of factual investigations.

By way of illustration, CN believes that guidance by a mediator with respect to the following issues would go a long way toward removing sources of impasse and revitalizing cooperative efforts:

*First*, should discussions be conducted with reference to PRIIA data or, instead, the realities on the ground? In CN's view, the agenda for the negotiations must be based on realities on the ground – what actually happened, why, and what might be done about it – and not solely

on PRIIA reporting data. The ultimate goal of collaboration is not to correct PRIIA data but to achieve solutions to actual problems.

*Second*, should the discussions focus only on causes that are within the actual control of CN, or should they focus as well on causes within the control of Amtrak? In CN's view, a productive approach to root causes and solutions (consistent with 49 U.S.C. § 24308(f)(1), which calls for a broad examination of causes) requires that Amtrak cooperate in identifying its own role in causing delays. Many and probably most delays have more than one cause, and many are attributable to Amtrak. Only a cooperative effort to identify all causes can make possible an integrated approach to priorities and solutions. The discussions could also focus on delays within the control of a third party if the purpose was to facilitate a joint approach by CN and Amtrak to work with such parties.

*Third*, should the discussions focus on opportunities for material improvements in OTP, even if short of the 80% OTP Standards? In CN's view, a proper goal of the negotiations is to achieve material improvements in OTP, even if short of the OTP standards. Discussions between CN and Amtrak hit a roadblock last year when Amtrak refused to consider capital improvements identified by CN, on the ground that the improvements would not necessarily result in complete compliance with the standards. Vilter Letter, at 1-2. As CN responded (Nordling Letter, at 3), CN considers Amtrak's insistence on a guarantee of compliance to be misconceived.<sup>69</sup> CN believes that demands for guarantees of outcomes that each party cannot

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<sup>69</sup> Amtrak's position with respect to its own capital improvements is also inconsistent with Amtrak's position concerning operating changes by the host railroad. In the Petition, Amtrak charges CN with not making operating improvements that would "eliminate, *or at least significantly reduce*, delays." Pet. ¶ 81 (emphasis added). Both operating changes and capital improvements can be worth doing even if they do not themselves result in complete compliance with the standards.

fully control, or insistence that any capital improvement must completely eliminate delays on a route or even a segment of a route, should not get in the way of real improvements.

*Fourth*, should the negotiations address operating changes separately from investment alternatives? In CN's view, operating changes and capital improvements should be considered on an integrated basis, in the recognition that operating changes also involve costs, and in light of the well-established principle that Amtrak pay for all incremental costs caused by passenger operations. The discussions should seek to identify the most cost-beneficial measures (and not simply the least-cost measures). Such an approach requires fact-intensive judgments – which underscores the need for the parties to work together cooperatively.

Thus, CN suggests that the Board order mediation, and that the mandate of the mediator include the provision of guidance on issues of law or policy that have caused impasse or that could do so in the renewed negotiations.

**3. Following mediation, or, if such is not ordered, immediately upon resolving the Motion for Abeyance, the Board publishes a proposed procedural order for comment, providing 20 days for public comments (including but not limited to Amtrak and CN comments), and encouraging comments outlining topics to be addressed and suggestions for initial narrowing of the investigation for purposes of manageability (e.g., focus on one or more test segment(s) first).**

**4. After considering comments, the Board issues a procedural order, setting procedure for Phase I (issues regarding PRIIA data, nature and causes of delays, and recommendations) and deferring Phase II (preference and compulsory remedies).**

**5. Phase I: delays, causes, recommendations and negotiations:**

- a. At all stages, Board encourages Amtrak and CN to negotiate, either to resolve whole proceeding or to narrow issues, and Board makes stays and/or mediation services available for that purpose.
- b. Amtrak, CN (and other parties, either to the extent they have a view of matters affecting Amtrak operations or delays on CN's segments or the Board has specified that its inquiry will extend to the entire route at issue) simultaneously brief, with appropriate evidentiary support:

- (i) the accuracy and significance of PRIIA data and metrics generally and as applicable to the routes at issue;
  - (ii) other measures and indications of the extent and location of delays and OTP failures along the routes at issue;
  - (ii) causes of delay that could reasonably be addressed by CN alone;
  - (iv) causes of delay that could reasonably be addressed by Amtrak alone;
  - (v) causes of delay that can only be addressed by mutual cooperation;
  - (vi) other causes of delay by Amtrak, CN, and third parties; and
  - (vii) proposed recommendations.
- c. Board exercises subpoena power in furtherance of causal investigation, as appropriate and on an even-handed basis; CN and Amtrak and other commenting parties have an opportunity to recommend (but not independently pursue) investigatory efforts by the Board; CN and Amtrak [and, as appropriate other carriers in any routes at issues] have the opportunity to negotiate.
  - d. Amtrak and CN simultaneously file replies, with appropriate evidentiary support.
  - e. Either by agreement of the parties or order of the Board, Amtrak, CN, and Board engage in confidential mediation proceedings before and/or after Board publishes recommendations.
  - f. If necessary, Board publishes proposed recommendations for public comment; Amtrak, CN, and public have 30 days to comment.
  - g. If necessary, Board publishes final recommendations pursuant to 49 U.S.C. § 24308(f)(1).
  - h. Parties have 60 days to negotiate in light of/otherwise respond to Board's recommendations.

**6. Phase II (preference and compulsory remedies):**

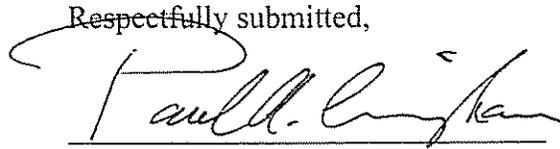
- a. If no agreement regarding Phase II has been reached by Amtrak and CN, Amtrak reports to the Board whether it believes proceeding to Phase II is appropriate, and, if so, states specific bases therefor (which may require a new pleading).
- b. CN has 30 days to respond/move to dismiss.
- c. The Board determines whether to proceed with Phase II.
- d. If Phase II proceeds, the Board provides for comments and briefs from CN, Amtrak, and interested third parties on whether and how to define "preference."
- e. If it wishes to in light of the Board's "preference" decision, CN has 20 days to seek relief under 49 U.S.C. § 24308(c).

- f. Parties may obtain Board-supervised discovery regarding Amtrak’s “preference” allegations.
- g. Formal adjudicatory hearing, including cross-examination, on Amtrak’s “preference” allegations.
- h. Briefing on (i) alleged “preference” violations; (ii) relief/justification under 49 U.S.C. § 24308(c); (iii) remedies: Amtrak first, then, after 30 days, CN.
- i. Board’s 49 U.S.C. § 24308(f)(2) ruling.

## **CONCLUSION**

For the reasons stated above and in the simultaneously filed Motion for Abeyance, CN respectfully requests that the Board hold this proceeding in abeyance pending a ruling by the United States District Court for the District of Columbia in the AAR Suit. In the alternative, or in the event that the Board grants the Motion for Abeyance and the proceeding is subsequently resumed following a decision by the court in the AAR Suit, CN respectfully requests that the Board enter an order compelling mediation and appointing a mediator, as described in Part III, above, and suggests that it conduct any further proceedings according to the recommendations set forth in that Part.

Respectfully submitted,



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*Counsel for Canadian National Railway Company,  
Grand Trunk Western Railroad Company, and  
Illinois Central Railroad Company*

March 9, 2012

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## List of Attachments

- 49 U.S.C. §24308(c)
  - Preference over freight transportation. - Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Board for relief. If the Board, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish the rights of the carrier and Amtrak on reasonable terms.
  
- 49 U.S.C. §24308(f)
  - Passenger Train Performance and Other Standards.- (1) Investigation of substandard performance.-If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 fails to meet those standards for 2 consecutive calendar quarters, the Surface Transportation Board (referred to in this section as the “Board”) may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate such an investigation, 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. As part of its investigation, the Board has authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays. In making its determination or carrying out such an investigation, the Board shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train. (2) Problems caused by host rail carrier.-If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection. (3) Damages and relief.-In awarding damages

and prescribing other relief under this subsection the Board shall consider such factors as- (A) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and (B) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved. (4) Use of damages.-The Board shall, as it deems appropriate, order the host rail carrier to remit the damages awarded under this subsection to Amtrak or to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier's failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2).

- Exhibit A – Route Schematics
- Exhibit B – Comparative Tables of OTP under Operating Agreement and PRIIA, for [January 2012 or other recent period]
- Exhibit C – Letter of Mark Nordling to Paul Vilter (October 11, 2011) (“Nordling Letter”)
- Exhibit D – E-mail from Donnell Day (Central Division Chief Dispatcher, CN) to Don Secret *et al.*, re “Passenger Train Delays” (Jan. 29, 2011)
- Exhibit E – Letter from Roger Frasure to [redacted] (Jan. 11, 2010) (letter of caution for failing to give preference to Amtrak train)
- Exhibit F – Waiver of Investigation (Jan. 18, 2011) (accepting five-day suspension for delaying Amtrak train)
- Exhibit G – E-mail from Mark Nordling to M. Savoy (June 22, 2011)
- Exhibit H – E-mail from Paul Vilter to Paul Ladue and Mark Nordling re “Delays to Amtrak Trains on CN” (June 24, 2011) Exhibit J – Infrastructure Capacity Improvements for Improved Amtrak Performance (Aug. 19, 2011)
- Exhibit I – Infrastructure Capacity Improvements for Improved Amtrak Performance (Aug. 19, 2011)
- Exhibit J – Letter from Paul Vilter to Paul Ladue and Mark Nordling (Sept. 30, 2011) (“Vilter Letter”)
- Exhibit K – Comments of the Association of American Railroads at 6 (Mar. 27, 2009), Proposed Metrics and Standards for Intercity Passenger Rail Service, Docket No. FRA-2009-0016

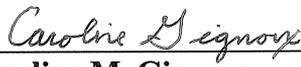
**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2012, I sent the foregoing Response to Amtrak Petition

Under Section 213 of PRIIA by e-mail to:

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david.ogden@wilmerhale.com  
Jonathan E. Paikin  
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*Counsel for National Railroad Passenger Corporation*

  
\_\_\_\_\_  
**Caroline M. Gignoux**

# Exhibit A

Chicago Union Station

2.2 miles over Amtrak  
between Union Station and  
Clark Street

Clark Street



306.7 miles over CN  
from Clark Street to  
Carbondale

Carbondale



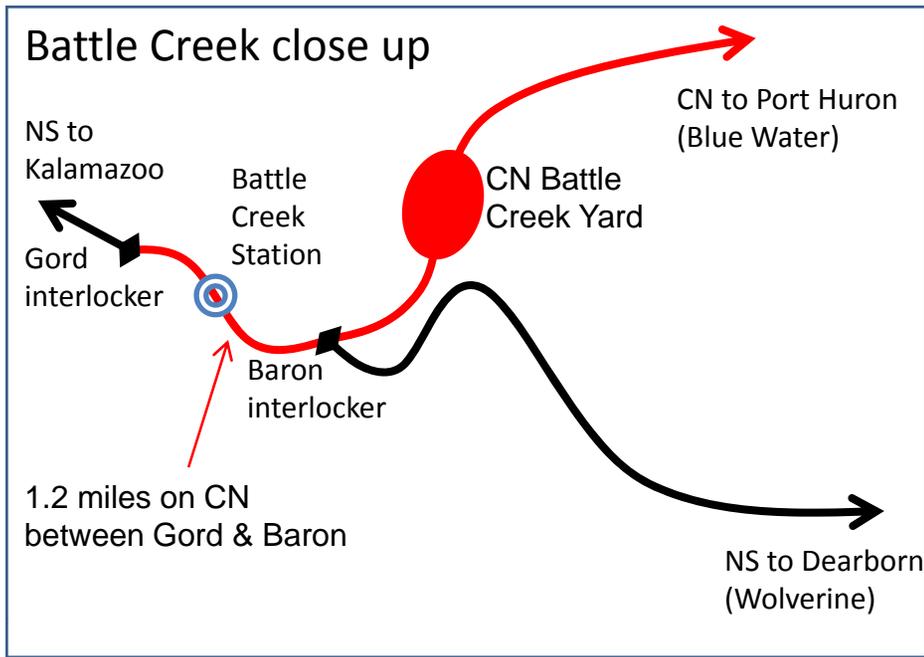
927.9 miles over  
CN from Clark  
Street to  
Southport  
Junction

Southport Junction

3.7 miles over Amtrak  
between Southport Junction  
and New Orleans Station

New Orleans Union  
Passenger Terminal

NOT TO SCALE



Chicago Union Station

1.6 miles on Amtrak

40.5 miles on NS Porter, IN

100.8 miles on Amtrak

Kalamazoo, MI

18.5 miles on NS between Kalamazoo and Gord

Battle Creek (Gord & Baron)

111.8 miles on NS between Baron and Dearborn

Wolverine

Dearborn

6 miles over Conrail between Dearborn and Vinewood

Pontiac

25.3 miles on CN

Vinewood (Detroit area)

Blue Water

158.7 miles on CN (between Gord and Port Huron)

Port Huron

NOT TO SCALE

# Chicago Union Station

1.6 miles on Amtrak

21<sup>st</sup> St.

35.7 miles on CN

Joliet, IL

237.8 miles on UP

St. Louis, MO

10.8 miles on TRRA

735.8 miles on UP

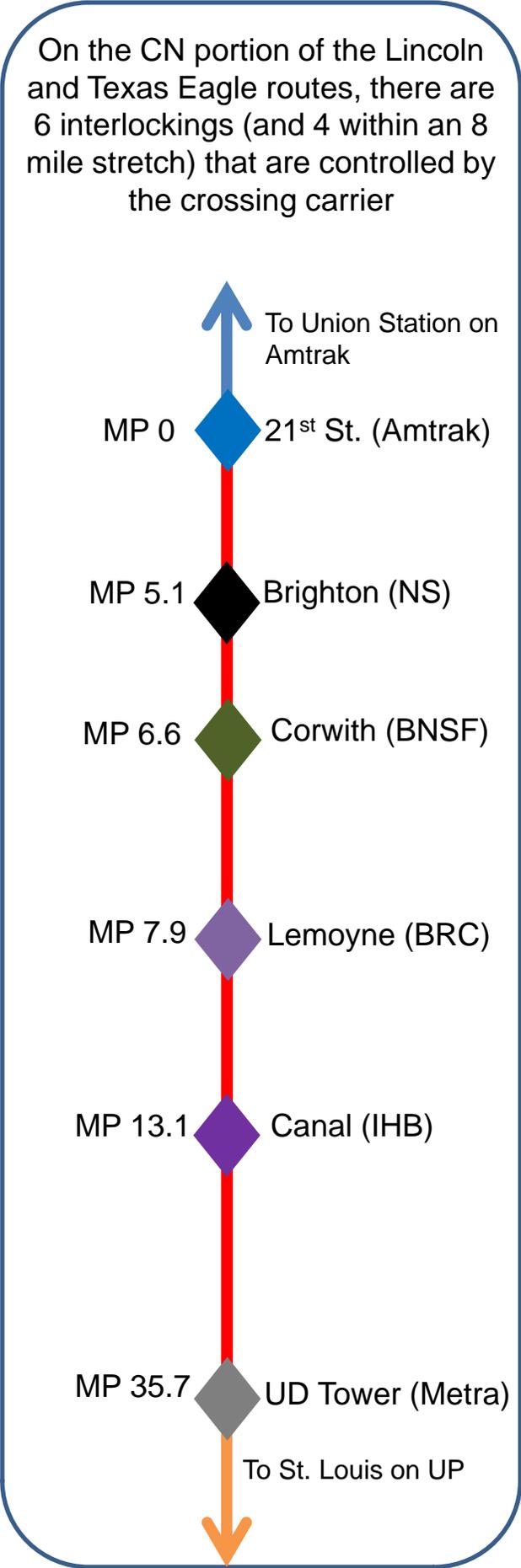
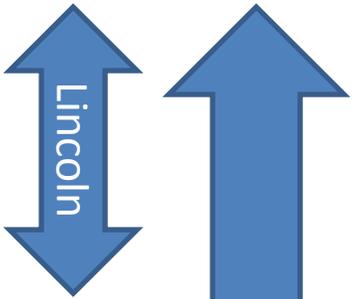
Fort Worth, TX

