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States for
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February 8, 2016

240046

California

Connecticut

The Honorable Daniel R. Elliott III
Chairman
United States Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

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February 8, 2016
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The Honorable Ann D. Begeman
Vice Chairman
United States Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Massachusetts

Maine

Michigan

The Honorable Debra Miller
United States Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Minnesota

Missouri

Nevada

Re: Surface Transportation Board Decision
Docket No. EP 726
Definition of "on-time performance" 49 USC 24308(f)

New York

North Carolina

Dear Chairman Elliott and Surface Transportation Board Members:

Oklahoma

Oregon

On behalf of the States for Passenger Rail Coalition, Inc. (SPRC) I am pleased to provide the attached comments to the record on the above-referenced rulemaking.

Pennsylvania

Our members sponsor 30 intercity passenger routes serving 296 communities across America. Last year our trains carried almost 15 million passengers, representing 48% of Amtrak's total ridership. We also contributed \$711 million in revenues to Amtrak, through \$489 million in passenger revenues plus \$222 million in contract payments.

Texas

Vermont

Virginia

SPRC members also partner with the USDOT and host freight railroads to make critical investments in rail safety and capacity, stations, and other network improvements to help ensure effective, reliable and efficient freight and intercity passenger services.

Washington

Wisconsin

Sincerely,

Capital Corridor

Joint Powers

Authority

Patricia Quinn
Chair, States for Passenger Rail Coalition, Inc.
Executive Director, Northern New England Passenger Rail Authority

Northern

New England

Passenger

Rail Authority

Attachment:

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB EX PARTE 726

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

COMMENTS OF THE STATES FOR PASSENGER RAIL COALITION, INC.

FEBRUARY 8, 2016

STATES FOR PASSENGER RAIL COALITION, INC.

COMMENTS ON THE PROPOSED RULE

The States for Passenger Rail Coalition, Inc. (SPRC) is a private non-profit organization comprised of 22 state departments of transportation and 2 passenger rail authorities. SPRC promotes the development, implementation, and expansion of intercity passenger rail services. In order to accomplish this purpose the SPRC:

- Promotes current and long-range plans for intercity passenger rail throughout the United States;
- Facilitates coordination and cooperation among state and agency officials and between the public and private sectors in order to promote and develop intercity passenger rail services;
- Advocates for, and assists in, the pursuit of state and federal funding to support further development and improvement of America's passenger rail system; and
- Supports current efforts and projects managed by state transportation departments and designated local authorities.

States and single-purpose authorities sponsor the following intercity passenger rail routes:

Pacific Surfliner	Chicago-St. Louis (Lincoln Service)	Piedmont
Capitol Corridor	Hiawatha	Keystone
San Joaquin	Wolverine	Pennsylvanian
Vermont	Chicago-Carbondale (Illini/Saluki)	Ethan Allen
New Haven-Springfield	Chicago-Quincy (IL Zephyr/Carl Sandburg)	Albany-Niagara Falls- Toronto
Washington-Lynchburg	Blue Water	Empire (NYP-ALB)
Washington-Newport News	Hoosier State	Adirondack
Washington-Norfolk	Pere Marquette	Heartland Flyer
Washington-Richmond	Downeaster	Cascades
Carolinian	Kansas City-St. Louis (MO River Runner)	Maple Leaf

The SPRC supports action by the Surface Transportation Board (STB) to define “on-time performance” (OTP) for operation of intercity passenger rail services that is consistent, easily understood by the traveling public, readily measurable, and meaningful for customers, host and operating railroads, service sponsors and policy-makers.

We find that the definition proposed in Docket No. EP 726 falls short of these goals in several respects:

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- The proposed rule measures OTP only at the route end point, failing to ensure performance for interim station stops. The public should be able to rely upon train schedules at intermediate stops as well as at the ‘final terminus’ of a route.
- The proposed rule would not measure OTP in 24 states which have intercity passenger rail services. A definition of OTP should address interim route stops and equally treat all intercity passenger rail trains traversing any state.
- Measuring performance only at the end-point of a route may cause poorer performance at intermediate stations, with host railroads focused only on arriving at the endpoint on time since that is the only point measured. The definition permits stacking in busy areas and recovery elsewhere.
- Defining only end point OTP will generate additional commercial pressure to lengthen schedules and a resistance to reducing travel times when publically-funded infrastructure improvements are made.
- The proposed rule is silent on the impact and responsibilities of routes operated over multiple host railroads or across international borders. Note that some routes are operated which begin or terminate in Canada.
- Consistent with defining OTP, standards should also be set for development of route schedules. While necessarily proprietary, capacity modeling tools used to develop route schedules need transparency and independent validation against which route schedules and OTP can be measured.
- Pending litigation regarding the PRIIA Section 207 Metrics and Standards could result in having multiple national standards for OTP.
- Many long distance trains frequently do not meet their schedules today nor come close to the proposed OTP definition—how will the STB implement a new OTP definition?
- Some service sponsors have purchased capacity, and negotiated performance agreements which are separate and apart from the Amtrak host railroad operating agreements. A definition of “on-time performance” should not diminish performance of any service which has in place parameters, incentives and penalties that already work to the satisfaction of the service sponsor. Service sponsors should be able to negotiate for more favorable service outcomes.
- Some host railroads have rules which limit the utility of capacity; implementation of positive train control (PTC) systems should negate the needs for such rules, which will necessitate revisions to schedules. How will STB ensure the fair and equitable revision of schedules to achieve desired performance improvements?

