



April 6, 2016

Daniel R. Elliott III
Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

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RE: STB Docket No. EP 728

Dear Mr. Elliot:

The Surface Transportation Board (STB) has issued a Proposed Policy Statement (PPS) to clarify existing law with regard to how Amtrak is given “preference” over freight trains on rail lines across the nation. We seek more clarification on STB’s intent and urge STB to avoid making changes to established definitions and procedures.

Congress, since 1973, has been clear and unambiguous that “Amtrak has preference over freight transportation in using a rail line, junction, or crossing...” (49 U.S.C. § 24308(c)). This language has remained unchanged, even though passenger rail legislation was signed into law as recently as December 2015, and is settled from Congress’ perspective. The interpretation of this language has also been confirmed by the U.S. Department of Justice and U.S. Department of Transportation.

In this PPS, the STB points out that freight and passenger rail traffic has increased and become more complicated. Therefore, the PPS is meant to clarify two issues: 1) that preference should be analyzed at the corridor level rather than train by train and 2) to explain the evidence that might be presented by all parties to demonstrate whether preference is or is not being provided as required by law.

Analyzing preference on a corridor level makes sense. However, requiring Amtrak to explain how their trains are or are not given preference by the host railroad seems challenging, if not totally infeasible. The freight rail companies are private, and the information governing their rail operations is proprietary; so Amtrak can, at best, offer speculative data on these issues. Our concern is that it is not clear from the language of the PPS whether STB is simply specifying the evidence it would like to weigh in a dispute or if STB is shifting the burden of proof onto Amtrak, requiring the passenger railroad to prove non-preferential practice in order to get relief. If it is the latter then it is not only infeasible, it would undermine Congressional intent and common practice that has been deliberated and settled for decades.

SACOG urges STB to state clearly that the burden of proof on preference lies with the entity with access to the necessary information – the host railroad. Without such language, STB’s actions could seriously undermine passenger rail service outside of the Northeast Corridor. Many regions, like ours, have made providing transportation choices a priority to address traffic congestion, quality of life and climate change. We ask the STB to proceed carefully and ensure that it is truly clarifying existing law and now making new law.

Sincerely,

Mike McKeever
Chief Executive Officer

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