128.6 miles on BNSF

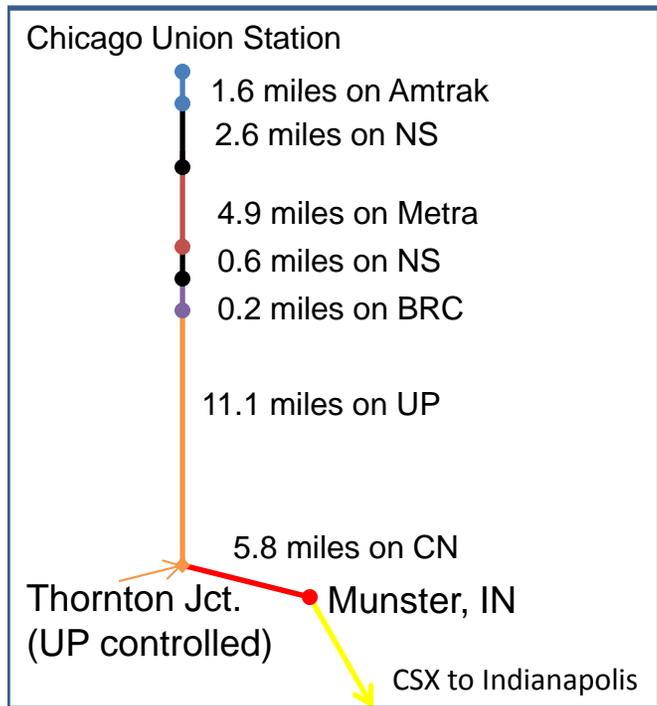
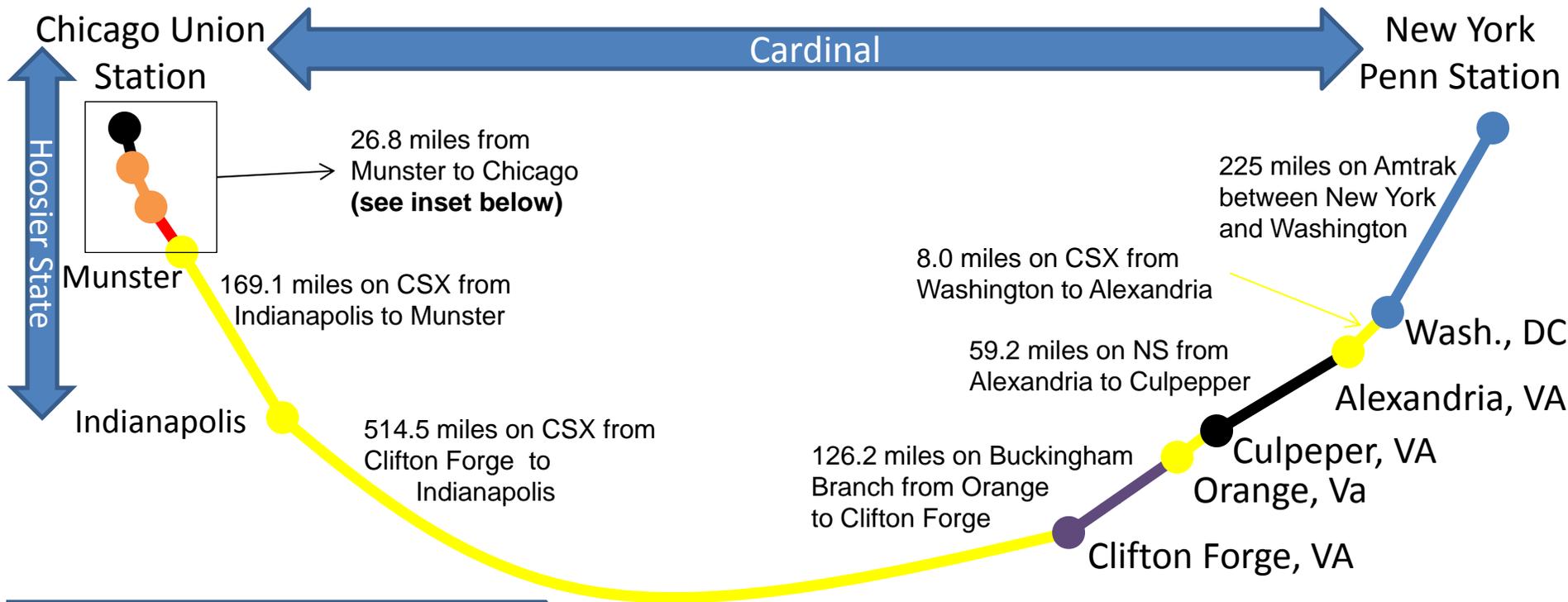
Temple, TX

155.1 miles on UP

# San Antonio Station



Not to scale



NOT TO SCALE

# Exhibit B

OTP Jan 2012 - Feb mid-month 2012

IC	Trains	Miles	Month End JAN '12 OTP %	Mid- Month FEB '12 OTP%
NOLA to Memphis	58-1	401.6	93.3%	100.0%
Memphis to CUS	58-2	526.2	80.0%	100.0%
CUS to Memphis	59-1	526.2	80.0%	100.0%
Memphis to NOLA	59-2	401.6	92.9%	100.0%
Chicago Union Station to Carbondale	390	306.7	86.2%	93.3%
	391	306.7	75.9%	93.3%
	392	306.7	76.7%	80.0%
	393	306.7	90.3%	86.7%
Chicago Union Station to Joliet	321	34.9	77.4%	80.0%
	322	34.9	64.5%	86.7%
	300	34.9	96.7%	100.0%
	301	34.9	93.3%	100.0%
	302	34.9	96.7%	93.3%
	303	34.9	60.0%	80.0%
	304	34.9	93.5%	93.3%
	305	34.9	93.3%	100.0%
	306	34.9	90.3%	100.0%
	307	34.9	93.5%	80.0%
<b>IC AVERAGE OTP</b>			84.9%	93.2%
<b>IC TOTAL INCENT. COMP.</b>			138,521	\$205,159
GTW	Trains	Miles	Month End JAN '12 OTP %	Mid-Month JAN '12 OTP %
Pt Huron to Baron	364	158.7	96.7%	93.3%
	365	158.7	87.1%	86.7%
Pontiac to Vinewood (Detroit)	350	25.3	71.4%	80.0%
	351	25.3	80.0%	61.5%
	352	25.3	73.3%	100.0%
	353	25.3	67.7%	92.9%
	354	25.3	48.4%	64.3%
	355	25.3	53.3%	85.7%
Gord to Baron (Battle Creek)	350	1.2	96.4%	93.3%
	351	1.2	100.0%	100.0%
	352	1.2	100.0%	100.0%
	353	1.2	100.0%	100.0%
	354	1.2	87.1%	100.0%
	355	1.2	100.0%	100.0%
Thornton - Munster (Chgo)	317/51	5.8	96.8%	86.7%
	318/50	5.8	96.8%	100.0%
<b>GTW AVERAGE OTP</b>			84.7%	90.3%
<b>GTW TOTAL INCENT. COMP.</b>			71,738	\$35,772
<b>AVERAGE OTP FOR IC AND GTW</b>			84.8%	91.7%

# Exhibit C



[www.cn.ca](http://www.cn.ca)

**Southern Region**

**Mark R. Nordling**  
Manager Passenger Operations

17641 So. Ashland Avenue  
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11 October 2011

Mr. Paul Vilter  
Assistant Vice President – Host Railroads  
Amtrak  
30<sup>th</sup> St. Station, Room 4N-163  
P. O. Box 20  
Philadelphia, PA 19104

Dear Paul:

Paul and I received your letter of September 30, 2011. It appears we have a different view not only of our August 19, 2011 meeting, but across a range of issues.

As an initial matter, we appear to have a very different view of Section 207 and the standards and measures FRA and Amtrak have adopted under it. These provisions are first and foremost standards and measures not of host-carrier performance, but of the performance of Amtrak's trains, which are operated by Amtrak crews, with Amtrak equipment. While the performance of those trains is certainly influenced by the fluidity of operations on host railroad lines, the repeated theme in your letter (as well as prior communications) asking CN to provide unilateral solutions to performance issues with Amtrak's trains ignores Amtrak's own necessary role and responsibility in the operation of its trains. We continue to believe that the only productive way forward is through a cooperative approach in which Amtrak and CN work together toward constructive solutions.

We further believe that this is consistent with the intent and meaning of Section 207. If Amtrak trains are failing to meet the standards or measures adopted under Section 207, that does not by itself demonstrate that Amtrak, a host carrier, or a third party is acting unreasonably or can or should be subjected to a remedy or penalty. The primary purpose of these goals and standards is to help the parties, and if necessary the Surface Transportation Board, identify routes that appear to require the attention of Amtrak and/or host railroads in order to address Amtrak's sub-par performance over those routes. Amtrak's failure to meet performance standards on certain routes over CN's rail lines does not demonstrate that CN is failing to take reasonable measures, or that CN can unilaterally assure that Amtrak begins to meet those standards, any more than it demonstrates those things with respect to Amtrak; what it does demonstrate is that these are locations where it makes sense for Amtrak and CN to work together to identify and address the issues that are hampering Amtrak performance.

The fact that the standards and measures adopted by FRA and Amtrak under Section 207 are ill-suited to demonstrate that Amtrak or a host railroad has acted unreasonably is underscored by the nature of the measures and standards themselves, particularly as developed and implemented by Amtrak and FRA. The on-time performance (OTP) measures adopted by Amtrak and FRA under Section 207 do not provide exceptions for or distinguish between various reasons that an Amtrak train may fall behind schedule; at most these measures reveal that there appears to be a problem that may need to be addressed.

Similarly, for a variety of reasons that we have discussed with you at length, the delay standards and measures adopted by Amtrak and FRA pursuant to Section 207, and the data generated by Amtrak pursuant to those standards also fail to indicate reliably the cause or responsibility for delays, much less indicate that a carrier is failing to provide Amtrak trains with reasonable preference. "Host-responsible delays," for example, include items that are not within the host carrier's control, such as weather, crossing accidents and delays at interlockings not controlled by the host carrier despite a timely request for a signal. In addition, Amtrak's assignment of delay minutes relies on Conductor Delay Reports (CDRs), and in filling out those reports conductors routinely do not seek to determine and assign root causes for delays. During our recent meeting, Mr. Carroll suggested a process whereby CN's RTC could attempt to communicate causes of delays to the Amtrak conductor in order to improve accuracy of the CDR. You indicated, however, that the Amtrak conductors are trained to show FTI regardless of the root cause of the delay unless the incident causing the delay was specific to the Amtrak train itself. But without root causes, the assignment of responsibility for delay minutes is often meaningless. Further, despite the fact that these CDRs are frequently incorrect, Amtrak has to date refused to update its PRIIA reports with corrected information, even when it has agreed to the correction for other purposes. Notably, nothing in Section 207 dictated any of these approaches; these deficiencies are due to decisions made by FRA and Amtrak in promulgating standards and metrics pursuant to that section or Amtrak in implementing them.

CN has expended considerable resources on these and other data issues for a very good reason -- it believes data can play a useful role in helping to identify problems, trends, and progress in addressing Amtrak operating issues. From Amtrak's heavy reliance on PRIIA data to suggest deficient CN performance, it appears that you share this view. We would hope, therefore, that you would also share our concerns with respect to the quality of the PRIIA data you are presently generating and take it upon yourself to try to improve that data (whether through changes in practices or by modifying the standards and metrics themselves through a further rulemaking) so they provide more meaningful information. Indeed, CN believes that such efforts should be at the top of any list of plans to address Amtrak train performance issues.

Given the deficiencies in the PRIIA data being generated by Amtrak, particularly with respect to actual host-railroad performance, and in the spirit of working with Amtrak to identify and address performance issues, CN has sought to understand and analyze its performance through more accurate data. One obvious source that is superior to the present PRIIA data is data jointly generated by Amtrak and CN for the Amtrak Operating Agreement. Although imperfect because, among other things, it still relies heavily on CDRs, this data is a significant improvement because it more accurately assigns responsibility for delays and includes agreed-

upon corrections to CDR reports. As we pointed out at the meeting - and have reiterated on several occasions - end point OTP based upon Operating Agreement data approaches 90%, and has shown steady overall improvement. This can be seen in Attachment 1, which provides a summary of Operating Agreement performance.

CN has also tried to assess its performance more accurately by refining PRIIA data to make it more meaningful. For example, Attachment 2 is a table comparing Amtrak's calculation of host-related delays per 10,000 train miles with CN's calculation of that figure, but with delays removed where they were beyond the reasonable control of CN. Again, this suggests that CN's performance has been far better than Amtrak's PRIIA data would indicate.

Nonetheless, in an effort to help Amtrak improve its performance, at CN's own initiative, and without seeking compensation from Amtrak (despite the fact that CN will not be automatically compensated for most of the work under the Amtrak-IC/GTW Operating Agreement), CN developed for and presented at the August 19 meeting nine (9) detailed capital improvement proposals to address specific FTI concerns that Amtrak had identified on two of its major routes over CN lines. Your dismissive response to those efforts is disappointing. You complain that CN would not guarantee that it will meet PRIIA standards if the capital improvements were made. That is hardly surprising, however, since most of the PRIIA standards do not even apply directly to CN, but rather to Amtrak's overall train performance, which can be impacted by numerous factors beyond CN's control, and, as noted above, even the FTI measure, which is most closely related to a host-carrier's own performance, is a poor and unreliable measure. In any event, the improvements CN proposed were never intended to resolve all delay issues on these routes, they were instead intended to remedy only the specific FTI delays identified by Amtrak, and CN did commit that they would do so. In addition, of course, Amtrak performance and PRIIA-related metrics would also ultimately be improved.

You also fault CN for proposing possible capital improvements because there may be other means of trying to achieve improved Amtrak performance. But the other potential means of improving performance that Amtrak would prefer to be considered before funding infrastructure upgrades - improving maintenance, altering schedules, and operational changes - were each, in turn, discussed and analyzed for its potential benefits. Maintenance changes would likely have little impact since there are no permanent slow orders in effect. Schedule changes would be challenging, at best given CN's pre-existing contractual freight obligations and Amtrak's stated unwillingness to alter its schedules or operate in the alternative windows that CN has identified as available due to Amtrak's passenger convenience requirements. Moreover, we do not see it as generally efficient to attempt to consider various options for operating changes and infrastructure improvements in isolation of one another. They are intimately related and best considered together.

It is unclear to us what "concrete operational improvements" or "other meaningful changes" Amtrak believes CN should be making; Amtrak certainly has not suggested any that could reasonably address our mutual needs and concerns. As reflected in our Operating Agreement compliance OTP and incentive payments, CN's Rail Traffic Controllers and their managers already fully understand the importance of maintaining Amtrak's schedules and they work hard

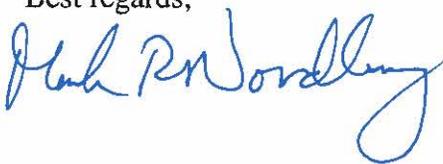
to keep Amtrak's trains moving across our very busy network. (It is important to remember that both your traffic and ours have increased several times over since the inception of Amtrak. On May 1, 1971, Amtrak's operation on IC and GTW consisted of 8 daily trains; that number today is 32.) CN has also made effort in other areas, such as the Joliet Subdivision, where it has had several discussions with Amtrak, Metra and the freight railroads regarding improved signaling at crossing locations not controlled by CN. CN does all that it can to assure that its RTC promptly requests the route for Amtrak trains, but execution is the responsibility of the controlling railroad(s), a fact that is recognized in our Operating Agreement, and which Amtrak agrees, does not attribute such delays to CN.

CN is willing to do its part to improve Amtrak's operations on its lines, but it cannot do it alone. Amtrak's trains in Michigan provide a good example of how delay and OTP problems require the attention and cooperation of both Amtrak and CN. For more than three years, Amtrak has been aware that the maintenance agreement with NS would be expiring at the end of 2010, and that upon its expiration NS was likely to substantially reduce maximum speeds on its lines. Yet this impending problem was not addressed prior to the agreement's expiration. As a consequence, in February, 2011, NS began downgrading the speeds on their line between Jackson and Dearborn which began delaying Amtrak trains from 30 to 90 minutes. This has caused Amtrak trains to operate on CN's lines between Detroit and Pontiac and between Baron and Gord (Battle Creek) significantly outside of the designated passenger train slots, placing these trains into conflict with CN's scheduled freights, and, at times, other Amtrak trains. The resulting delays caused Amtrak trains to exceed the delay tolerance in the Operating Agreement, which unfairly resulted in CN receiving no compensation for these trains. It is unreasonable to expect CN to compensate fully for Amtrak's poor performance on another carrier, and to be judged as deficient on that basis, despite our best efforts.

It is the importance of sharing information concerning operational developments, schedules, flexibility, and Amtrak funding, and the difficulty of crafting potential solutions that meet both our needs that we believe makes a joint, comprehensive approach to Amtrak performance issues critical. It is the only way we can efficiently explore the full gamut of potential solutions. We do not believe it is productive, reasonable, or responsible for Amtrak to adopt the attitude that it may simply sit back, point to its seriously flawed FTI or host-railroad delay data (neither of which demonstrates that a host-railroad is at fault), and on that basis expect CN to develop unilaterally a "comprehensive plan" addressing delays that may not even be attributable to it.

