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These comments are submitted regarding Docket No. EP-726.

This writer, who lives and practices law in South Orange, New Jersey, is an experienced rail rider, having ridden every train in the Amtrak system, and having visited more than 350 destinations currently served by Amtrak. Although this writer is involved at the national and local levels as an advocate for better service on Amtrak and local transit, these comments are submitted in an individual capacity, and not on behalf of any other person or organization.

The overarching question is whether or not the proposed regulations would be sufficient to protect the statutory priority to benefit not only Amtrak, but also Amtrak's riders, who wish to arrive at their destinations at or near scheduled time. It appears that, while the present proposal would help improve Amtrak's performance somewhat, new and stricter standards are needed.

The proposal concerns only two standards for measuring on-time-performance (OTP) for Amtrak trains; essentially one standard for corridor trains and another for Amtrak's few long-distance trains. Most corridor trains, including the Northeast Corridor north and south of New York, and the Midwest Corridors with Chicago as their hub, travel between 200 and 300 miles. For them, the standard is arrival at their final stations within fifteen minutes of scheduled time. For routes longer than 500 miles, the standard is arrival within thirty minutes of scheduled time.

There is nothing new about the proposed measure for on-time performance; it was first implemented by the ICC in 1973 and the present issue concerns whether or not this standard is the best measure for OTP today, despite its simplicity. The announcement of the proposal on the STB web site stated:

The Board proposes to adopt the ICC's definition because relying on a comparison between Amtrak's scheduled arrival time and the time an Amtrak train actually arrives at

its final destination would be clear and relatively easy to apply. In particular, adoption of this definition would simplify the record-keeping and production of evidence that may otherwise be necessary for Amtrak and the host carriers if on-time performance were defined using a number of additional factors, such as the amount of delay at intermediate stops or construction on the host carrier's line.

The announcement went on to say:

The Board seeks comments from all interested persons on the proposed rule. Importantly, the Board encourages interested persons to propose and discuss potential modifications or alternatives to the proposed rule. Examples of such alternatives might include, but are not limited to: factoring into the calculation of on-time performance a train's punctuality at intermediate stops, rather than the final terminus only; implementing alternative tables of maximum allowances with respect to either the distance-variables or the maximum allowance of minutes for each distance-variable band; or calculating the "on-time" thresholds under an entirely different methodology, such as approaches that Amtrak or other public agencies and host carriers have implemented. The Board will carefully consider all recommended proposals, and may take further comment, if appropriate, in an effort to establish the most meaningful and straightforward definition of on-time performance.

In light of today's operational situation regarding Amtrak, it is unclear that such a "one size fits all" approach would give most riders a meaningful measurement of OTP; at least on the long-distance trains, some of which travel over 2000 miles. On some routes, there is an intermediate stop with heavy ridership; perhaps even more riders than at one of the endpoints for that route. Some examples include Denver on Trains #5 and #6, the San Francisco Bay area (Oakland or Emeryville) on Trains #11 and #14, and Atlanta on Trains #19 and #20. An OTP measure should be included for high-ridership intermediate-stop stations on those selected trains, and should be factored into the overall OTP statistic, as a weighted average.

Currently, the schedules of some trains are padded for arrival into certain intermediate stops. They include Train #14 into Sacramento, Train #1 into San Antonio, Train #4 into Albuquerque, and Trains #5 and #6 into Denver. There are other examples, as well, where schedules are padded by one hour or more. Presumably, these trains are scheduled to accommodate potential delays caused by host railroads, and with the goal of providing a

schedule that Amtrak considers realistic. If Amtrak trains are to have true priority on tracks owned by the host railroads, this padding must be eliminated, or at least substantially reduced. Some running times on current long-distance routes are longer than they were a half-century ago; sometimes by several hours, to accommodate slower movement on track that Amtrak does not own. In considering OTP, Amtrak passengers should have the benefits of a passenger-train-priority on the entire route of their train. The running time for every train should be as short as Amtrak and the host railroads can accomplish, comparable with the schedules established during the 1950s and earlier, when railroads voluntarily gave passenger trains priority over freight.

This writer is deeply concerned that host railroads may push for extra padding in schedules immediately prior to a train's arrival at its terminal. Several trains already have significant slack in their schedules, and a safeguard is needed to prevent the host railroads giving themselves an extra hour or two of slack on every run, for the purpose of avoiding late fees.

Many of Amtrak's long-distance trains are currently scheduled with significant padding before arrival at their final destinations. For most of them, there is 30 to 45 minutes of slack. There is even more padding for some trains: approximately one hour for Train #59 into New Orleans, Train #21 into San Antonio and Trains #1 and #3 in Los Angeles. Many of Amtrak's long-distance trains are currently scheduled with significant padding before arrival at their final destinations. For most of them, there is 30 to 45 minutes of slack. There is even more padding for some trains: approximately one hour for Train #59 into New Orleans, Train #21 into San Antonio and Trains #1 and #3 in Los Angeles.

From the time the Court of Appeals for the D.C. Circuit invalidated Amtrak's participation in rulemaking under PRIIA on July 2, 2013, until the Supreme Court reversed on March 9, 2015, the host railroads had unfettered discretion to give Amtrak trains as low a priority as they saw fit, regardless of how late those trains arrived at their terminals as a result. Under no circumstances should the schedules of Amtrak trains be padded more than they were during the period between the D.C. Circuit and Supreme Court decisions. That was the period when Amtrak trains were most vulnerable to the operational whims of the host railroads, and adding any time to baseline schedules that would result in longer running times than riders endured during that period would completely defeat the purpose of the STB rulemaking proposal.

There is a further problem with the proposal, concerning trains that fail to operate over their entire routes, for whatever reason. The STB statement says: "excluded from the calculation

would be, for example, trains that do not operate, for any reason; trains that terminate prematurely at an intermediate point rather than the scheduled final terminus; and trains that originate at an intermediate point rather than the scheduled origin” (at note 6). This means that only trains which run late will be counted when calculating on-time performance toward triggering an STB investigation. When there is a service disruption, the trains that are annulled entirely or in part would not count at all against a host railroad’s on-time performance.

From a rider’s perspective, this procedure appears outrageous. A service disruption that results in the annulment or cancellation of a run is worse for a rider than a train that arrives late, unless that train is many hours late. If a train is annulled because of a natural disaster, such as the recent Mississippi River flooding, that is not the railroad’s fault. If a train is annulled because of operational difficulties on the host railroad, that is a different story. The cause of the annulment or cancellation is a question of fact for the STB, and not a matter to be eliminated from consideration. Riders want and deserve reliable service on Amtrak. They suffer when a train is substantially late, and they suffer more when a train does not run at all. To this writer, the provision of the proposed rules that would eliminate from consideration every train that does not make its entire advertised runs is objectionable and must be revised. If a train does not run and a rider must wait an entire day for the next train, the total delay is 720 minutes for each person who would have been on that train. For the two tri-weekly trains that Amtrak operates, an annulment or cancellation would result in a delay of 1440 or 2160 minutes (two days or three days) for each rider.

Section 213 came from PRIIA, as did Section 207, which was at issue in the Supreme Court case. These issues might come back to the Court. Justice Alito expects it, and Justice Thomas would welcome it. In the meantime, Amtrak trains might enjoy better on-time-performance, but standards should be strict, and they should be enforced vigorously. Amtrak’s riders deserve to have trains that reach not only final destinations, but also intermediate stops, on or close to scheduled arrival times. The suggestions offered in this document should help.

Respectfully submitted,

DAVID PETER ALAN

Dated: February 8, 2016