



KAPLAN KIRSCH ROCKWELL

224431

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 Maryland Transit Administration ("MTA") provides notice of its intent to participate in the hearing scheduled in this proceeding on February 11, 2009. Ira Silverman, Director of Transit Operations Initiatives, will be testifying on behalf of the agency. We respectfully request that Mr. Silverman be apportioned ten (10) minutes for his testimony as the representative of a public transportation authority.

Attached for electronic filing is MTA'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

PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2008

TESTIMONY OF MARYLAND TRANSIT ADMINISTRATION

The Maryland Transit Administration (“MTA”), a modal administration of the Maryland Department of Transportation of the State of Maryland, is pleased to have the opportunity to testify in this proceeding and provide the Board with MTA’s perspective on the Board’s implementation of the Passenger Rail Investment and Improvement Act of 2008 (the “Act”). I am Ira Silverman, Director of Transit Operations Initiatives for MTA. I am a graduate of New York University and attended Northwestern University for graduate study. I have 38 years of experience at the Illinois Central, Amtrak and MTA. As an administrator at MTA, my duties include: implementing programs to increase capacity on MARC, MTA’s commuter rail service, to accommodate future growth in ridership; and working with Amtrak and CSX on capital improvements. Because freight operations, long-distance passenger service and local commuter rail activity all share corridors, track, facilities and services in the U.S., the Act represents an important development in ongoing efforts to allocate our nation’s limited rail resources efficiently and equitably. The Act reflects Congress’ recognition of the importance of rail passenger transportation as a matter of national interest, and it is my privilege to convey MTA’s thoughts on this legislation today.

MTA's MARC commuter rail trains serve a large geographic region stretching from north of Baltimore, to the Washington, D.C. metropolitan area, to the eastern panhandle of West Virginia. 32,000 daily riders use our weekday service to commute to Baltimore and Washington, D.C., and to get to Baltimore-Washington International Thurgood Marshall Airport, among other destinations. MARC's network covers 202 route miles, of which 77 miles are within corridor shared with Amtrak and the freight railroads. In addition, Amtrak provides terminal services for all MARC trains at Washington Union Station and maintains 135 MARC passenger cars and 10 electric locomotives. I have attached a map showing the reach of MARC's service to this testimony.

MTA offers the following comments to the Board as it moves forward to implement the mandates of the Act:

Effect of the Board's new authority to enforce intercity rail performance standards. New provisions added by the Act give the Board an increased role in mediating disputes between Amtrak and commuter rail operators, including the authority to respond to complaints about performance, conduct investigations, and award damages against the host railroad if the Board determines that the host railroad has been responsible for compromising intercity performance. The MTA and other commuter rail agencies operating on the North East Corridor ("NEC") have long-standing relationships and contractual agreements with the freight railroads and Amtrak to address both operations and capital investment. As a result, any recommendations to implement the Act should not have the collateral effect of abrogating existing contracts and should recognize past state and local contributions to the Northeast Corridor infrastructure.

Capital cost allocation issues relating to the Northeast Corridor. The NEC has been the focus of an ongoing, comprehensive master planning process for a number of years. As the

Board moves forward to implement the goals of the Act, MTA and the many other stakeholders in the NEC master planning effort urge that the STB take into account, and, wherever possible, leverage, the substantial work that has been done in that process to date.

The recognition that the needs of host railroads and Amtrak are closely intertwined is the animating force behind many provisions of the Act. Amtrak right-of-way in the NEC has been acquired and improved with public support, both state and federal. Accordingly, STB guidelines should acknowledge the ongoing importance of public financial participation in the preservation and improvement of Amtrak facilities for all shared purposes, not just intercity rail.

Furthermore, Amtrak has inherited a legacy railroad with many potential environmental problems. To minimize its own liability Amtrak demands that the commuter rail agencies who share its track assume all environmental liability without any knowledge of the potential risks. The result has been the slowing or stoppage of numerous important projects. This Board should establish a basis for shared responsibility on these projects. Amtrak's NEC infrastructure was purchased with the intent of supporting a shared regime of intercity rail, commuter and freight operations, and the burdens of remediating past damage in order to ensure an effective system for the future should be equitably allocated.

As the Board establishes standards for determining compensation to Amtrak for use of its facilities, the STB should consider the continuing role, if any, of the industry's long-established avoidable cost methodology. That is, before instituting a new costing methodology, the STB should evaluate and seek comment on whether the current avoidable cost methodology or an allocated cost methodology is the appropriate one. If the STB adopts an allocated costing formula for use of Amtrak's facilities, it needs to determine, based on comment and rulemaking, whether to revise the historic formula as it applies to the NEC and other Amtrak properties.

Many carefully negotiated operations agreements among all participants in the rail industry are premised on the application of the avoidable cost model, including planning for operations and capital funding. The Board must very thoroughly evaluate the effect any changes to this long-held framework may have on existing plans for improvements to the nation's rail network.