Accordingly, we believe that a meeting between Messrs. Geary and Vena would be a productive next step to help us work together to address Amtrak performance issues. In the meantime, CN will continue to look for ways in which it can reduce and eliminate delays to Amtrak's trains on its lines.

Best regards,

A handwritten signature in blue ink, appearing to read "Hank R. Woodling". The signature is written in a cursive, flowing style.

CC Jeffrey Geary  
Richard Phelps  
Jason Maga  
Jim Vena  
Paul Ladue  
Ted Kalick  
David Hirsh

2 Attachments

# Attachment 1

IC	Trains	Miles	Month End SEPT '11 OTP%	Month End AUG '11 OTP%	Month End JUL '11 OTP%	Month End JUN '11 OTP%	Month End MAY '11 OTP%	Month End APR '11 OTP%	Month End MAR '11 OTP%	Month End FEB '11 OTP%	Month End JAN '11 OTP%	Month End DEC '10 OTP%	Month End NOV '10 OTP%	Month End OCT '10 OTP%	Month End SEPT '10 OTP%	Month End AUG '10 OTP%	Month End JULY '10 OTP%	Month End JUNE '10 OTP%	Month End MAY '10 OTP%	Month End APR '10 OTP%	Month End MAR '10 OTP%	Month End FEB '10 OTP%	Month End JAN '10 OTP%
NOLA to	58-1	401.6	92.6%	96.8%	90.0%	86.2%	91.7%	75.0%	70.0%	81.5%	80.6%	77.4%	50.0%	60.7%	73.3%	78.6%	87.1%	75.9%	89.3%	89.3%	90.0%	77.8%	70.0%
Memphis to CUS	58-2	526.2	90.0%	100.0%	96.8%	100.0%	100.0%	77.3%	87.1%	92.0%	80.0%	76.7%	56.7%	80.6%	86.2%	96.7%	90.3%	71.4%	96.2%	86.2%	96.8%	88.9%	70.0%
CUS to Memphis	59-1	526.2	86.2%	87.1%	96.7%	90.0%	90.9%	66.7%	83.9%	100.0%	83.3%	74.2%	73.3%	80.0%	89.7%	96.8%	100.0%	96.6%	88.5%	92.6%	96.8%	92.9%	77.4%
Memphis to	59-2	401.6	80.8%	96.8%	100.0%	96.7%	100.0%	70.0%	96.8%	92.3%	90.3%	83.9%	73.3%	63.3%	96.7%	90.0%	96.7%	100.0%	96.4%	90.0%	90.3%	89.3%	67.7%
Chicago Union Station to Carbondale	390	306.7	86.2%	83.9%	83.9%	72.4%	80.6%	89.7%	90.3%	69.2%	90.3%	56.7%	53.3%	80.0%	89.7%	100.0%	96.8%	93.3%	80.6%	90.0%	83.9%	82.1%	64.5%
	391	306.7	89.7%	96.8%	80.6%	75.0%	87.1%	72.4%	80.6%	73.1%	74.2%	56.7%	66.7%	80.0%	86.2%	89.7%	93.5%	83.3%	83.3%	90.0%	83.9%	89.3%	66.7%
	392	306.7	86.7%	69.0%	83.3%	100.0%	70.0%	79.3%	87.1%	74.1%	64.5%	40.0%	72.4%	63.3%	86.7%	80.0%	67.7%	73.3%	73.3%	85.7%	90.3%	85.7%	61.3%
	393	306.7	100.0%	96.8%	100.0%	86.2%	80.6%	96.7%	87.1%	85.2%	87.1%	64.5%	90.0%	89.7%	86.7%	96.7%	83.9%	86.7%	93.5%	93.3%	93.5%	96.4%	93.5%
Chicago Union Station to Joliet	321	34.9	56.7%	74.2%	71.4%	75.0%	69.2%	84.6%	83.3%	88.9%	90.3%	88.2%	85.7%	85.7%	84.6%	83.3%	93.1%	80.0%	87.1%	79.3%	87.1%	84.6%	83.9%
	322	34.9	63.3%	88.9%	75.0%	83.3%	71.4%	92.3%	90.3%	85.7%	93.3%	82.4%	100.0%	100.0%	92.3%	77.4%	72.4%	65.5%	64.5%	80.0%	83.9%	76.0%	86.7%
	300	34.9	75.9%	93.5%	90.0%	92.3%	96.3%	96.7%	100.0%	80.0%	80.6%	73.3%	76.7%	90.3%	80.0%	96.7%	86.2%	86.7%	90.3%	90.0%	87.1%	84.6%	83.9%
	301	34.9	96.7%	96.8%	92.9%	91.7%	96.0%	100.0%	100.0%	88.0%	100.0%	90.0%	96.7%	100.0%	100.0%	100.0%	100.0%	96.7%	100.0%	93.3%	93.5%	96.2%	100.0%
	302	34.9	70.0%	90.3%	62.5%	100.0%	80.0%	90.0%	96.8%	96.3%	96.8%	80.0%	93.3%	93.5%	83.3%	96.8%	93.1%	72.4%	90.3%	73.3%	90.3%	88.5%	96.7%
	303	34.9	36.7%	61.3%	50.0%	63.6%	92.3%	83.3%	83.9%	66.7%	74.2%	66.7%	83.3%	87.1%	76.7%	80.0%	65.5%	70.0%	64.5%	83.3%	54.8%	80.8%	87.1%
	304	34.9	76.7%	96.8%	91.7%	100.0%	92.3%	90.0%	87.1%	92.3%	93.3%	93.3%	90.0%	83.9%	90.0%	96.8%	96.6%	83.3%	83.9%	90.0%	100.0%	76.9%	93.5%
	305	34.9	76.7%	93.5%	71.4%	100.0%	96.2%	96.7%	96.8%	88.5%	80.6%	80.0%	93.3%	96.8%	89.7%	90.3%	89.7%	83.3%	96.8%	90.0%	93.5%	92.3%	90.3%
	306	34.9	80.0%	90.3%	84.6%	100.0%	92.3%	83.3%	100.0%	92.9%	96.7%	93.3%	90.0%	100.0%	100.0%	96.8%	86.2%	93.3%	93.3%	86.2%	83.3%	92.3%	90.0%
307	34.9	82.8%	93.5%	64.3%	100.0%	84.6%	89.7%	90.0%	85.7%	93.5%	73.3%	80.0%	93.5%	90.0%	90.3%	96.6%	70.0%	80.6%	93.3%	87.1%	84.6%	82.1%	
IC AVERAGE OTP			83.2%	89.9%	86.1%	89.1%	87.5%	82.5%	89.5%	85.1%	86.1%	74.5%	78.3%	84.6%	87.9%	90.9%	88.6%	82.3%	86.2%	87.5%	88.1%	86.6%	81.4%
IC TOTAL INCENT. COMP.			\$173,180	\$332,171	\$297,977	\$256,868	\$154,547	\$72,940	\$177,360	\$165,701	\$100,286	(\$92,678)	(\$115,577)	\$14,861	\$159,860	\$288,531	\$275,794	\$177,658	\$193,454	\$190,563	\$263,115	\$162,025	\$11,977
IC YTD TOTAL INCENTIVE COMP.			\$1,731,030	\$1,557,850	\$1,225,679	\$927,702	\$670,834	\$516,286	\$443,347	\$265,987	\$100,286	\$1,529,583	\$1,622,261	\$1,737,838	\$1,722,977	\$1,563,117	\$1,274,586	\$998,792	\$821,134	\$627,680	\$437,117	\$174,002	\$11,977
GTW	Trains	Miles	Month End SEPT '11 OTP%	Month End AUG '11 OTP%	Month End JUL '11 OTP%	Month End JUN '11 OTP%	Month End MAY '11 OTP%	Month End APR '11 OTP%	Month End MAR '11 OTP%	Month End FEB '11 OTP%	Month End JAN '11 OTP%	Month End DEC '10 OTP%	Month End NOV '10 OTP%	Month End OCT '10 OTP%	Month End SEPT '10 OTP%	Month End AUG '10 OTP%	Month End JULY '10 OTP%	Month End JUNE '10 OTP%	Month End MAY '10 OTP%	Month End APR '10 OTP%	Month End MAR '10 OTP%	Month End FEB '10 OTP%	Month End JAN '10 OTP%
Pt Huron to Baron	364	158.7	93.3%	93.5%	96.7%	90.0%	96.8%	93.3%	96.8%	92.3%	93.3%	93.5%	100.0%	93.5%	96.7%	96.8%	96.8%	96.7%	96.8%	96.7%	100.0%	88.9%	90.3%
	365	158.7	83.3%	93.5%	90.3%	93.3%	87.1%	93.3%	87.1%	85.2%	86.7%	71.0%	86.7%	93.5%	76.7%	77.4%	83.9%	100.0%	93.5%	96.7%	87.1%	67.9%	54.8%
Pontiac to Vinewood (Detroit)	350	25.3	88.9%	85.7%	96.4%	92.9%	64.5%	73.3%	80.0%	85.2%	100.0%	100.0%	83.3%	80.0%	76.7%	76.7%	93.1%	93.3%	83.9%	80.0%	83.9%	96.4%	92.9%
	351	25.3	80.0%	83.9%	80.6%	86.2%	80.6%	83.3%	74.2%	88.9%	87.1%	93.5%	86.7%	93.5%	90.0%	93.5%	93.5%	86.7%	90.3%	96.7%	90.3%	89.3%	96.8%
	352	25.3	80.8%	87.1%	90.3%	92.9%	71.0%	20.0%	22.6%	26.9%	56.7%	87.1%	90.0%	74.2%	90.0%	77.4%	65.5%	76.7%	83.9%	83.3%	80.6%	89.3%	45.2%
	353	25.3	91.3%	92.3%	76.7%	80.0%	71.0%	43.3%	29.0%	23.1%	51.6%	83.9%	96.7%	83.9%	90.0%	74.2%	86.7%	86.7%	90.3%	83.3%	83.3%	92.9%	77.4%
	354	25.3	86.7%	87.1%	93.5%	93.1%	90.3%	40.0%	35.5%	53.6%	77.4%	77.4%	76.7%	90.3%	70.0%	71.0%	67.7%	76.7%	100.0%	90.0%	90.3%	75.0%	83.9%
355	25.3	90.0%	87.1%	93.1%	75.0%	86.7%	90.0%	80.6%	92.9%	90.3%	93.5%	90.0%	90.0%	86.7%	76.7%	87.1%	86.7%	77.4%	69.0%	80.6%	82.1%	67.7%	
Gord to Baron (Battle Creek)	350	1.2	85.2%	95.2%	100.0%	96.4%	90.3%	90.0%	96.7%	100.0%	93.5%	96.8%	93.3%	93.3%	86.7%	90.0%	96.6%	93.3%	90.3%	86.7%	96.8%	92.9%	85.7%
	351	1.2	83.3%	96.8%	93.5%	100.0%	87.1%	93.3%	93.5%	96.3%	96.8%	96.8%	93.3%	93.5%	73.3%	87.1%	93.5%	96.7%	96.8%	100.0%	96.8%	89.3%	93.5%
	352	1.2	84.6%	93.5%	90.3%	89.3%	96.8%	93.3%	93.5%	100.0%	100.0%	90.3%	96.7%	96.8%	90.0%	96.8%	86.2%	96.7%	90.3%	93.3%	93.5%	89.3%	87.1%
	353	1.2	87.0%	92.3%	100.0%	100.0%	96.8%	96.7%	100.0%	96.2%	87.1%	93.5%	93.3%	90.3%	66.7%	80.6%	90.0%	90.0%	83.9%	83.3%	83.3%	92.9%	80.6%
	354	1.2	83.3%	96.8%	96.8%	96.6%	83.9%	96.7%	96.8%	92.9%	100.0%	93.5%	100.0%	96.8%	90.0%	100.0%	93.5%	90.0%	96.8%	96.7%	83.9%	96.4%	96.8%
355	1.2	86.7%	80.6%	89.7%	89.3%	93.3%	93.3%	100.0%	89.3%	100.0%	96.8%	90.0%	83.3%	83.3%	93.3%	90.3%	86.7%	96.8%	93.1%	77.4%	89.3%	90.3%	
Thornton - Munster (Chgo)	317/51	5.8	93.3%	90.3%	86.2%	93.3%	93.5%	90.0%	90.3%	96.0%	87.1%	83.3%	90.0%	90.0%	96.6%	79.3%	96.7%	100.0%	87.1%	90.0%	96.7%	89.3%	79.3%
	318/50	5.8	90.0%	100.0%	93.5%	93.3%	100.0%	90.0%	87.1%	88.0%	93.5%	90.3%	75.9%	93.5%	96.7%	74.2%	90.3%	93.3%	90.3%	80.0%	90.3%	92.9%	96.8%
GTW AVERAGE OTP			86.7%	91.0%	91.7%	91.4%	86.9%	80.0%	78.9%	81.7%	87.6%	90.1%	90.2%	89.8%	85.0%	84.1%	88.2%	90.6%	90.5%	88.7%	88.4%	88.4%	82.4%
GTW TOTAL INCENT. COMP.			\$67,951	\$73,710	\$74,832	\$71,716	\$73,004	\$64,599	\$66,611	\$57,144	\$69,275	\$65,355	\$67,441	\$67,727	\$60,358	\$62,265	\$65,611	\$66,904	\$68,943	\$63,856	\$66,628	\$55,090	\$55,038
GTW YTD TOTAL INCENT. COMP.			\$618,841	\$550,890	\$477,179	\$402,348	\$330,632	\$257,628	\$193,029	\$126,418	\$69,275	\$765,217	\$699,862	\$632,421	\$564,694	\$504,336	\$442,071	\$376,459	\$309,555	\$240,612	\$176,756	\$110,128	\$54,930
AVERAGE OTP FOR IC AND GTW			85.0%	90.4%	88.9%	90.2%	87.2%	81.2%	84.2%	83.4%	86.8%	82.3%	84.2%	87.2%	86.4%	87.5%	88.4%	86.5%	88.4%	88.1%	88.3%	87.5%	81.9%
GRAND TOTAL YTD COMP. FOR IC AND GTW			\$2,349,871	\$2,108,740	\$1,702,858	\$1,330,049	\$1,001,466	\$773,915	\$636,376	\$392,405	\$169,561	\$2,294,800	\$2,322,122	\$2,370,259	\$2,287,671	\$2,067,453	\$1,716,657	\$1,375,251	\$1,130,689	\$868,292	\$613,873	\$284,130	\$66,907
YTD OTP % FOR IC & GTW			86.4%	86.6%	86.0%	85.5%	84.6%	83.9%	84.8%	85.1%	86.8%	86.4%	86.8%	87.0%	87.0%	87.1%	87.0%	86.8%	86.8%	86.5%	85.9%	84.7%	81.9%

# Attachment 2

Monthly Comparison - Minutes of Delay per 10k Train Miles

IC Trains	Data Description	legend												Amtrak			CN relief	
		Oct. 2010	Nov. 2010	Dec. 2010	Jan. 2011	Feb. 2011	Mar. 2011	Apr. 2011	May. 2011	June. 2011	July. 2011	Aug. 2011	Sept. 2011	Oct. 2011	Nov. 2011	Dec. 2011		
58-1	Amtrak Raw																	
	CN w/relief	1749	1617	1347	1437	1243	1544		690	925	514	1074	1111					
58-2	Amtrak Raw																	
	CN w/relief	1101	1032	1115	1027	792	736		491	557	563	834	786					
58	Amtrak Raw	1411	1493	1235	1242	1056	1094	1518	1469	1409	1085	1088						
	CN w/relief	1382	1285	1216	1208	995	1086	1169	621	716	541	938	907					
59-1	Amtrak Raw																	
	CN w/relief	1099	1024	1388	1007	879	1041		272	873	869	969	1033					
59-2	Amtrak Raw																	
	CN w/relief	2558	2063	1245	1260	1276	1730		274	970	980	1215	1062					
59	Amtrak Raw	1736	1570	1279	1180	1167	1345	1815	1902	1465	1056	1188						
	CN w/relief	1730	1473	1326	1119	1050	1339	1276	273	878	916	1075	1031					
21	Amtrak Raw	601	685	2953	1608	3743	2961	1275	746	718	2961	4231						
	CN w/relief	450	553	860	659	2176	1220	1609	1697	836	4032	1590	2627					
22	Amtrak Raw	451	347	3316	868	1760	1225	992	3175	859	1215	1252						
	CN w/relief	368	0	910	305	696	305	242	1842	1839	406	913	2168					
300	Amtrak Raw	2678	2274	4176	3043	4181	2422	1992	2161	1865	2064	2458						
	CN w/relief	1239	1738	3305	2191	2728	1081	821	1369	1411	659	1248	3142					
301	Amtrak Raw	893	785	9820	393	2368	667	1029	1972	1959	3662	1197						
	CN w/relief	434	573	2187	314	1822	287	602	1307	979	2108	1035	1452					
302	Amtrak Raw	2572	1909	4176	2202	4027	1681	2096	2380	4249	2762	3244						
	CN w/relief	730	725	1977	1405	2154	1100	1137	1777	1089	1540	1128	3142					
303	Amtrak Raw	1980	2950	5154	2367	3599	2842	2597	3301	4769	5281	4560						
	CN w/relief	980	1786	2130	1691	2409	1017	1757	1267	3985	2824	2200	4479					
304	Amtrak Raw	3199	2804	2180	2522	3051	1809	3437	2081	921	2104	2385						
	CN w/relief	1303	755	1079	1137	1532	1128	1652	1080	549	597	527	2923					
305	Amtrak Raw	636	1361	2845	1782	2380	1206	491	1286	897	2996	1517						
	CN w/relief	305	783	1671	1183	1620	508	487	617	478	2620	823	1805					
306	Amtrak Raw	1759	2475	2471	941	3814	1499	2814	2484	2314	4148	1937						
	CN w/relief	453	688	1117	564	2589	407	1433	1157	836	705	1063	2063					
307	Amtrak Raw	1167	1379	2910	2403	3713	1965	840	2648	873	2934	1764						
	CN w/relief	434	888	1710	1627	2702	1012	564	1389	812	1494	952	1671					

