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

*Re: EP 726, On-Time Performance Under Section 213 of the Passenger Rail Investment
And Improvement Act*

Dear Ms. Brown:

Attached by e-filing please find the request for procedural schedule of the Association of American Railroads filed in the above captioned proceeding.

Sincerely,

Timothy J. Strafford
Counsel for the Association
of American Railroads

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 726

ON-TIME PERFORMANCE UNDER SECTION 213 OF THE PASSENGER RAIL
INVESTMENT AND IMPROVEMENT ACT OF 2008

REQUEST FOR PROCEDURAL SCHEDULE OF
THE ASSOCIATION OF AMERICAN RAILROADS

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BEFORE THE
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REQUEST FOR PROCEDURAL SCHEDULE

The Association of American Railroads (“AAR”), on behalf of its Class I freight railroad members,¹ respectfully requests that the Surface Transportation Board (“Board”) issue a procedural schedule in this proceeding to receive proposals from stakeholders on the appropriate means of defining Amtrak’s on-time performance (“OTP”) for the purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008, 49 U.S.C. § 24308(f). To effectively address what is likely to be difficult and contentious issues, the Board should receive two rounds of pleadings, opening comments and replies, and allow at

¹ The AAR is a trade association representing the interests of North America’s major freight railroads, and it has participated actively in prior proceedings before the Board. The AAR and its Class I freight members have a vital interest in ensuring that the Board not exceed its statutory authority and that OTP performance be defined correctly. Amtrak is also a member of the AAR; however, this pleading does not necessarily reflect the views of Amtrak.

least 45 days for parties to submit each. Only after reviewing that record, should the Board consider issuing a proposed rule.

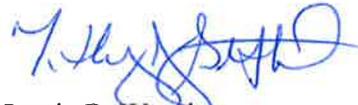
In the decision instituting this proceeding, the Board stated that it “intends to issue a notice of proposed rulemaking and procedural schedule in a subsequent decision.” *On-Time Performance Under Section 213 of the Passenger Rail Investment and Improvement Act of 2008*, EP 726, slip op. at 5 (STB served May 15, 2015). Rather than attempting to craft an OTP standard out of whole cloth itself, the Board should provide an opportunity for all interested parties to submit proposals, followed by an opportunity for parties to respond, as in the case when an agency initiates a rulemaking proceeding by issuing an advance notice of proposed rulemaking. Such a process would allow the Board to develop a record, clarify issues, and conserve the Board’s and parties’ resources. It would also be in line with the Board’s previous statements about defining OTP. In the decision in NOR 42134 that prompted the AAR petition for rulemaking in this proceeding,² the Board initially stated that it would attempt to define OTP in the course of a single adjudication. *See Nat’l. R.R. Passenger Corp.—Section 213 Investigation of Substandard Performance on Rail Lines of Can. Nat’l. Ry. Co.*, NOR 42134, slip op. at 10 (STB served Dec. 19, 2014). But the Board only intended to do so after getting the parties’ views on the appropriate standard for OTP. *See id.* at 11. The Board has since correctly determined that rulemaking is the appropriate

² The AAR notes that in instituting this proceeding, the Board did not address the AAR’s request that Board begin a rulemaking proceeding only after the Board addressed the pending motions for reconsideration of Canadian Railway Company in NOR 42134 and for dismissal of CSX Transportation, Inc. and Norfolk Southern Railway Company in NOR 42141. The AAR continues to believe that the Board materially erred when it held that it has the authority to define OTP for purposes of Section 213 in NOR 42134. The Board should correct its error and dismiss those proceedings. The AAR’s request for a procedural schedule is made subject to and without waiving its objections to the Board’s authority to define OTP.

way to proceed on this issue of industry-wide significance and should now seek the input of all affected stakeholders to build a record that supports a fair and meaningful OTP standard.

The AAR and its freight railroad members look forward to the opportunity to provide their views on this important matter.

Respectfully Submitted,



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Dated: July 16, 2015