BACKGROUND

OTP is the “canary in the coal mine” for intercity passenger rail services. Consistent OTP brings positive responses from customers—freight and passengers alike—while poor OTP undermines efforts to grow ridership and adds costs to the public treasury. 80% OTP, by any definition, has proven elusive to define, achieve, litigate and enforce. The Congress, in demonstrating its will to have intercity passenger trains be operated with punctuality, has held

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hearings, set goals, enacted legislation, and has invested in infrastructure improvements and yet the railroad industry has all too frequently failed to achieve the desired outcome.

Consistent OTP clearly is in the public interest as it will not only help build train patronage, it will also help spur economic development focused on development surrounding stations and help achieve beneficial environmental, educational and employment goals.

In Amtrak's Monthly Performance Report for September 2015, the year to date network averaged 72.3% on-time performance in 2014 and 71.1% in 2015.

The United States Department of Transportation's Bureau of Transportation Statistics (BTS) reports during the 32 year interval 1980 through 2012 only three years when the Amtrak national network achieved an 80% or greater OTP standard (1985 @ 81%, 2009 @ 80.4% and 2012 @ 83%) according to the definition below:

Trip length (miles)	Minutes late at endpoint
0–250	10 or less
251–350	15 or less
351–450	20 or less
451–550	25 or less
> 551	30 or less

According to the same BTS report there was no year when trains operating routes more than 400 miles in length achieved OTP, and the average OTP for long distance trains was 55.3%

See also

http://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national_transportation_statistics/html/table_01_73.html

HISTORY

Most freight railroads were chartered to provide both freight and passenger services. Over time, passenger services became unprofitable and the freight railroads asked to be relieved of that common carrier responsibility.

Freight railroads also carried the burdens of taxation—a World War II-era excise tax of 15% of passenger revenues survived until 1962, local ad valorem taxes, subsidized competition in the form of highways, trucks and automobiles, and in 1966, the United States Postal Service (USPS) moved much of the revenue generated by mail, from railroads to the aviation and truck modes.

The Rail Passenger Service Act (RSPA) signed October 30, 1970 by President Nixon authorized the National Railroad Passenger Corporation (Amtrak) to manage the basic national rail network and operate trains under contracts with the freight railroads. Amtrak assumed the common carrier obligations for passenger service of the private railroads in exchange for the right to priority access of their tracks for incremental cost.

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In establishing Amtrak, the RSPA states, in part,

“...the Congress finds that modern, efficient, intercity railroad passenger service is a necessary part of a balanced transportation system; that the public convenience and necessity require the continuance and improvement of such service to provide fast and comfortable transportation between crowded urban areas and in other areas of the country....”

In 1973 the Congress returned to the issue, in response to generally poor on time performance of passenger trains and provided Amtrak with a preference over freight transportation, see 49 CFR 24308 (C)(3)(c).

“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....”

In the same legislation, Congress also provided for Amtrak to operate trains at accelerated speeds and to operate additional trains, and for the public to add sufficient infrastructure and compensation to support improved intercity passenger rail services. These provisions were enacted to better serve the public interest as expressed by Congress in establishing Amtrak.

OTP deteriorated due to freight train interference and discretionary host railroad preference in the late 1970s as described in the report by Amtrak PRIIA Section 210 FY10 Performance Improvement Plan for the *Sunset Limited Texas Eagle*,

“...Ridership on the *Sunset Limited* increased after Amtrak took over the train's operation. However, on-time performance deteriorated in the late 1970s due to freight train interference. In 1980, the U.S. Department of Justice (DOJ) filed a federal lawsuit against Southern Pacific, charging that on the *Sunset Limited* route, it had violated the provision of the Rail Passenger Service Act (RPSA) that requires that Amtrak trains be given preference over freight trains. (This lawsuit remains the only legal action brought by DOJ under that provision.) On-time performance improved markedly after Southern Pacific entered into a consent decree that required it to comply with the RPSA provision...”