**Monthly Comparison - Minutes of Delay per 10k Train Miles**

IC Trains	Data Description	Oct. 2010	Nov. 2010	Dec. 2010	Jan. 2011	Feb. 2011	Mar. 2011	Apr. 2011	May. 2011	June. 2011	July. 2011	Aug. 2011	Sept. 2011	Oct. 2011	Nov. 2011	Dec. 2011
390	Amtrak Raw	1403	1505	1811	1082	1469	1101	1483	1179	1485	1156	1112				
	CN w/relief	1236	1275	1586	1012	1188	1014	994	806	1157	842	1001	1017			
391	Amtrak Raw	1353	1377	1868	1504	1633	1256	1721	1500	2040	1307	1236				
	CN w/relief	1142	1057	1545	1028	1388	1065	1146	990	1422	940	1007	1017			
392	Amtrak Raw	1542	1490	2078	1601	1623	1100	1650	1844	1215	1216	1502				
	CN w/relief	1338	1373	1988	1427	1427	1077	924	1436	740	873	1389	1101			
393	Amtrak Raw	822	938	1250	904	1338	745	1323	928	1185	682	910				
	CN w/relief	766	783	1239	807	1281	696	671	610	983	572	844	512			
GTW Trains	Data Description	Oct. 2010	Nov. 2010	Dec. 2010	Jan. 2011	Feb. 2011	Mar. 2011	Apr. 2011	May. 2011	June. 2011	July. 2011	Aug. 2011	Sept. 2011	Oct. 2011	Nov. 2011	Dec. 2011
364	Amtrak Raw	1155	630	858	676	1139	669	811	982	1363	1493	821				
	CN w/relief	1150	599	858	653	1129	659	781	821	1243	794	821	536			
365	Amtrak Raw	1722	1680	2122	2048	2266	2315	1853	2333	2157	1667	1791				
	CN w/relief	1669	1661	2157	1561	1473	1583	815	1514	1575	453	1714	1972			
350	Amtrak Raw	1871	1208	628	1023	1265	2298	3157	4431	1513	1301	1090				
	CN w/relief	1748	1119	268	962	1174	2075	2013	3469	1051	701	881	1104			
351	Amtrak Raw	4163	1899	901	1741	1941	2678	3899	2666	1819	3591	2313				
	CN w/relief	3640	1283	779	1716	1468	2167	3057	1838	1054	2094	1668	2629			
352	Amtrak Raw	3092	2352	3396	2478	3469	4711	3069	2264	1625	2009	2386				
	CN w/relief	1984	1736	1923	1950	3077	2958	2742	1814	1213	1509	1582	1988			
353	Amtrak Raw	2337	1509	2198	2520	2992	2897	4201	2702	2352	4954	4006				
	CN w/relief	2398	1384	2130	2520	2787	2629	2591	1339	1484	2138	2032	2034			
354	Amtrak Raw	1753	2201	2179	3128	3248	3993	3447	2532	1221	1534	2483				
	CN w/relief	1509	1535	1789	1765	2925	2897	2428	2215	1041	828	998	1585			
355	Amtrak Raw	1909	1434	1400	1436	2739	2135	2566	2617	3762	4701	4633				
	CN w/relief	1447	1245	1302	1242	1900	1570	1786	1799	1685	1353	2142	918			

# Exhibit D

>----->  
| From: |  
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>----->  
| Donnell Day/Day07/IL/CNR/CA |  
|

>----->  
|----->  
| To: |  
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>----->  
|----->  
| Don Secrest/SECREST/CNR/CA@CNR, Craig Williams/WILLIA23/IL/CNR/CA@CNR, Gary Paulson/PAULSON/CNR/CA@CNR, Roger Frasure/FRASUR02/CNR/CA@CNR, Scott |  
| Kuxmann/KUXMAN01/WI/CNR/CA@CNR, Allan Danielwicz/DANIELO4/IL/CNR/CA@CNR, Joseph Whitt/WHITT02/WI/CNR/CA@CNR, William |  
| Albritton/ALBRITTO/CNR/CA@CNR, Kirk Carroll/CARROL05/CNR/CA@CNR, Mike Bullerman/BULLERMA/IL/CNR/CA@CNR, Donnell Day/Day07/IL/CNR/CA@CNR, Mark |  
| Hunker/Hunker01/IL/CNR/CA@CNR, Victor Bell/BELL13/IL/CNR/CA@CNR, Thomas Martisek/Martis01/IL/CNR/CA@CNR, Edward Girman/Girman01/IL/CNR/CA@CNR, |  
| Gregory Zunker/ZUNKER01/WI/CNR/CA@CNR, Charles Hasse/Hasse01/IL/CNR/CA@CNR, Brian Fredrickson/FREDRI01/WI/CNR/CA@CNR, Anne |  
| Morehouse/Moreho01/IL/CNR/CA@CNR, Major Norman/NORMAN10/CNR/CA@CNR, Venus Coe/COE01/IL/CNR/CA@CNR, Carrie Roberts/ROBER100/IL/CNR/CA@CNR, Rick |  
| Wornum/WORNUM/CNR/CA@CNR

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| Date: |  
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| 01/29/2011 02:16 AM |  
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| Subject: |  
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>----->  
|----->  
| Passenger Train Delays |  
|

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|----->

To all RTC's,  
Please stay focused on the movement of passenger trains! They are to take priority above all other traffic. Please plan meets accordingly to minimize delays to these trains.  
Thx,

D. Day  
Central Division MCO  
Homewood, IL  
708-332-6575

# Exhibit E



[REDACTED]

Southern Region

Roger D. Frasure  
Senior Chief Dispatcher  
Chicago Division

www.cn.ca

, 2010



### Letter of Caution



On , 2011 while working the Desk Rail Traffic Controller's position in , at approximately hours, you lined train M ahead of Amtrak P at causing delays to the passenger train having to follow train M to where you then arranged to hold M to allow P to pass. As a result Amtrak P then arrived 26 minutes late. This delay could have been prevented by allowing Amtrak to operate west at ahead of train M .

This letter of caution is a follow-up to our conversation , 2011 and is intended to be a reminder that passenger trains are to be operated on-time and any issues that may impact Amtrak's are to be escalated to and discussed with the Chief Train Dispatcher in Homewood, IL.

Based upon your past work history, this incident is being handled with this Letter of Caution.

Roger Frasure  
Senior Chief Dispatcher

- Cc: K. Carroll - General Manager-SROC
  - W. Albritton- Superintendent-SROC
  - C. Cortez- Sr. Mgr. Labor Relations
  - General Chairman - ATDA
  - Local Chairman - ATDA
- Copy to personal file.

# Exhibit F

[REDACTED]



File #:

U. S. Operations  
Roger Frasure  
Sr. Chief Dispatcher  
Network Operations

, 2011

Waiver of Investigation

- ATDA

CHARGES: Delaying Amtrak P. \_\_\_\_\_ at approximately \_\_\_\_\_  
hours while you were working the \_\_\_\_\_ Desk RTC position in \_\_\_\_\_  
\_\_\_\_\_ on \_\_\_\_\_  
2011.

I, \_\_\_\_\_, accept responsibility in connection with the above charges and do  
hereby waive my right to an investigation under the terms of the collective bargaining agreement and I  
agree to accept the following discipline.

Five (5) Days Suspension Deferred for a period of One (1) Year  
From \_\_\_\_\_, 2011 through \_\_\_\_\_, 2012

I agree that no appeal of the discipline assessed will be made by me or on my behalf.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Union Representative (If Required)

I have consulted my Union Representative

I do not desire to consult my Union Representative

Signing this Waiver is your notice the investigation scheduled for \_\_\_\_\_

2011 is cancelled.

# Exhibit G

From: Mark Nordling/NORDLI01/IL/CNR/CA  
m:  
To: savoym@amtrak.com, "Vilter, Paul" <VilterP@amtrak.com>, "Pesce, Daryl" <PesceD@amtrak.com>, "Walton, Albert" <AsW@amtrak.com>, "Blair, Jim" <BlairJ@amtrak.com>  
Cc: Kirk Carroll/CARROL05/CNR/CA@CNR, Paul Ladue/LADUE/CNR/CA@CNR, William Albritton/ALBRITTO/CNR/CA@CNR, Joseph Whitt/WHITT02/WI/CNR/CA@CNR, Larry Wizauer/WIZAUER/CNR/CA@CNR, Roger Frasure/FRASUR02/CNR/CA@CNR, Tamera Burney/BURNEY01/IL/CNR/CA@CNR  
Date: 06/22/2011 09:03 AM  
e:  
Subject: Amtrak-caused Delays to CN Freights  
bjc  
ct:

The following report about trains 350 and 355 on June 21st came from our Troy dispatching center:

**Amtrak P350 tied up HOS on Shoreline Sub Main 1 at Commonwealth at 1720 hours. Amtrak Relief crew taxied to train and took train to Woodward Station. Passengers were entrained and Amtrak turned as P355 due to P350 running so late.. Due to Amtrak P350 tying up HOS on Main 1, Train M384-61-21 was held at Coolidge to clear M385-31-21 and Q144-61-21. M384 arrive Coolidge at about 1815 hours. Amtrak Operations Advised.**

Due to 350 arriving about 3 hours late off the NS with the crew subsequently dying on our main line, CN manifest train 385 took a 23 minute delay, manifest 384 lost 181 minutes and premium intermodal train 144 lost 255 minutes. The three CN freights were delayed a total of more than 7 hours.

These delays are not acceptable.

We are in the process of reviewing Amtrak's requested Michigan schedule changes, and we hope we can accommodate your needs. But please understand that we cannot and will not unilaterally compensate for all the Norfolk Southern problems.

# Exhibit H

From: "Vilter, Paul" <VilterP@amtrak.com>  
To: "mark.nordling@cn.ca" <mark.nordling@cn.ca>, "paul.ladue@cn.ca" <paul.ladue@cn.ca>  
cc "Phelps, Richard" <Phelpsr@amtrak.com>, "Maga, Jason" <MagaJ@amtrak.com>, "Blair, Jim" <BlairJ@amtrak.com>  
Subject: Delays to Amtrak Trains on CN  
06/24/2011 08:18 AM

Mark,

I am writing to follow up on the various discussions and emails between Amtrak and CN staff in recent months regarding Freight Train Interference (FTI) delays on CN. Unfortunately, these communications do not appear to be resulting in the needed improvement, and an unacceptable level of FTI delays continues to persist.

As you know based on the Host Railroad Report that Amtrak distributes to host railroads including CN each month, no Amtrak route on CN met the PRIIA standard for Host-Responsible Delays in either of the past two quarters. Only one train (#364) met this standard in either quarter (see attached). In addition, very few routes or trains operating on CN met the PRIIA standard for On-Time Performance in either of the past two quarters. CN is the only major Amtrak host railroad to exhibit this level of performance. The attached exhibit summarizes the performance of Amtrak trains on CN relative to these standards.

In FY 2011 Q2, the largest category of delay on CN for Trains 21, 22, 58, 59, 300, 301, 302, 303, 304, 305, 306, 307, 364, 390, 391, 392, and 393 was FTI. FTI was the second-largest category of delay on trains 350, 353, 354, 355, and 365.

I would like to focus your and CN's attention on reducing CN delays to Amtrak trains. Please provide to me in writing what immediate actions CN plans to take to reduce host-responsible delays so that all Amtrak trains operating on CN meet the PRIIA standard. Amtrak appreciates CN's attention to this matter.

Thanks,  
Paul

# Exhibit I



**Infrastructure Capacity  
Improvements  
for  
Improved Amtrak Performance**

FTI Delays on CN Between Carbondale and Chicago, February through April 2011  
 (as reported by Amtrak from Conductor Delay Reports)



**Showing Total Minutes of FTI Delay**

Train	Trips	CHI - HMW	HMW - KKI	KKI - CHM	CHM - MAT	MAT - EFG	EFG - CEN	CEN - CDL	Total
390	87	63	152	534	370	118	305	19	1561
391	87	4	66	736	210	367	361	60	1804
392	89	21	143	764	121	74	435	55	1613
393	89	4	111	228	242	132	256	61	1034
58	89	19	213	445	445	59	187	104	1472
59	89	6	148	297	354	87	396	716	2004
<b>Total</b>	<b>530</b>	<b>117</b>	<b>833</b>	<b>3004</b>	<b>1742</b>	<b>837</b>	<b>1940</b>	<b>1015</b>	<b>9488</b>

**Showing Minutes of FTI Delay Per Trip**

Train	Trips	CHI - HMW	HMW - KKI	KKI - CHM	CHM - MAT	MAT - EFG	EFG - CEN	CEN - CDL	Total
390	87	0.7	1.7	6.1	4.3	1.4	3.5	0.2	17.9
391	87	0.0	0.8	8.5	2.4	4.2	4.1	0.7	20.7
392	89	0.2	1.6	8.6	1.4	0.8	4.9	0.6	18.1
393	89	0.0	1.2	2.6	2.7	1.5	2.9	0.7	11.6
58	89	0.2	2.4	5.0	5.0	0.7	2.1	1.2	16.5
59	89	0.1	1.7	3.3	4.0	1.0	4.4	8.0	22.5
<b>Total</b>	<b>530</b>	<b>0.2</b>	<b>1.6</b>	<b>5.7</b>	<b>3.3</b>	<b>1.6</b>	<b>3.7</b>	<b>1.9</b>	<b>17.9</b>

**Showing Minutes of FTI Delay Per 10K Train Miles**

Train	Trips	CHI - HMW	HMW - KKI	KKI - CHM	CHM - MAT	MAT - EFG	EFG - CEN	CEN - CDL	Total
390	87	320	549	847	954	506	649	42	589
391	87	20	239	1167	541	1574	768	131	680
392	89	104	505	1184	305	310	905	118	595
393	89	20	392	353	610	553	533	131	381
58	89	94	753	690	1121	247	389	223	543
59	89	30	523	460	892	365	824	1532	739
<b>Total</b>	<b>530</b>	<b>98</b>	<b>494</b>	<b>782</b>	<b>737</b>	<b>589</b>	<b>678</b>	<b>365</b>	<b>587</b>

Miles	22.6	31.8	72.5	44.6	26.8	54.0	52.5	304.8
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## FTI Delays on CN Between Carbondale and Southport Jct, February through April 2011 (as reported by Amtrak from Conductor Delay Reports)

### Showing Total Minutes of FTI Delay

Train	Trips	CDL - FTN*	FTN - NBN*	NBN - MEM*	MEM - GWD	GWD - YAZ	YAZ - JAN	JAN - HAZ	HAZ - BRH	BRH - MCB	MCB - HMD	HMD - XSU	Grand Total
58	89	163	56	506	890	160	246	831	147	105	187	85	3376
59	89	376	294	416	787	584	812	265	93	109	539	93	4368
Grand Total	178	539	350	922	1677	744	1058	1096	240	214	726	178	7744

### Showing Minutes of FTI Delay Per Trip

Train	Trips	CDL - FTN*	FTN - NBN*	NBN - MEM*	MEM - GWD	GWD - YAZ	YAZ - JAN	JAN - HAZ	HAZ - BRH	BRH - MCB	MCB - HMD	HMD - XSU	Grand Total
58	89	1.9	0.7	6.0	10.0	1.8	2.8	9.3	1.7	1.2	2.1	1.0	37.9
59	89	4.5	3.5	5.0	8.8	6.6	9.1	3.0	1.0	1.2	6.1	1.0	49.1
Grand Total	178	3.2	2.1	5.5	9.4	4.2	5.9	6.2	1.3	1.2	4.1	1.0	43.5

### Showing Minutes of FTI Delay Per 10K Train Miles

Train	Trips	CDL - FTN*	FTN - NBN*	NBN - MEM*	MEM - GWD	GWD - YAZ	YAZ - JAN	JAN - HAZ	HAZ - BRH	BRH - MCB	MCB - HMD	HMD - XSU	Grand Total
58	89	194	186	696	852	363	675	2803	850	525	427	204	644
59	89	448	978	572	754	1324	2227	894	537	545	1232	223	833
Grand Total	178	321	582	634	803	844	1451	1848	693	535	829	214	739

Miles		99.9	35.8	86.6	124.3	52.5	43.4	35.3	20.6	23.8	52.1	49.6	623.9
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\*Train 58 and 59 trips originating on April 26 through April 30 are not included for segments between Carbondale and Memphis due to service disruption during that time period.



