



KAPLAN KIRSCH ROCKWELL

224430

January 28, 2009

**E-Filing**

Hon. Anne Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**Re: *Passenger Rail Investment and Improvement Act of 2008, STB Ex Parte No. 683***

**Dear Madam:**

By this letter, the Southern California Regional Rail Authority ("Metrolink") provides notice of its intent to participate in the hearing scheduled in this proceeding on February 11, 2009. Mr. Keith F. Millhouse, Chairman of Metrolink's Board, will be testifying on behalf of the agency. We respectfully request that Mr. Millhouse be apportioned ten (10) minutes for his testimony as the representative of a public transportation authority.

Attached for electronic filing is Metrolink's Testimony in the above-captioned proceeding. Thank you for your attention to this matter.

Sincerely,

Allison I. Fultz

Enclosure

cc: All Parties of Record

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**Before the  
Surface Transportation Board**

**STB EX PARTE NO. 683**

**Hearing Date: February 11, 2009**

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**PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008**

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**TESTIMONY OF SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY**

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The Southern California Regional Rail Authority (Metrolink), a Joint Powers Authority consisting of the Los Angeles County Metropolitan Transportation Authority, the Orange County Transportation Authority, the Riverside County Transportation Commission, San Bernardino Associated Governments and the Ventura County Transportation Commission, appreciates the opportunity to present testimony concerning the important questions raised by the Board in this proceeding. I am Keith F. Millhouse, Chairman of the Metrolink Board. I am a graduate of Pepperdine University and Pepperdine School of Law, and am the past-Chair of the Ventura County Transportation Commission. I currently serve as Vice Chair of the Southern California Association of Governments' High Speed Rail Authority, and am a member of the City Council of the City of Moorpark, California. I appear before you today to urge the Board to be aware that the interests and operating configurations of the nation's commuter rail providers are not monolithic, and to offer Metrolink's perspective on the Board's implementation of the Passenger Rail Investment and Improvement Act of 2008 (the "Act").

Metrolink, whose enabling act is found at Section 130255 of the California Public Utilities Code, provides mass transit to all five counties in the most densely populated regions of coastal Southern California, serving a population of approximately 21 million people. Metrolink currently operates over 500 miles of commuter rail service, 124 miles of which are in shared

corridor right of way with Amtrak and freight railroads. Metrolink's operations in the shared corridor began in 1993. A map showing Metrolink's existing and projected rail-based operations is attached to these comments.

I'll address the following issues in my testimony:

- The need to take into account potential impacts on commuter rail operators that share corridors with Amtrak as the Federal Railroad Administration ("FRA") and Amtrak lead the effort to formulate standards and metrics for intercity passenger service.
- Consideration of existing operations agreements between Amtrak and commuter rail operators as the Board institutes procedures for dealing with complaints about intercity rail service.
- The potential for the Board to play a significant and beneficial role through its expanded powers as the mediator of access disputes between commuter rail providers and freight rail carriers.

To set the stage, Metrolink shares its corridors and track with the freight railroads and with Amtrak. In many instances, Metrolink is the host rail operator, and the freight railroads and Amtrak provide service over Metrolink lines under agreements with Metrolink. This arrangement differs from the typical scenario in other regions, for instance the Northeast, where the freight railroads are the host railroads. In Southern California, Metrolink and Amtrak have developed an effective working relationship that allows efficient, reliable intercity and commuter rail operations to serve one of the densest and widest-ranging population centers in the U.S. while also accommodating the passage of freight traffic. Indeed, almost half of the goods that enter this country (44%) come through the Ports of Los Angeles and Long Beach. Most of that freight is then transported via the southern California rail system to various destinations throughout the

country. The success of the Metrolink/Amtrak arrangement is something Metrolink, Amtrak, the freight railroads and above all, the public, have an interest in preserving as the Board moves forward with implementing its new powers under the Act.

### **Amtrak Performance Metrics**

The Act charges Amtrak and FRA with primary responsibility for establishing the performance standards that all intercity passenger trains must meet.<sup>1</sup> As the Board and other stakeholders participate with FRA and Amtrak to put such standards in place, commuter rail operators must receive the same priority treatment the Act specifies for Amtrak and other intercity passenger rail operators. The continued accessibility and reliability of commuter rail service is a key component of the success of passenger rail generally in the U.S. Enhancing opportunities for commuter rail providers to serve their constituent communities will also advance the interests explicitly set forth in the Act to preserve and expand access to the nation's rail network by intercity passenger operators.

Metrics governing the performance of intercity passenger rail providers must take into account the preservation and expansion of commuter rail service in the metropolitan areas linked by long-distance operators. This does not in any way presume that the intersection of commuter rail service with intercity operations would be expected to compromise either of them. However, the nature and operational patterns that characterize commuter rail service, and which distinguish it from intercity operations, will be an important consideration in ensuring that intercity trains successfully navigate congested metropolitan areas.