In relieving the freight railroads of the responsibility, and costs, of operating passenger service the Congress began a program of supporting the costs of intercity passenger service. This financial support in annual operating and capital investments totals more than \$40 billion to date, and should be considered a subsidy to the freight railroad industry.

Note that this sum does not include the more than \$9.8 billion in federal grants made to intercity passenger service sponsors by the FRA under the Passenger Rail Improvement and

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Investment Act of 2008 (PRIIA) and the American Recovery and Reinvestment Act of 2009 (ARRA). In addition state and local project sponsors have invested billions more in rail infrastructure investments. These capital grants were made to improve safety, add capacity and reduce travel times for intercity passenger routes.

Project awards aligned well with areas identified with long-standing congestion and capacity issues, see <https://www.fra.dot.gov/eLib/details/L02836>, FRA High-Speed Intercity Passenger Rail (HSIPR) Program Funding Selection Summary.

For ARRA construction projects USDOT required Definitive Service Outcome Agreements (DSOA) to be negotiated and signed by the FRA, the project sponsor, the host railroads, and Amtrak. In effect the projects and the DSOAs created “islands of improvements” outside of the traditional Amtrak host railroad operating agreements. These islands enabled and required enhanced network performance for freight and passenger services.

As a condition of receiving the grants, the host railroads also were required to attest that the projects provided capacity for passenger rail at 80% OTP and did not negatively impact freight capacity. Further, the project sponsors were to underwrite cost of maintenance—not at the Amtrak incremental cost—but at the host railroad’s cost to maintain the infrastructure.

All of the projects authorized by ARRA must be completed by September 30, 2017 and will result in a wave of additional passenger trains and heightened network performance expectations.

In 2012 the FRA completed an Analysis of the Causes of Amtrak Train Delays, Report Number: CR-2012-148. The report’s findings include:

“...Amtrak train delays outside the Northeast Corridor (NEC) reduce the value of Amtrak service as an option for travelers and increase the railroad’s need for subsidies. Consequently, they have long been the subject of congressional concern and industry debate. Amtrak points to freight railroads’ dispatching practices as the cause with the greatest impact on Amtrak train delays, while the freight railroads contend that capacity limitations, or insufficient infrastructure for rail traffic levels, contribute more heavily.

“...The impact of Amtrak delays took on a new significance with the passage of the Passenger Rail Investment and Improvement Act of 2008, and the American Recovery and Reinvestment Act of 2009.... *A substantial portion of the HSIPR program is geared towards improving the speed and reliability of existing Amtrak services....*”

“Host effects and slow orders were the chief causes of delays system-wide. However, delays caused by host effects varied considerably from one host railroad to another, for both long- and short-distance services system-wide. Only slow orders may have caused delays greater than those caused by the largest host effects. Capacity utilization and the activities at turn points also contributed notably to delays on both types of services, but capacity utilization had a relatively greater impact on short-distance services than on long-distance services. Amtrak mechanical problems contributed little to delays on either type of service. Delays caused by different hosts varied even more widely across individual routes than they did system-wide. Slow

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orders dominated other non-host effect causes in their contributions to individual route delays.”

In 2008 the FRA completed Report Number: CR-2008-Effects of Amtrak's Poor On Time Performance. The report documented on time performance affects Amtrak finances

“...poor OTP reduces ridership on Amtrak trains because potential passengers cannot predict when their train will arrive. It also increases costs, primarily by extending shifts, increasing staffing requirements, and utilizing more fuel. Improving OTP could significantly improve Amtrak's finances. It would generate funds Amtrak could use to increase the incentives to host railroads both to improve the performance of Amtrak trains operating on their tracks or reduce its reliance on Federal operating subsidies.

Amtrak's poor OTP significantly undermines the viability of intercity passenger rail as an option for travelers and weakens Amtrak's financial position by reducing its revenues and increasing its operating costs. Between Fiscal Year (FY) 2003 and FY 2007, Amtrak's OTP off the Northeast Corridor (NEC) for long-distance routes fell from an average of only 51 percent to 42 percent, and OTP for non-NEC corridor routes fell from an average of 76 percent to 66 percent. The need to improve mobility, relieve congestion, and reduce oil consumption makes Amtrak's performance and financial health a national concern.

Further, “...*The portion of the reductions in operating losses associated with state-supported routes would largely reduce state payments to Amtrak, and would not generally impact Amtrak's finances. (emphasis added)* Long-distance routes would generate the greatest gains from achieving reliable OTP because their current performance is so poor.

Travelers who have the option to choose among transportation modes can readily choose to take the train if they become more confident that it will arrive on time. This makes revenues relatively responsive to changes in OTP....”

Finally the FRA analysis of poor on-time performance found it costs Amtrak almost \$140 million per year, an amount more than 50% of Amtrak's FY2015 Federal operating subsidy and 12% of the total costs to States to sponsor train operations during the same period.