## Segment 1 – Kankakee to Champaign

### 1. Double track Paxton to Leverett Jct. with crossovers (including Rantoul)

- Work Champaign without interfering and avoid 8.3 mile run to meet
- Track and bridge \$25.2 million / Signal \$1.6 million

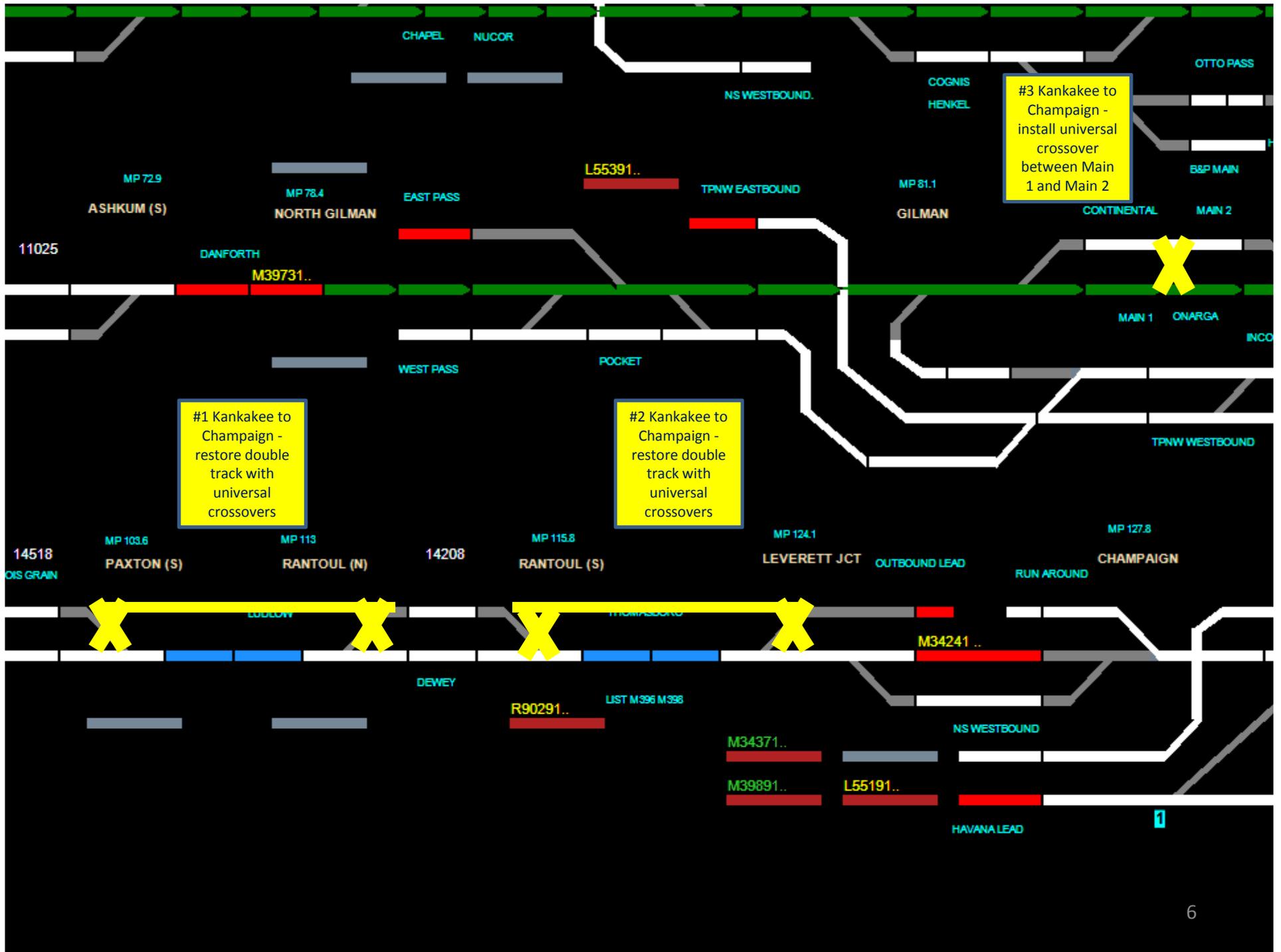
### 2. Double track Rantoul to Leverett Jct. with crossovers (subset of #1)

- Same as #1, except double track only Rantoul to Leverett Jct.
- Track and bridge \$13.1 million / Signal \$1.4 million

(cont.)

### 3. Universal crossover between Gilman and Delrey

- Eliminate three way meets
- Eliminate need to hold trains 8 miles north or 13.5 miles south
- Track \$700,000 / Signal \$1.0 million





**12 CHICAGO SUBDIVISION**

TRACK CHART & SIDINGS	SIDING LENGTH	SIDING SWITCH LOCATIONS	STATION SIGN	STATIONS	METHOD OF OPERATION	DEFECT DETECTORS	INDICATORS CALL NO.	
			1.5	16TH STREET	CTC			
				3.3				39TH STREET
				4.6				39TH STREET
				8.1				67TH STREET
				8.4				CSSSB
				14.5				KENSINGTON
				15.5				WILDWOOD
				17.9				HIGHLAWN
				19.9				NORTH JCT.
				20.1				SOUTH JCT.
				23.5				HOMWOOD
				25				VOLLMER
				26.0				MATTESON
				29.7				STUENKEL
		10,519	41.2 43.2	40.5				PEOTONE
			46.7	MANTENO	Diesel Doctor 8-0-8			
	29,528	49.5 55.4	55.3	KANKAKEE	(72.72) RTC 2			
			57.8	GAR CREEK	(72.72) RTC 2			
	13,224	60.4	60.3	OTTO	Diesel Doctor 8-0-8			
			61.6	RANE				

Chicago Subdivision south of Rane is in Central Division Timetable.

Freight	Passenger
MAXIMUM SPEED	MPH
16th Street to Homewood .....	65
Homewood to Rane .....	79

SPEED RESTRICTIONS	Passenger	Freight
	MPH	MPH
16th Street to MP 2.2 - Mains 1 & 2 - curves .....	10	10
MP 2.2 to MP 2.7 - Mains 1 & 2 .....	25	25
MP 4 - Curve - Mains 1 & 2 .....	60	40
Kensington Interlocking - Mains 1 & 2 - crossings .....	25	25
Kensington Interlocking - Mains 1 & 2 - through all turnouts .....	10	10
Wildwood - through DCS turnouts .....	25	25

T.T.#6



**CN CHICAGO SUBDIVISION 5**

TRACK CHART & SIDINGS	SIDING LENGTH	SIDING SWITCH LOCATIONS	STATION SIGN	STATIONS		METHOD OF OPERATION	DEFECT DETECTORS	MILE CHANNELS CALLING
				↓ 100'S H	↑ 100'S H			
			61.6	RANE		CTC	68.7	(72.72) RTC 2 Diesel Doctor 8-8-8
			64.3	CHEBANSE				
			69.1	CLIFTON				
	11,025	70.6 72.9	73.1	ASHKUM				
			78.4	N. GILMAN				
			81.1	GILMAN				
			87.3	DELREY				
	14,518	100.7 103.6	102.8	PAXTON				
	14,208	113.0 115.8	113.8	RANTOUL				
			124.1	LEVERETT JCT.				

Chicago Subdivision north of Rane is in the Chicago Division Timetable.

	Passenger	Freight
	MPH	MPH
<b>MAXIMUM SPEED</b> .....	79	60

	Passenger	Freight
	MPH	MPH
<b>SPEED RESTRICTIONS</b>		
MP 81.1 - TP&W Crossing .....	50	30
Gilman - through turnout North end Main 2 .....	40	40
Delrey - through turnout South end Main 2 .....	40	40
MP 113 to MP 114 .....	60	—

	Turnouts	Siding
	MPH	MPH
<b>SIDING SPEEDS</b>		
Ashkum .....	40	40
Paxton .....	40	40
Rantoul - Freight Trains .....	40	40
Rantoul - Passenger Trains .....	40	60

T.T.#5



**CN CHAMPAIGN SUBDIVISION 7**

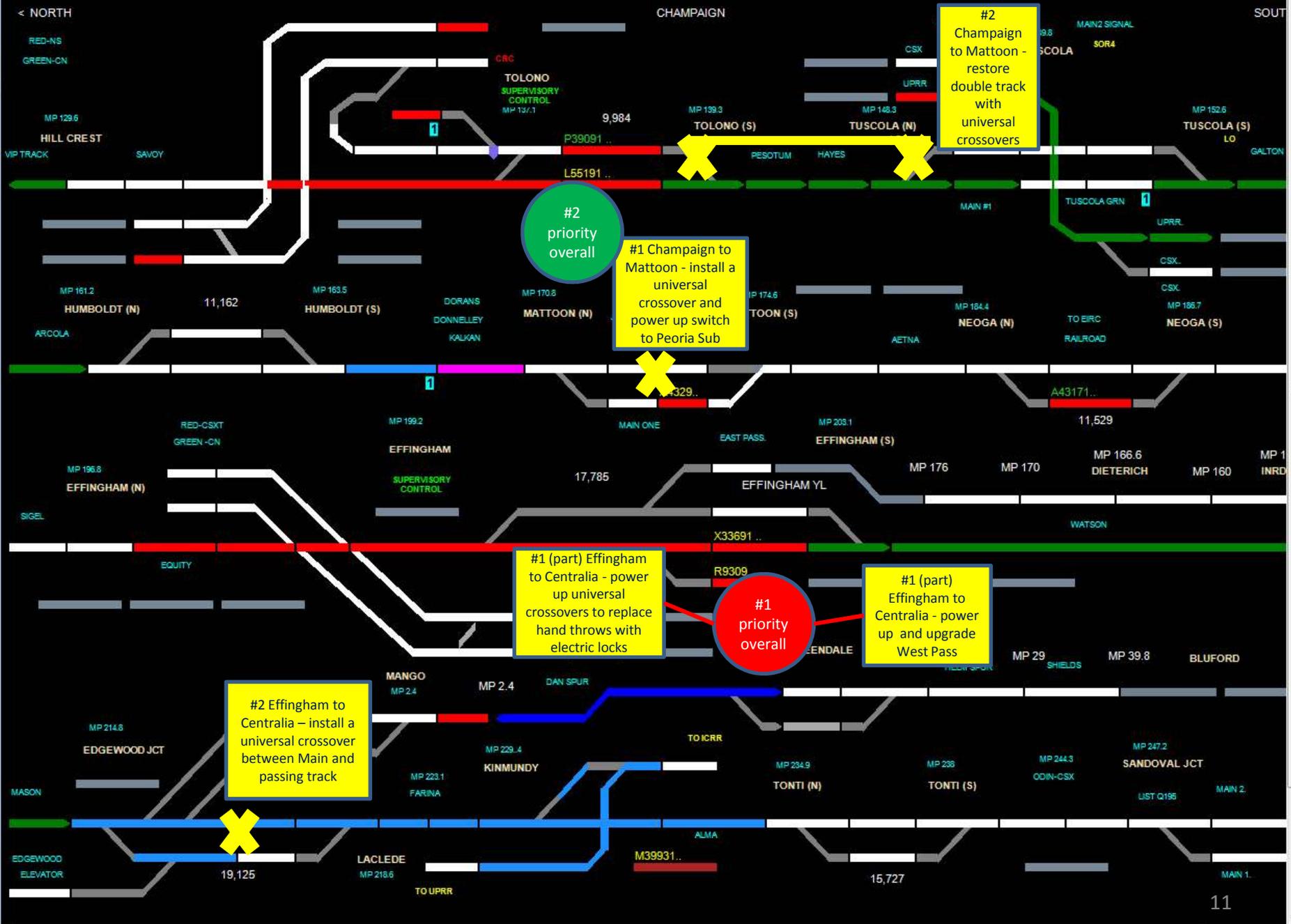
TRACK CHART & SIDINGS	SIDING LENGTH	SIDING SWITCH LOCATIONS	STATION SIGN	STATIONS	METHOD OF OPERATION	DETECT DETECTORS	MOBILE CHANNELS CALLING
Siding ← Yard Load NS	15,928	124.2 127.4	124.1	LEVERETT JCT. -3.7	CTC	135.1	(72 72) RTC 2 Diesel Doctor 8-0-8
			127.8	CHAMPAIGN -1.8			
SEYMOUR SPUR NS	9,984	137.1 139.3	129.6	HILLCREST -7.5			
			141.9	PESOTUM -6.4			
Main 1 ← Main 2 UP CSX			148.3	NORTH TUSCOLA -1.5			
			149.8	TUSCOLA -2.8			
UP CSX			152.6	SOUTH TUSCOLA -5.3			
			157.9	ARCOLA -5.7			
Main 1 ← Main 2 UP EIRC	11,193	161.2 163.5	163.6	HUMBOLDT -7.2			
			170.8	NORTH MATTOON -1.6			
PREVIERA SUB EIRC			172.4	MATTOON -2.2			
			174.6	SOUTH MATTOON -9.7			
CSX	11,246	184.4 186.7	184.3	NEOGA -12.5			
			196.8	N. EFFINGHAM -2.4			
EFFINGHAM SUB	17,793	199.5 203.1	199.2	EFFINGHAM -6.5			
			205.7	WATSON -9.1			
BLUFORD SUB	19,166		214.8	EDGEWOOD JCT. -3.8			
			218.6	LACLEDE -4.5			
UP			223.1	FARINA -6.3			
			229.4	KINMUNDY -9.6			
CSX	15,470	234.9 238.0	239.0	TONTI -5.2			
			244.2	ODIN -3.0			
Main 1 ← Main 2			247.2	SANDOVAL JCT.	238.8	(72 72) RTC 2 Diesel Doctor 8-0-8	

MAXIMUM SPEED ..... 79 <sup>Passenger</sup>MPH <sup>Freight</sup>MPH 60

T.T.#5

## Segment 2 – Champaign to Mattoon

1. Universal crossover between North Mattoon and South Mattoon and power switch to Peoria Sub (#2 priority overall)
  - Eliminate three ways and holding 7.2 miles north or 9.8 miles south
  - Eliminate time-consuming hand throws
  - Track \$860k / Signal \$3.3 million (inc. \$ 1.1 million in existing AFE)
2. Double track Tolono to Tuscola with crossovers at Tolono and Tuscola
  - Allow multiple meets and avoid holding 9.7 miles north or 8.6 miles south
  - Expedite UP Tuscola interlocking and NS Tolono interlocking moves
  - Track \$11.4 million / Signal \$1.3 million





**CN CHAMPAIGN SUBDIVISION 7**

TRACK CHART & SIDINGS	SIDING LENGTH	SIDING SWITCH LOCATIONS	STATION SIGN	STATIONS	METHOD OF OPERATION	DEFECT DETECTORS	MOBILE CHANNELS CALL NO.
Siding ← Yard Load NS	15,928	124.2 127.4	124.1	LEVERETT JCT. -3.7	CTC	135.1	(72 72) RTC 2 Diesel Doctor 8-0-8
			127.8	CHAMPAIGN -1.8			
SEYMOUR SPUR NS	9,984	137.1 139.3	129.6	HILLCREST -7.5			
			137.1	TOLONO -4.8			
Main 1 ← Main 2 UP CSX			141.9	PESOTUM -6.4			
			148.3	NORTH TUSCOLA -1.5			
Main 1 ← Main 2 UP CSX			149.8	TUSCOLA -2.8			
			152.6	SOUTH TUSCOLA -5.3			
Main 1 ← Main 2 UP EIRC			157.9	ARCOLA -5.7			
			163.6	HUMBOLDT -7.2			
Main 1 ← Main 2 UP EIRC			170.8	NORTH MATTOON -1.6			
			172.4	MATTOON -2.2			
Main 1 ← Main 2 UP EIRC			174.6	SOUTH MATTOON -9.7			
			184.3	NEOGA -12.5			
Main 1 ← Main 2 UP CSX			196.8	N. EFFINGHAM -2.4			
			17,793	EFFINGHAM -6.5			
Main 1 ← Main 2 UP CSX			199.2	EFFINGHAM -9.1			
			205.7	WATSON -3.8			
Main 1 ← Main 2 UP CSX			214.8	EDGEWOOD JCT. -4.5			
			218.6	LACLEDE -6.3			
Main 1 ← Main 2 UP CSX			223.1	FARINA -9.6			
			229.4	KINMUNDY -5.2			
Main 1 ← Main 2 UP CSX			239.0	TONTI -3.0			
			244.2	ODIN -3.0			
Main 1 ← Main 2 UP CSX			247.2	SANDOVAL JCT.			