### **Board Enforcement of Amtrak Performance Standards**

The Act mandates that the Board take an increased role in mediating disputes between Amtrak and commuter rail operators. The Act is a clear indication that Congress recognizes the

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<sup>1</sup> Passenger Rail Investment and Improvement Act of 2008, Pub. L. 110-432, Div B (the "Act"), Sec. 213.

need to assist intercity and commuter rail operators in gaining access to the rail corridors and facilities they require in order to serve the public. Once the intercity passenger rail performance standards are established, the Board will have the power to initiate an investigation of alleged performance failures either on its own or on the basis of a complaint from any of Amtrak, an intercity passenger rail operator, a host freight railroad or an entity for which Amtrak operates intercity passenger rail service.<sup>2</sup> If, on the basis of its investigation, the Board determines that delays or other performance failures have occurred, and that such failures are attributable to a rail carrier's failure to provide Amtrak priority over freight operations, the Board may award damages against the host rail carrier and prescribe additional measures to prevent future failures.<sup>3</sup> As you can see, the complaint procedure contemplated in the Act would lead directly to possible enforcement action by the Board, with no opportunity for participation from the host rail carrier to settle or otherwise resolve any alleged impediment to satisfactory intercity service.

Metrolink generally supports the measures set forth in the Act to enhance the delivery of intercity passenger service. However, since successful endeavors such as Metrolink's and Amtrak's have clearly served as models for the operational patterns anticipated in the Act, we must be careful not to throw the baby out with the bathwater. Metrolink's existing relationship with Amtrak exemplifies the framework embodied in the legislation, including such elements as shared track, equipment and services. Metrolink and Amtrak operate successfully under private agreements that they have carefully negotiated. As drafted, however, the Act could be construed as effectively abrogating portions of Metrolink's existing contracts with Amtrak by permitting Amtrak to take any complaints directly to the Board without first seeking the remedies set forth in its agreements with Metrolink. Metrolink, in turn, would be subject to a fundamentally

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<sup>2</sup> Act, Sec 207 (codified at 49 U.S.C. § 24308)

<sup>3</sup> 49 U.S.C. § 24308(f)(2).

changed relationship for which it did not bargain and which could potentially harm its ability to provide safe, effective commuter rail services.

Any regulations and complaint procedures the Board adopts as it implements the Act should be tailored to take into account instances where Amtrak and the host operator have existing agreements in place. That way, the parties to such agreements will be able to continue to rely on the remedies and dispute resolution procedures they negotiated. Metrolink urges, as the Board promulgates regulations in furtherance of its mandate under the Act, that the STB be wary of the “law of unintended consequences” and provide that agreements existing as of the effective date of any such regulations be permitted to continue in force.

#### **Board Role in Mediating Disputes between Commuter Operators and Freight Railroads**

Section 401 of the Act<sup>4</sup> expands the Board’s authority under 49 U.S.C. Subtitle V to conduct confidential, non-binding mediation of access disputes between freight railroads and commuter rail operators. The Act provides that, after a “reasonable period of negotiation,” if the commuter rail operator cannot agree to terms for a freight rail carrier to use trackage of, and have related services provided by, the freight rail carrier for purposes of commuter rail passenger transportation,” either party may submit the dispute to the Board for non-binding mediation.<sup>5</sup> The Act adopts the processes already in place for mediation of freight rail rate disputes.<sup>6</sup>

Even though any mediation under the new provisions would not be binding on the parties, the Act clearly intends that the Board assert a regulatory role in resolving such disputes. The Board should act forcefully to bring the freight railroads to the table to participate in good faith toward resolution of access disputes involving commuter rail operators. Rather than

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<sup>4</sup> Codified at 49 U.S.C. §§ 28501-28505.

<sup>5</sup> 49 U.S.C. § 28502.

<sup>6</sup> 49 U.S.C. § 28502.

leaving commuter rail agencies to negotiate in isolation for access to freight rail lines, the Act empowers the Board to bring consistency and a well-informed policy perspective to the task of settling disputes and allowing both the freights and local commuter operators room to maneuver.

As I mentioned at the outset, the Act is a clear signal from Congress that support for passenger rail transportation is a matter of national importance. The Act provides a variety of means to improve intercity and commuter rail service, and as always – the devil is in the details.

### **Conclusion**

In sum, Metrolink respectfully requests that the Board do the following:

- Emphasize to FRA and Amtrak the importance of including commuter rail service in the policy and regulatory structure being established to preserve the priority given to passenger operators.
- Ensure that existing rights, obligations and remedies that currently apply to Amtrak and commuter rail operators with which it has entered into binding agreements will not be compromised as the Board institutes procedures for dealing with complaints about intercity rail service.
- Fulfill the essential role afforded to the Board in mediating access disputes between freight carriers and commuter rail providers.