AMTRAK MANAGEMENT AND HOST RAILROAD OPERATING AGREEMENTS

Based upon its statutory rights, Amtrak has entered into negotiated agreements with host railroads that specify the terms of Amtrak's operations over host tracks. These agreements also incorporate performance payments and penalties. Performance payments are made by Amtrak to the host railroads when certain OTP outcomes are achieved. Host railroads must pay performance penalties to Amtrak when OTP fails to meet certain thresholds.

Amtrak host railroad operating agreements are proprietary, states and other intercity service sponsors are not a part of the negotiated agreements nor are they privy to the terms and

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conditions of these agreements—but the intercity service sponsors are responsible to pay the direct and indirect costs of these agreements.

In more than sixty (60) audits conducted since the 1990s by the Amtrak Office of Inspector General (OIG) has found that the host railroads have a history of filing inaccurate invoices under the operating agreements, and that Amtrak's consistently poor management of the operating contracts has resulted in significant overpayments. While, reportedly, about 51% of the overpayments have been recouped, it does not appear that any service sponsor has been reimbursed for these errant costs.

See Amtrak Invoice Review: Internal Control Weaknesses Lead to Overpayments (Union Pacific) Report No. OIG-A-2013-011, March 28, 2013, Appendix I for a list of audits concerning Union Pacific Railroad, Burlington Northern Santa Fe Railway, Canadian Pacific Railway, Canadian National Railway, CSX Transportation and Amtrak oversight of host railroad operating agreements. See also <http://www.eenews.net/stories/1060015115> Cash strapped Amtrak let millions in overpayments slip away, March 16, 2015.

The combination of intercity service sponsors being responsible for costs which other parties negotiate, widespread poor OTP, and inaccurate invoices, paid with poor oversight, is an arrangement which clearly does not serve the public interest.

Some service sponsors have purchased capacity and or have negotiated separate operating agreements with host railroads. These agreement set service standards and metrics, and include incentives and penalties for performance. Any new definition of OTP should not negate these agreements nor diminish any intercity passenger rail service which meets the requirements of the service sponsor/s.

Some host railroads have rules which enhance the margin of safety while also limiting the utility of capacity, such as Norfolk Southern Railway's System Timetable rule 444-1:

“...the train dispatcher/control operator must maintain at least 1 unoccupied block between non-passenger trains and occupied: Passenger Trains, Steam or office car specials, Employee/Passenger specials, and Operation Lifesaver trains....”

This rule was implemented to provide an additional margin of safety and requires two signal blocks between a freight train and a passenger train. Implementation of PTC may negate the needs for such rules and due to the added enhanced safety from PTC implementation enable reductions in running times and additional trains to operate. This example is cited to illustrate that changes in operations over time will necessitate a review of route schedules and adjustments.

STB SHOULD UNDERTAKE AN ASSESSMENT OF OTP

Once a satisfactory OTP definition is in effect and the PRIIA Section 207 Metrics and Standards litigation is settled, the SPRC requests that, consistent with the authority and resources assigned, the STB undertake a nationwide assessment of intercity passenger train operating practices and performance. Only the STB has the requisite standing, authority, and technical expertise, to undertake such a review.

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49 USC 24308 states, in relevant part,

“...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....”

Further, “...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..., and

If the Board determines that delays or failures to achieve minimum standards... the Board *may* award damages....”

The SPRC intends that such an assessment by the STB would be fact-finding and solutions-based and, while the STB *may* award damages, that is not the primary objective of this request.

Concurrent with such an assessment by the STB are other federal analyses which can become informed by and with which such an assessment can be coordinated. Among these initiatives are the recently enacted Section 11311 of the Fixing America's Surface Transportation Act, Shared-Use Study, and Evaluating Amtrak's Boarding Procedures at Amtrak's 15 Busiest Stations underway by the Amtrak Office of Inspector General.

CONCLUDING REMARKS

America's transportation system is at a critical juncture with a compelling need for safe, efficient, secure, and reliable transport throughout. There is broad agreement on the need for additional infrastructure investment with measurable, productive and sustainable results. PTC is in its infancy and has yet to have its full effect on improving industry safety and capacity.

Both private and public entities involved in rail transportation have made significant investments in our national railroad network. Yet after 46 years of trying, and billions of dollars of investment, our national intercity passenger rail system continues to fall short of the public interest goals envisioned by the Congress and our customers. It is through this rulemaking, and the subsequent comprehensive assessment of best practices, diagnosis of ills, and identification of solutions, that the prescription for OTP can be written. We believe that through the continued engagement by all parties in the industry we can deliver the level of service quality that America's freight and passenger rail customers deserve.