MAXIMUM SPEED ..... 79 <sup>Passenger</sup> MPH <sup>Freight</sup> MPH  
60

T.T.#5

## Segment 3 – Effingham to Centralia

1. Upgrade and power up the West Pass at the south end of Effingham, and power up the universal crossovers at Effingham (#1 priority overall)
  - Eliminate three way meets with yard assignments and core trains
  - Track \$400,000 / Signal \$1.2 million
  
2. Universal crossover between Edgewood Jct. and Laclede
  - Eliminate three way meets and delays from 34.8 mile run to next meeting point
  - Free up staging area for trains held out by UP at Kinmundy
  - Track \$700,000 / Signal \$1.8 million



#2  
priority  
overall

#1 Champaign to  
Mattoon - install a  
universal  
crossover and  
power up switch  
to Peoria Sub

#2 Champaign  
to Mattoon -  
restore  
double track  
with universal  
crossovers

#1 (part) Effingham  
to Centralia -  
power up universal  
crossovers to  
replace hand  
throws with  
electric locks

#1  
priority  
overall

#1 (part)  
Effingham to  
Centralia -  
power up and  
upgrade West  
Pass

#2 Effingham to  
Centralia - install  
a universal  
crossover  
between Main  
and passing track



**CN CHAMPAIGN SUBDIVISION 7**

TRACK CHART & SIDINGS	SIDING LENGTH	SIDING SWITCH LOCATIONS	STATION SIGN	STATIONS	METHOD OF OPERATION	DETECT DETECTORS	MOBILE CHANNELS CALL NO.
Siding ← Yard Load NS	15,928	124.2 127.4	124.1	LEVERETT JCT. -3.7	CTC	135.1	(72 72) RTC 2 Diesel Doctor 8-0-8
			127.8	CHAMPAIGN -1.8			
SEYMOUR SPUR NS	9,984	137.1 139.3	129.6	HILLCREST -7.5			
			137.1	TOLONO -4.8			
Main 1 ← Main 2 UP CSX			141.9	PESOTUM -6.4			
			148.3	NORTH TUSCOLA -1.5			
Main 1 ← Main 2 UP CSX			149.8	TUSCOLA -2.8			
			152.6	SOUTH TUSCOLA -5.3			
Main 1 ← Main 2 UP EIRC	11,193	161.2 163.5	157.9	ARCOLA -5.7			
			163.6	HUMBOLDT -7.2			
Main 1 ← Main 2 UP EIRC			170.8	NORTH MATTOON -1.6			
			172.4	MATTOON -2.2			
Main 1 ← Main 2 UP EIRC	11,246	184.4 186.7	174.6	SOUTH MATTOON -9.7			
			184.3	NEOGA -12.5			
Main 1 ← Main 2 UP CSX	17,793	199.5 203.1	196.8	N. EFFINGHAM -2.4			
			199.2	EFFINGHAM -6.5			
Main 1 ← Main 2 UP CSX	19,166		205.7	WATSON -9.1			
			214.8	EDGEWOOD JCT. -3.8			
Main 1 ← Main 2 UP CSX	15,470	234.9 238.0	218.6	LACLEDE -4.5			
			223.1	FARINA -6.3			
Main 1 ← Main 2 UP CSX			229.4	KINMUNDY -9.6			
			239.0	TONTI -5.2			
Main 1 ← Main 2 UP CSX			244.2	ODIN -3.0			
			247.2	SANDOVAL JCT.			

MAXIMUM SPEED ..... 79 <sup>Passenger</sup>MPH <sup>Freight</sup>MPH 60

T.T.#5



**22 CENTRALIA SUBDIVISION**

TRACK CHART & SIDINGS	SIDING LENGTH	SIDING SWITCH LOCATIONS	STATION SIGN	STATIONS		METHOD OF OPERATION	DEFECT DETECTORS	RADIO CHANNEL CALL NO.
				←-CROSS	←-CROSS			
			247.2		SANDOVAL JCT.			
				6.0				
			253.2		CENTRALIA			(72 72)
				1.0				RTC
			254.2		31 SWITCH			3
				2.9				Diesel Doctor
			257.1		F YARD LEAD			8-1-8
				1.5				
			258.8		IRVINGTON			
				7.7				
			266.3		ASHLEY			
				7.5				
	13,760	273.6	273.8		BOIS		273.5	
		276.3		6.0				(72 72)
			279.8		TAMAROA			RTC
				5.7				3
			285.5		ST JOHNS			Diesel Doctor
				2.0				8-1-8
			287.5		DUQUOIN			
				1.3				
		288.8		ELDORADO JCT.	CTC			
			1.6					
		290.4		DOWELL JCT.		293.4		
			15.3				(72 72)	
		305.7		N. CARBONDALE			RTC	
			3.1				3	
		308.8		S. CARBONDALE			Diesel Doctor	
			14.6				8-1-8	
		323.4		COBDEN			(72 72)	
			5.3				RTC	
9,860	325.8	328.7		ANNA			3	
	327.8		12.1				Diesel Doctor	
13,664	340.9	340.8		WETAUG		340.2		
	343.5		11.3				Diesel Doctor	
		352.1		VILLA RIDGE			8-1-8	
			3.6					
		355.7		MOUNDS JCT.			(72 72)	
			0.6				RTC	
		356.3		MOUNDS			3	
			5.1				Diesel Doctor	
		361.4		CAIRO			8-1-8	
			1.7					
		363.1		ILLINOIS				

T.T.#5

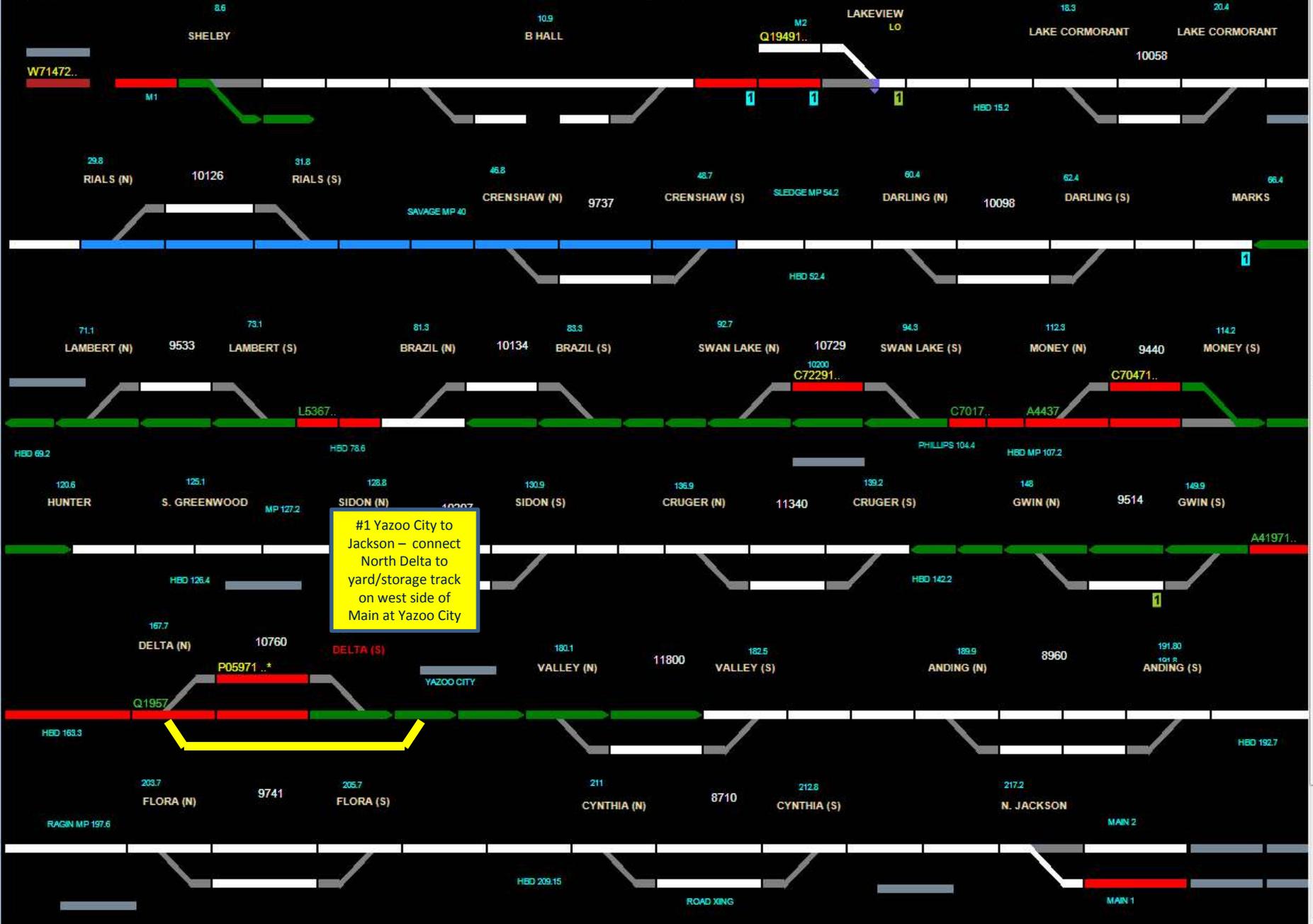
## Segment 4 – Yazoo City to Jackson

1. New track connecting north switch Delta to yard/storage track on west side of Main at Yazoo City
  - Allow trains to work without affecting main line trains
  - Track and bridge \$12.0 million / Signal \$2.0 million

< NORTH

YAZOO

SOU



#1 Yazoo City to  
 Jackson - connect  
 North Delta to  
 yard/storage track  
 on west side of  
 Main at Yazoo City



**50 YAZOO SUBDIVISION**

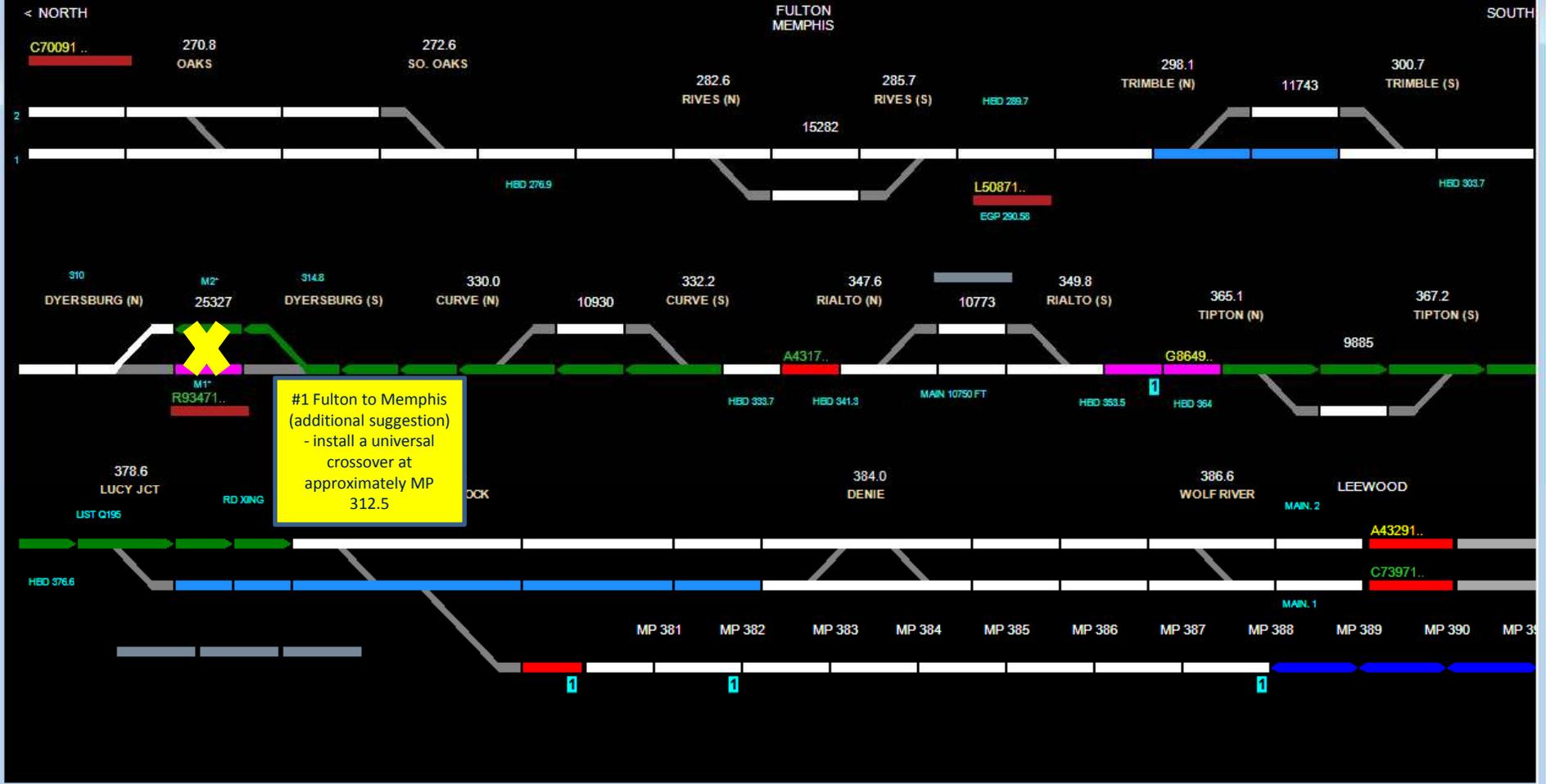
TRACK CHART & SIDINGS		SIDING LENGTH	SIDING SWITCH LOCATIONS	STATION SIGN	STATIONS	METHOD OF OPERATION	DEFECT DETECTORS	INDICATIONS CALLING
MAIN 1	MAIN 2			13.1	LAKEVIEW -7.4	CTC	15.2	(72 72) RTC 4 Diesel Doctor 9-2-8
		10,058	18.3 20.4	20.5	LAKE CORMORANT 9.7			
		10,126	29.8 31.8	30.2	RIALS -18.6			
		9,737	46.8 48.7	48.8	CRENSHAW -13.6			
		10,098	60.4 62.4	62.4	DARLING -4.0			
				66.4	MARKS -4.8			
		9,533	71.1 73.1	71.2	LAMBERT -12.1			
		10,134	81.3 83.3	83.3	BRAZIL -10.4			
		10,729	92.7 94.3	93.7	SWAN LAKE -11.3			
				105.0	PHILIPP -7.8			
		9,440	112.3 114.2	112.8	MONEY -7.8			
				120.6	HUNTER -1.3			
				121.9	YALOBUSHA -0.8			
				122.7	GREENWOOD -2.4			
				125.1	SOUTH GREENWOOD -5.9			
		10,207	128.8 130.9	131.0	SIDON -6.8			
		11,340	136.9 139.2	137.8	CRUGER -10.5			
		9,514	148.0 149.9	148.3	GWIN -20.9			
		10,760	167.7 169.9	169.2	DELTA -6.0			
				175.2	YAZOO CITY -5.0			
		11,800	180.1 182.5	180.2	VALLEY -9.5			
		8,960	189.9 191.8	189.7	ANDING -7.9			
				197.6	RAGIN -7.4			
		9,741	203.7 205.7	205.0	FLORA -6.3			
		8,750	211.0 212.8	211.3	CYNTHIA -5.9			
				217.2	NORTH JACKSON -1.4			
				218.6	JACKSON	YL		(72 72) RTC 4 Diesel Doctor 9-2-8

T.T.#5

## Improvement not in Top 4 Delay Segments

### 1. Universal crossover near Dyersburg (approximately MP 312.5 Fulton Sub)

- Eliminate three way meets with core trains and yard assignment working Main 1
- Optimize use of 25,000' Main 2
- Track \$800,000 / Signal \$2.0 million