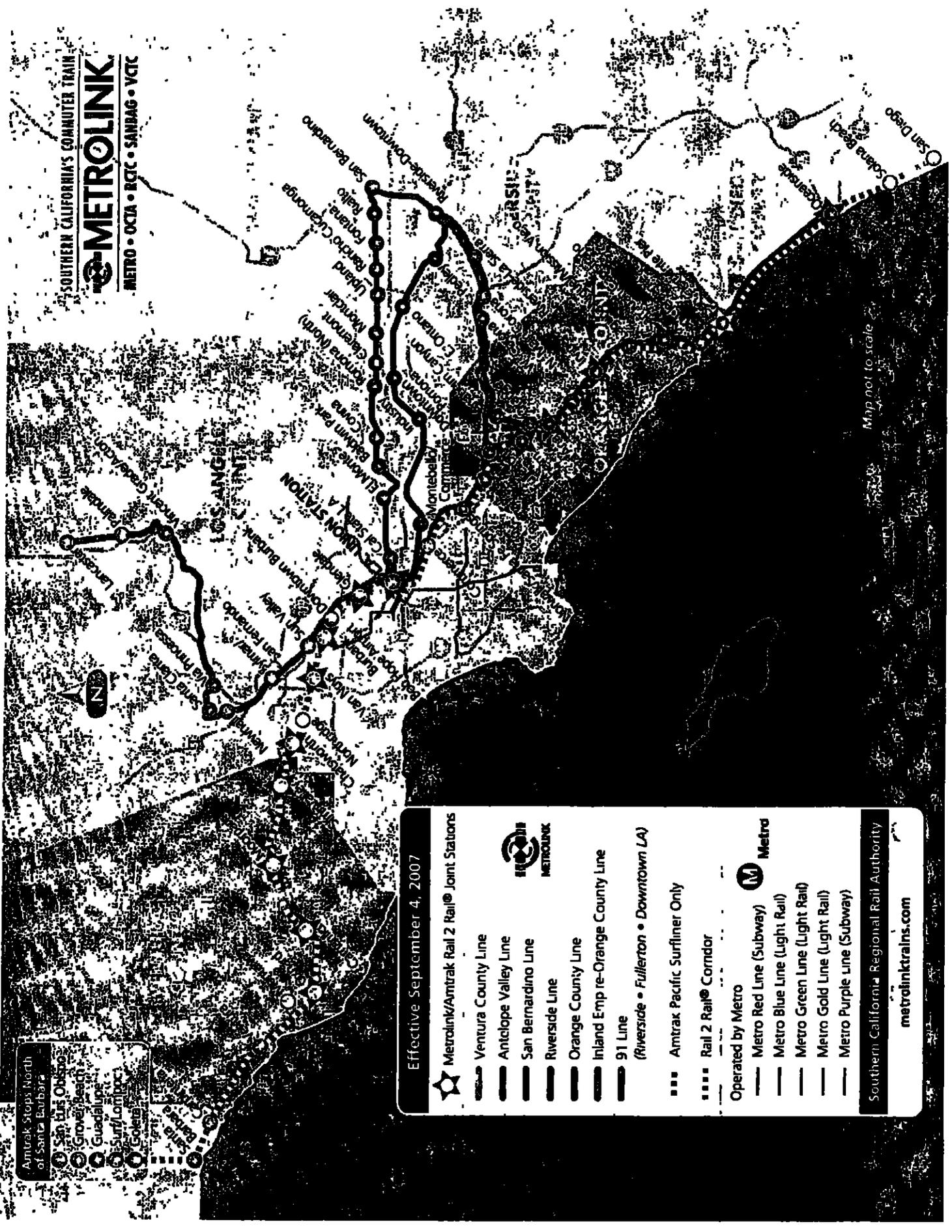
Metrolink submits that consideration of the foregoing factors will aid the Board in its expanded role to increase the effectiveness of the national rail network for commuter and intercity passenger rail operations.

Thank you very much, again, for providing Metrolink with the opportunity to explain its views on this very important subject to this Board.

SOUTHERN CALIFORNIA'S COMMUTER TRAIN



METRO • OCTA • BCTC • SANDAG • YCTC



Map not to scale

Amtrak Stops North of Santa Barbara  
 San Luis Obispo  
 Grover Beach  
 Guadalupe  
 Surf/Lompoc  
 Goleta  
 Santa Barbara  
 Santa Maria

Effective September 4, 2007

- Metrolink/Amtrak Rail 2 Rail® Joint Stations
- Ventura County Line
- Antelope Valley Line
- San Bernardino Line
- Riverside Line
- Orange County Line
- Inland Empire-Orange County Line
- 91 Line  
(Riverside • Fullerton • Downtown LA)
- Amtrak Pacific Surfliner Only
- Rail 2 Rail® Corridor

Operated by Metro

- Metro Red Line (Subway)
- Metro Blue Line (Light Rail)
- Metro Green Line (Light Rail)
- Metro Gold Line (Light Rail)
- Metro Purple Line (Subway)

Southern California Regional Rail Authority  
[metrolinktrains.com](http://metrolinktrains.com)

**Certificate of Service**

I hereby certify that I have this 28<sup>th</sup> day of January, 2009, caused to be served a copy of the foregoing Testimony of the Southern California Regional Rail Authority upon all parties of record by first class mail with postage prepaid and properly addressed.

  
Allison I. Fultz