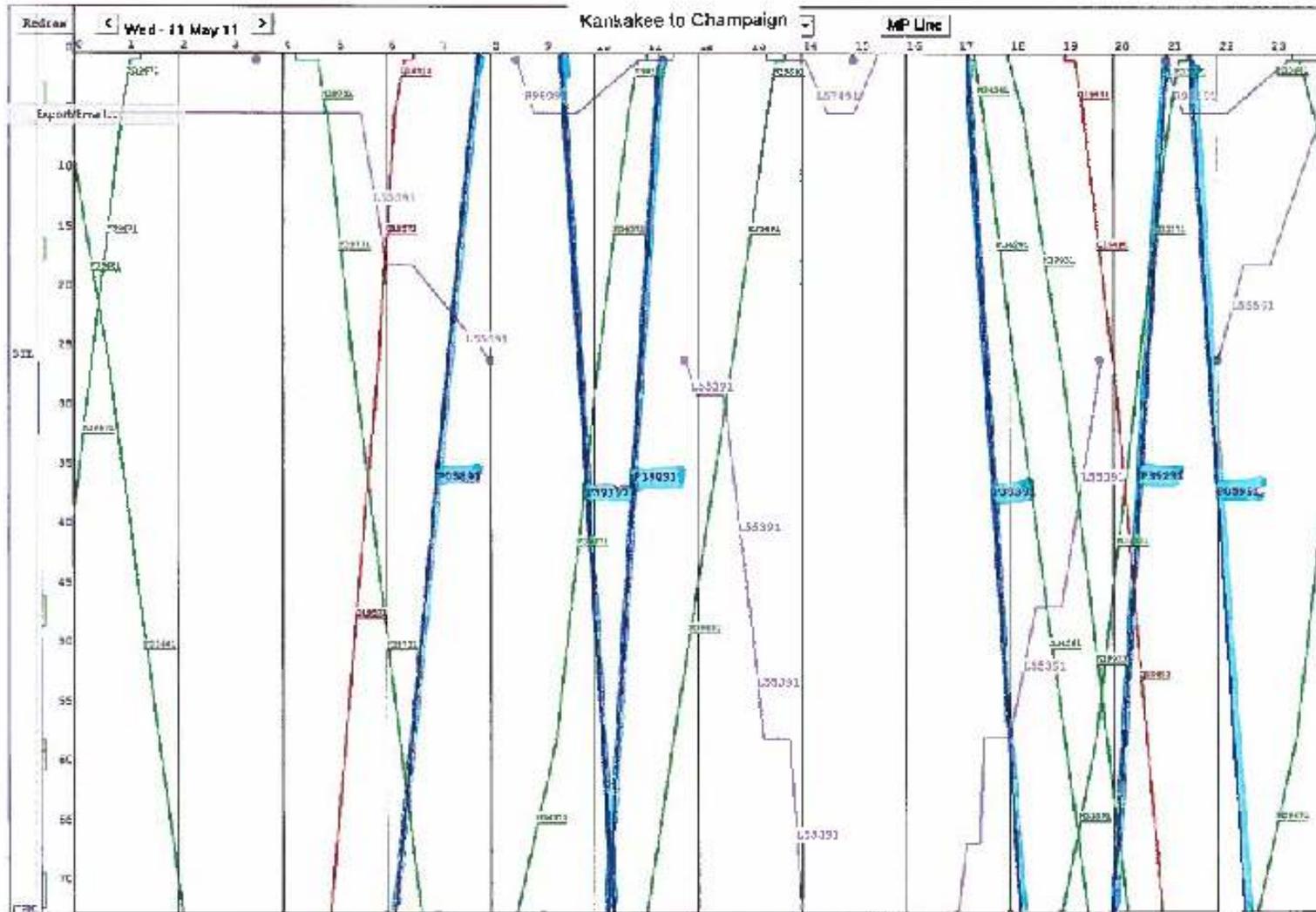


**36 FULTON SUBDIVISION**

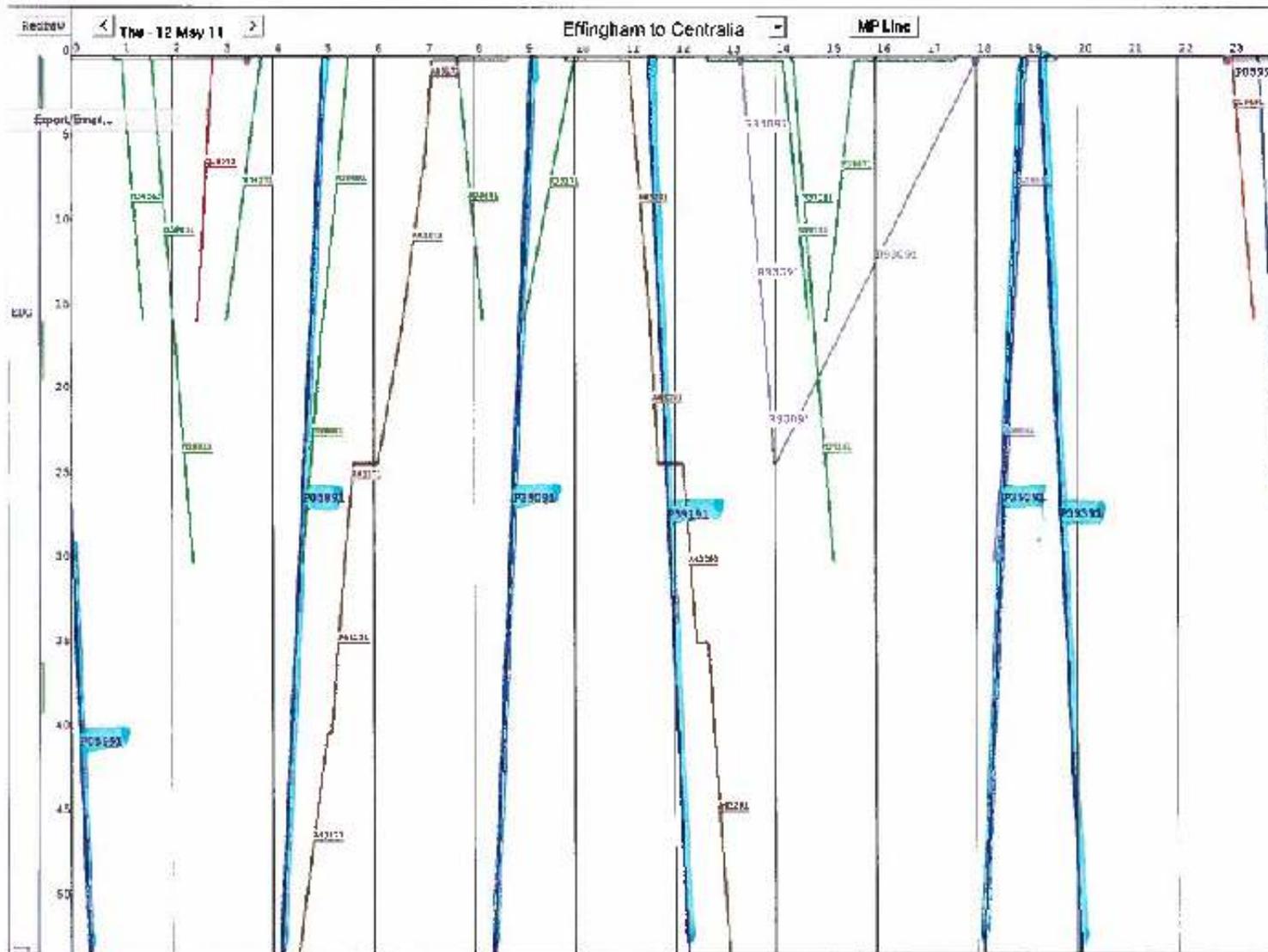
TRACK CHART & SIDINGS	SIDING LENGTH	SIDING SWITCH LOCATIONS	STATION SIGN	STATIONS		METHOD OF OPERATION	DEFECT DETECTORS	RAILROAD CHANNELS CALLING
				↓	↑			
CAIRO SUB MAIN 1 → MAIN 2 ←			40.7	NORTH SIDING		CTC		
				-1.6				
			269.2	CAIRO JCT.		YL		(72 72)
				-0.2				
			269.4	FULTON				RTC 4
				-1.4				
			270.8	OAKS				Diesel Doctor 8-1-8
				-1.8				
			272.6	S. OAKS			276.9	
				-10.9				
UNION CITY SPUR MAIN 1 → MAIN 2 ←	15,282	282.6 285.7	283.5	RIVES				
				-14.5			289.7	
	11,743	298.1 300.7	298.0	TRIMBLE				
				-7.2			303.7	
			305.2	NEWBERN				(72 72) RTC 4 Diesel Doctor 8-1-8
				-9.0				
			314.2	DYERSBURG			322.5	
				-16.1				
	10,930	330.0 332.2	330.3	CURVE			333.7	(72 72) RTC 4 Diesel Doctor 8-1-8
				-7.2				
		337.5	RIPLEY				(72 72)	
			-10.0			341.3	RTC 4	
10,773	347.6 349.8	347.5	RIALTO		CTC		Diesel Doctor 8-1-8	
			-4.8					
		352.3	COVINGTON			353.5		
			-14.8					
9,885	365.1 367.2	367.1	TIPTON			364.0		
			-6.9					
		374.0	MILLINGTON				(72 72)	
			-4.6			376.6	RTC 4	
		378.6	LUCY JCT.					
			-1.8					
		380.4	WOODSTOCK				Diesel Doctor 8-1-8	
			-3.6					
		384.0	DENIE					
			-2.6					
		386.6	WOLF RIVER					
			-0.8				(72 72) RTC 4 Diesel Doctor 8-1-8	
		387.4	HOLLYWOOD YARD					
			-0.5					
CSX			CN 367.9 CSX 371.3	LEEWOOD		CSX CTC	CSX (94 94)	

MAXIMUM SPEED ..... Passenger MPH 79      Freight MPH 60

T.T.#5







# Exhibit J



September 30, 2011

Mr. Paul Ladue, Regional Director Contracts and Administration  
Mr. Mark Nordling, NRPC Operations Officer  
CN North America  
17641 South Ashland Ave.  
Homewood, Illinois 60430-1345

Dear Paul and Mark:

Thank you for your hospitality in hosting Jason Maga, Charles Zak, and myself at your Homewood offices on August 19, 2011.

I received Mark's September 1, 2011 e-mail regarding the meeting. Amtrak's view of the meeting and appropriate next steps differs from CN's summary.

As you know, back in October 2009, CN's Mr. Vena and Amtrak's Mr. Crosbie met to discuss unacceptable levels of Freight Train Interference ("FTI") and other delays on CN's rail lines. CN promised to look into these issues and provide Amtrak with a plan to reduce delay. Nevertheless, despite a series of communications since that time, CN has not provided a comprehensive plan to ameliorate this serious situation, while FTI and other host-responsible delays on CN's rail lines have continued to fall far short of the standards prescribed by PRIIA Section 207.

On June 24, 2011, I sent CN an email (attached) again asking that CN provide me, in writing, a specific outline of the immediate actions CN would take to reduce host-responsible delays so that all Amtrak trains operating on CN meet the PRIIA Section 207 standards. In response, CN proposed the August 19 meeting, which I understood would be a chance to discuss a concrete plan for operating improvements to reduce delays. Unfortunately, when we met, CN failed to provide such a plan.

CN's primary focus at the meeting was: (1) to challenge how host-responsible delay minutes are calculated under PRIIA Section 207, and (2) to propose publicly-funded capacity improvements on CN's Chicago-Carbondale-New Orleans route used by Amtrak's *Illini/Saluki* and the *City of New Orleans*. With respect to the first issue, Section 207 does not entitle a host railroad to exclude certain delays. With respect to the second issue, when I asked (a) if the proposed capital improvements would result in CN meeting the PRIIA Section 207 standards, (b) if the proposed capital improvements were the only way to meet the PRIIA Section 207 standards, and (c) if CN has a plan for how to bring itself into compliance



with the PRIIA Section 207 standards on the Carbondale / New Orleans line, or on any other CN lines over which Amtrak operates – CN's answer to each of these questions was "no."

Amtrak continues to look to CN to make concrete operational improvements that will reduce delays to Amtrak trains. Mark's email of September 1 says that, "By mutual agreement, the meeting was viewed as the beginning of a dialogue about ways to improve OTP." Amtrak has sought for two years, via dialogue, for CN to improve performance, but very little has been accomplished. We have worked with CN on specific issues such as improving communication between CN dispatchers and the dispatchers of railroads crossing CN's route to Joliet, but CN has not made meaningful changes. We have repeatedly called attention to high FTI delays in Michigan, but have seen only limited improvement by CN.

After Mark's email, CN proposed another meeting, this time between Jim Vena and Mr. Crosbie's successor Jeff Geary. Paul and I have discussed this, but Amtrak remains unclear on how this meeting will differ from the meeting with Mr. Vena two years ago. Given the numerous meetings and discussions Amtrak and CN have already had over the last two years, and the poor performance that continues to this day, at this point Amtrak would prefer that CN first focus on making concrete operational improvements that will reduce delays to Amtrak trains.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul Vilter".

Paul Vilter  
*Assistant Vice President – Host Railroads*

cc: Jeffrey Geary  
Richard Phelps  
Jason Maga

Attachment

---

**From:** Vilter, Paul  
**Sent:** Friday, June 24, 2011 9:18 AM  
**To:** mark.nordling@cn.ca; paul.ladue@cn.ca  
**Cc:** Phelps, Richard; Maga, Jason; Blair, Jim  
**Subject:** Delays to Amtrak Trains on CN  
**Attachments:** CN 110624 PRIIA 207 Delays and OTP.xls

Mark,

I am writing to follow up on the various discussions and emails between Amtrak and CN staff in recent months regarding Freight Train Interference (FTI) delays on CN. Unfortunately, these communications do not appear to be resulting in the needed improvement, and an unacceptable level of FTI delays continues to persist.

As you know based on the Host Railroad Report that Amtrak distributes to host railroads including CN each month, no Amtrak route on CN met the PRIIA standard for Host-Responsible Delays in either of the past two quarters. Only one train (#364) met this standard in either quarter (see attached). In addition, very few routes or trains operating on CN met the PRIIA standard for On-Time Performance in either of the past two quarters. CN is the only major Amtrak host railroad to exhibit this level of performance. The attached exhibit summarizes the performance of Amtrak trains on CN relative to these standards.

In FY 2011 Q2, the largest category of delay on CN for Trains 21, 22, 58, 59, 300, 301, 302, 303, 304, 305, 306, 307, 364, 390, 391, 392, and 393 was FTI. FTI was the second-largest category of delay on trains 350, 353, 354, 355, and 365.

I would like to focus your and CN's attention on reducing CN delays to Amtrak trains. Please provide to me in writing what immediate actions CN plans to take to reduce host-responsible delays so that all Amtrak trains operating on CN meet the PRIIA standard. Amtrak appreciates CN's attention to this matter.

Thanks,  
Paul

Train	Host-Responsible Delay Minutes per 10,000 Train Miles (CN)		Endpoint OTP		All-Stations OTP	
	FY2011 Q1	FY2011 Q2	FY2011 Q1	FY2011 Q2	FY2011 Q1	FY2011 Q2
<b>Standard</b>	<b>900</b>	<b>900</b>	<b>80%</b>	<b>80%</b>	<b>80%</b>	<b>80%</b>
58	<b>1378</b>	<b>1134</b>	<b>68.5%</b>	84.4%	<b>54.3%</b>	<b>66.1%</b>
59	<b>1528</b>	<b>1233</b>	<b>70.7%</b>	87.8%	<b>47.1%</b>	<b>58.3%</b>
300	<b>3042</b>	<b>3149</b>	<b>47.8%</b>	<b>57.5%</b>	<b>68.2%</b>	<b>68.3%</b>
301	<b>3816</b>	<b>1058</b>	<b>67.4%</b>	<b>75.9%</b>	<b>77.6%</b>	<b>78.9%</b>
302	<b>2886</b>	<b>2590</b>	<b>47.8%</b>	<b>54.4%</b>	<b>68.9%</b>	<b>70.8%</b>
303	<b>3351</b>	<b>2906</b>	<b>60.9%</b>	<b>75.3%</b>	<b>58.3%</b>	<b>61.0%</b>
304	<b>2737</b>	<b>2427</b>	<b>75.0%</b>	84.1%	<b>69.7%</b>	<b>76.0%</b>
305	<b>1593</b>	<b>1749</b>	<b>68.1%</b>	<b>72.7%</b>	<b>70.3%</b>	<b>65.5%</b>
306	<b>2228</b>	<b>2027</b>	85.7%	85.6%	85.3%	86.2%
307	<b>1803</b>	<b>2660</b>	<b>65.9%</b>	<b>75.6%</b>	<b>62.6%</b>	<b>67.2%</b>
364	884	811	88.0%	85.2%	82.0%	80.1%
365	<b>1843</b>	<b>2207</b>	<b>45.7%</b>	<b>35.2%</b>	<b>79.9%</b>	<b>70.8%</b>
390	<b>1575</b>	<b>1203</b>	<b>44.6%</b>	<b>70.5%</b>	<b>55.9%</b>	<b>62.0%</b>
391	<b>1535</b>	<b>1455</b>	<b>44.6%</b>	<b>48.9%</b>	<b>29.1%</b>	<b>28.7%</b>
392	<b>1705</b>	<b>1433</b>	<b>26.1%</b>	<b>43.3%</b>	<b>51.4%</b>	<b>56.3%</b>
393	<b>1004</b>	<b>980</b>	<b>63.0%</b>	<b>76.7%</b>	<b>35.9%</b>	<b>61.3%</b>
350	<b>1236</b>	<b>1532</b>	<b>51.1%</b>	<b>32.2%</b>	<b>46.3%</b>	<b>37.3%</b>
351	<b>2326</b>	<b>2130</b>	<b>33.7%</b>	<b>16.9%</b>	81.5%	<b>63.7%</b>
352	<b>2953</b>	<b>3570</b>	<b>26.1%</b>	<b>5.6%</b>	<b>35.4%</b>	<b>28.8%</b>
353	<b>2018</b>	<b>2797</b>	<b>45.7%</b>	<b>36.7%</b>	<b>71.2%</b>	<b>56.0%</b>
354	<b>2043</b>	<b>3463</b>	<b>35.9%</b>	<b>17.8%</b>	<b>33.1%</b>	<b>36.1%</b>
355	<b>1579</b>	<b>2075</b>	<b>55.4%</b>	<b>40.0%</b>	<b>62.4%</b>	<b>42.4%</b>
21	<b>1408</b>	<b>2738</b>	83.7%	82.2%	<b>53.5%</b>	<b>61.3%</b>
22	<b>1366</b>	<b>1268</b>	<b>56.5%</b>	<b>72.2%</b>	<b>64.8%</b>	<b>62.9%</b>

Corrected August 3, 2011

# Exhibit K



ASSOCIATION OF  
AMERICAN RAILROADS

**Law Department**

Louis P. Warchot  
Senior Vice President-Law  
and General Counsel

March 27, 2009

Federal Railroad Administration  
1200 New Jersey Ave, SE  
Washington, DC 20590

Re: FRA-2009-0016 – Proposed Metrics and Standards for Intercity Passenger Rail  
Service

Pursuant to the Notice issued by the FRA in the Federal Register of March 13, 2009,  
attached please find the Comments of the Association of American Railroads for filing in the  
above docket.

Respectfully submitted,

Louis P. Warchot  
Counsel for the Association of  
American Railroads

**BEFORE THE  
FEDERAL RAILROAD ADMINISTRATION**

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**DOCKET NO. FRA-2009-0016**

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**PROPOSED METRICS AND STANDARDS FOR INTERCITY PASSENGER  
RAIL SERVICE**

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**COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS**

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*Counsel for the Association of  
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Dated: March 27, 2009

**BEFORE THE  
FEDERAL RAILROAD ADMINISTRATION**

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**DOCKET NO. FRA-2009-0016**

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**PROPOSED METRICS AND STANDARDS FOR INTERCITY PASSENGER  
RAIL SERVICE**

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**COMMENTS OF THE  
ASSOCIATION OF AMERICAN RAILROADS**

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**Introduction**

The Association of American Railroads (AAR) submits these comments on behalf of its member freight railroads<sup>1</sup> on the draft metrics and standards for measuring the performance of intercity passenger rail services that were recently released by FRA pursuant to section 207 of the Passenger Rail Investment and Improvement Act of 2008 (Act). AAR is a national trade association whose members include the nation's major freight railroads, as well as Amtrak and some commuter railroads. AAR's freight railroad members operate 72 percent of the freight rail industry's line-haul mileage, produce 95 percent of its revenue, and employ 92 percent of its employees.

While these comments are submitted only on behalf of AAR's freight railroad members, AAR wishes to emphasize that the freight railroads are successful partners with Amtrak across the country. Accordingly, freight railroads have a strong interest in the proposed metrics and standards because about 97 percent of the 22,000 miles of track over which Amtrak operates is owned by freight railroads. By statute, freight railroads

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<sup>1</sup> These comments do not reflect the views of the Kansas City Southern Railway, which takes no position on this proceeding

are required to share their tracks with Amtrak. Outside of the Northeast Corridor (NEC), passenger service must be integrated into day-to-day freight operations. Currently, an Operating Agreement is in effect between each host freight railroad and Amtrak that governs the rights and obligations of the parties with respect to Amtrak's use of freight railroad rights-of-way, including provisions addressing the measurement of Amtrak train performance on each railroad.

AAR's comments convey the general concerns of the freight railroads over FRA's proposal. AAR understands that some individual railroads also plan to submit comments on the proposed metrics and standards. Those comments will provide examples and more specific information, which should serve to illuminate some of the points raised by AAR.

While the metrics and standards that FRA develops ostensibly will be used to measure Amtrak's performance, they will have implications for the freight railroads that host Amtrak. As required by the Act, FRA will be issuing reports on, among other things, the causes of delays to Amtrak trains utilizing the metrics and standards. Moreover, the Act empowers the Surface Transportation Board (STB) to investigate failures to meet certain standards FRA develops and determine the cause of such failures. 49 USC §24308(f)(1). Where STB determines that a failure to meet standards is due to the host railroad's failure to provide preference to Amtrak, STB may assess damages against the host railroad. 49 USC §24308(f)(2). Though FRA is not tasked with enforcing the standards it develops, it must develop those standards with due consideration given to the fact that, if those standards are not met, there is the potential for penalties to be imposed.

The purpose of the Act is to improve passenger rail service, and the establishment of metrics and standards is intended to further that goal. However, metrics and standards will be of little value and, in fact, will be counterproductive, if they are divorced from the realities of the rail transportation system. To be meaningful and assist in attaining the goal of better service, the metrics and standards must take into account the state of the rail system which, notwithstanding the current serious economic downturn, has exhibited capacity shortages, which are expected to reappear in the future.

Metrics and standards for passenger rail service outside the NEC must be developed with an appreciation and recognition of the inherent constraints associated with operating passenger service on the rights-of-way of the freight railroads. This includes, among other things, the level of traffic, the class and type of tracks (i.e., single or double track) and short and long term maintenance needs. In addition, events that occur with some regularity, but whose time and place are unpredictable (e.g., crossing accidents, severe weather), can impact the fluidity of the network. It would not be realistic to assume that significant improvements in the performance of passenger rail can be made without addressing the underlying characteristics of the rail network.

### **Proposed Metrics and Standards**

FRA's draft proposes to establish two basic metrics and standards of direct relevance to freight railroads: on-time-performance (OTP) and train delays. The OTP metrics, which would be reported by route, include three tests:

1. Effective speed, to be equal to or better than a baseline of Fall/Winter 2007-08 system timetable plus actual endpoint terminal lateness during FY 2007;
2. Endpoint OTP, with all routes outside NEC achieving 80% in 2009, and 85% OTP by 2013;

3. All station OTP, with all routes outside NEC achieving 80% OTP in 2010, and 85% OTP by 2013.

In addition, FRA proposes to measure train delay minutes against pure run time, categorized by Amtrak-responsible delays and host railroad-responsible delays. Off of the NEC, the proposed standard for the former would be less than 250 minutes per 10,000 train miles; for the latter, less than 700 minutes per/10,000 train miles. These metrics would be reported by route and host railroad. FRA will be issuing reports on train delays which will include the direct cause of delays.

*Effective Speed:* The freight railroads seriously question the usefulness of measuring effective speed, especially when it is measured without consideration of seasonal variations in activity on various routes or growth and changing traffic patterns. Train speed is not the sole or even primary consideration for passengers choosing travel by train, and in particular, is a less meaningful measure for longer distance rail service. Long distance rail passengers are most concerned about whether they will get to their destination when they expect to, not about the speed of the train. As long as OTP standards are met, effective speed is of little importance, except, perhaps, on shorter corridors. FRA posits that effective speed is a necessary metric to guard against “schedule creep,” but, as discussed below, revised schedules will be necessary if any of FRA’s standards are to be meaningful.

Additionally, using a static schedule as a baseline is not appropriate since it would not take into account seasonal factors that can affect train speed, a concern further explored in the discussion of endpoint OTP. While it may be argued that the average endpoint terminal lateness component of Effective Speed already accounts for seasonal variations in performance, these variations would be smoothed out through the

calculation of a mathematical average. As a result, application of the average endpoint terminal lateness component will likely result in trains underperforming the standard during periods of heavy track maintenance and out performing the standard at other times of the year. If FRA believes that this metric is relevant and necessary, then it should consider a revised metric that is adjusted on a seasonal or quarterly basis. Aside from the seasonal effects on the proposed metric, an additional concern with the use of a static baseline schedule is that it does not reflect projected growth in rail transportation demand, which inevitably will affect system capacity.

***Endpoint OTP:*** OTP standards are meaningful only within the context of the timetable schedules against which they are measured. Amtrak is to implement schedules that “can be achieved with a degree of reliability.” 49 USC §24101(c)(6). Achieving an endpoint OTP of 80% (increasing to 85% by 2013) is not realistic on many routes under the existing Amtrak schedules. Historically, Amtrak has achieved an 80% OTP on routes over 400 miles only twice since its inception (during a time of weak demand for freight rail services), and less than half the time on shorter routes. Unless Amtrak schedules are revised, or substantial public investments are made, the proposed standard will prove unrealistic.

Government agencies, the public, Amtrak and the host railroads all share the expectation of service reliability. There are many variables that factor into achieving this reliability. Schedules must take into account operational conditions such as the impact of passengers embarking and disembarking, increased ridership, track maintenance time and the time needed to recover from unscheduled disruptions. Sufficient time must be

reflected in the schedules to allow for these events or the likelihood for meeting those schedules will be remote.

Moreover, measuring performance in aggregate over a period of time, e.g. an entire year, will mask important seasonal differences in operational activities and performance. Most importantly, track maintenance and construction is primarily carried out during the spring and summer. Therefore, it is common that performance will be at lower levels during these times of the year than during other times. However, even if customers are notified on an ad hoc basis about potential delays, Amtrak's scheduling process rarely adjusts its public timetables to account for delays that are known and planned well in advance. As a result, the OTP and delay reporting rarely adjusts appropriately for these planned events. There is a significant potential for improving performance by implementing more timely and flexible scheduling practices or by adopting seasonal schedules.

Finally, the proposed standards include endpoint arrival tolerances based on a former Interstate Commerce Commission rule. The tolerances increase as trip length increases, but only up to 551 miles. The longer a trip, the more likely it will be delayed, simply because there will be more opportunities to encounter delays. The ICC tolerances, which FRA proposes to use as a component of OTP, are the same for a 551 mile trip as for a 2,000 mile trip. FRA should consider lengthening tolerances as trip length increase above 551 miles.

***All Station OTP:*** The freight railroads object to a metric of OTP for all stations on all routes. Because a failure to meet this standard could result in an investigation, significant administrative resources would need to be expended by the host railroad to

investigate the root cause of all station delays. There are many stations that are lightly used and any benefit of measuring OTP at those stations is outweighed by the administrative burden of compiling that information.

Historically, Amtrak schedules typically have built recovery time into the end of a run. This results in very demanding station arrival times at intermediate stations. Therefore, any effort to measure all station OTP would require that these schedules be revised so that they more realistically reflect arrival times at intermediate stations in addition to assuring there is adequate time in the schedule for the entire trip.

***Delay Minutes:*** The freight railroads object to measuring delay minutes against pure run time as proposed by FRA. Delay time should be measured against published train schedules, which is how Amtrak measures itself on the NEC and which is the only appropriate way to measure performance. Measurement of delay versus schedule is a more relevant and meaningful measure and acknowledges that schedules may change over time for valid reasons. It is also what ultimately matters to passengers, who are primarily concerned with late trains and the reasons for the delay.

Train delays do not necessarily result in late trains, as Amtrak's schedules allow for some recovery time. In fact, the preponderance of delays recorded on the Host Railroad Delay per 10,000 Train Mile Report involve on-time trains and reflect the normal operational events on the railroad. On routes at or near capacity, all trains will experience some delay, including high priority passenger trains. These delays are associated with slow orders, track maintenance and train meets and passes which are inevitable (and necessary) on a freight rail system. Most delay minutes that accumulate on a run are for trains that arrive on time and there is little or no benefit in expending

resources monitoring, explaining and analyzing those delays. For a fair and relative assessment of performance, Amtrak and its host railroads should be measured on a comparable basis, which is tracking delay minutes against schedule.

Efforts to measure delays and assess their causes will be no better than the reliability of the data that is utilized. Simply measuring delays will achieve little if their causes are not recorded accurately. FRA has indicated an intention to rely on existing Amtrak data in recording delays; specifically, Amtrak Conductor Delay Reports (CDR). This is not acceptable. Quite often, Amtrak conductors simply do not know the root cause of a delay, recording only their impression of the direct cause. For example, a train stop due to a red signal may be recorded as a signal delay, but there will be no information about why the signal was red, which could have been for a number of reasons (e.g., a crossing accident ten miles down the line). As a result, though they may serve Amtrak's needs, the accumulated data on delays derived from the CDRs is of little value in assessing the true extent and cause of delays.

Also highly problematic is the manner in which delay data are categorized. When Amtrak measures itself, it segregates Amtrak interference, Amtrak equipment failures and third party delays (e.g., Amtrak crossing accidents). However, when reporting on freight train interference, all such categories ultimately are reported as "dispatching related delays." This implicates Amtrak's statutory right of preference. Since delays that are caused by a host railroad's failure to give preference to Amtrak can result in financial penalties under the Act, it is essential that delays be properly categorized.

Compliance with metrics and standards must be evaluated based upon sources of information beyond Amtrak's CDRs. Contrary to the contention that metrics should be

obtained solely from existing Amtrak data, new systems and existing technology can improve data integrity and reliability, while increasing productivity, reducing staff required for manual data entry, and improving overall efficiency. Continuation of a thirty-year-old manual process by itself is inappropriate and falls short of the standard that must be met given the Act's implications. The freight railroads have data, recording events on their rights-of-way, that can be made available. FRA should require use of those data. At a minimum, FRA should recognize that Amtrak's CDRs by themselves are insufficient to trigger, or be utilized in, an investigation under the Act and that supplemental data must be consulted to determine the root cause of delays.

*Other Metrics:* FRA should consider two other metrics, which the freight railroads believe would provide more meaningful information than some of the metrics proposed. Many Amtrak trains operate over the lines of more than one host railroad. Given that Endpoint OTP is not a representation of an individual host railroad's performance and does not provide any insight into the root cause of delays, addition of a host railroad OTP metric should be considered. Freight railroads are appropriately measured by and held accountable for the portion of the route operating on their line and for factors under their control. A metric measuring host railroad performance would be relevant in that regard and would be useful when investigations are contemplated under the Act.

Another metric for FRA to consider is a measurement of the severity of delays. While the goal is to meet schedules, trains that arrive slightly late should not pose the same concerns as trains that are significantly late. Late trains could be categorized in increments; for example, arrivals within 30, 60 or 90 minutes of schedule. This could be

effective in isolating patterns on different routes. If a route consistently performed below its OTP standard, but with the vast majority of trains arriving within 15 minutes of schedule, the best response might be a slight adjustment to the schedule rather than a costly investigation. Investigations could focus on routes with trains that are significantly late, though such an analysis might yield a finding that in many cases the root cause is an unavoidable event, such as a crossing accident, derailment or extreme weather.

### **Conclusion**

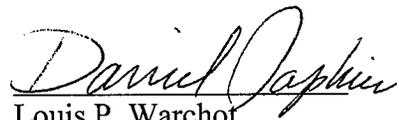
The Act calls for FRA and Amtrak to develop metrics and standards in consultation with the freight railroads over whose lines Amtrak operates and other key stakeholders. It also calls on Amtrak and the freight railroads to incorporate those metrics and standards into their operating agreements “to the extent practicable.” Any metrics and standards that arbitrarily assume a particular level of service without addressing the realities of operating that service could prove problematic and impracticable to incorporate into operating agreements.

To the extent such standards can be incorporated into operating agreements, they would require massive additional investment to expand capacity, as well as increased expenditures for maintenance and administration. As a result, the costs to consistently achieve such standards would become inherently unknowable. This could serve to inhibit freight railroads from entertaining any new Amtrak service. Moreover, to the extent such investments and costs are incurred, they would be considered incremental costs chargeable to Amtrak.

The freight railroads that host Amtrak service appreciate the opportunity to provide further input to FRA as it seeks to address the challenging tasks ahead.

Notwithstanding the concerns expressed on the proposed metrics and standards, the goal of the freight railroads is to foster a collaborative industry effort to advance passenger and freight rail transportation in America. The freight railroads have indicated to both Amtrak and FRA that they stand ready to work with each of them in the establishment of performance metrics and standards and to address the concerns raised in these comments. They wish to go on record again with that offer and remain available to meet with the FRA to further discuss this important matter.

Respectfully submitted



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March 27, 2009