The need for system wide performance standards. Although the Act sets out detailed requirements for maintaining intercity service performance¹ and gives the Board authority to conduct non-binding mediation in access disputes between commuter rail providers and freight railroads,² there is a crucial operational link the Act does not address that the Board is in an excellent position to take up. The STB should consider whether it can play a role in ensuring that freight railroads and Amtrak provide reasonable dispatching with commuter operators as part of the general effort to improve efficiency and performance on the nations' shared rail network. There is a role for the STB in determining whether systems that operate on the NEC and that are dispatched by Amtrak are being given proper priority. In MTA's experience, the single biggest cause of delay on its heavily traveled Penn Line between Washington, D.C., Baltimore and points north, is intercity passenger train interference. The means to address this problem are of a piece with the solutions spelled out in the Act, and MTA urges the Board to take a comprehensive look at establishing standards for dispatching and operational responsibilities on shared corridors.

Liability issues. The STB should review the present "there but for" basis of liability both on Amtrak and the freight railroads. The current policy relieves the host carrier of virtually any responsibility for its actions and places a significant financial burden on state and local governments who seek access to those lines. The current liability framework does not reflect a

¹ The Act, Secs. 207, 213.

² The Act, Sec. 401.

fair or realistic allocation of risk among the various users of the rails. MTA urges that the Board examine the policy bases for and practical limitations of the existing approach to allocating liability, which hinders the development of commuter rail service.

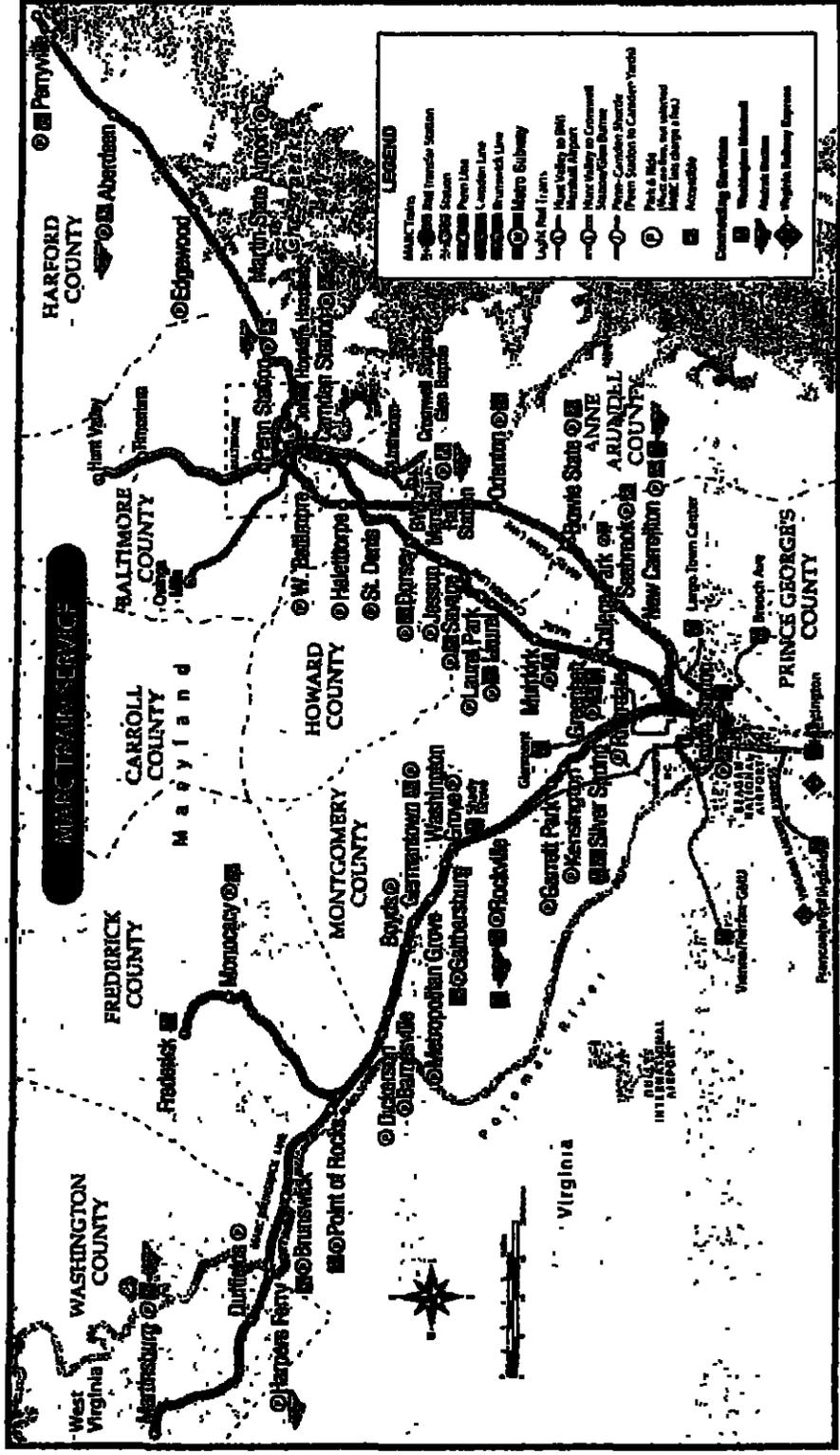
The Board should vigorously take up its new role to mediate access disputes between freights and commuter operators. In fulfilling its mandate to establish policies for mediating disputes between commuter operators and the freights, the STB should clarify that freight railroads must enter into good faith negotiations, not simply engage in “pro forma” participation. The Board’s new role, as specified by Congress, as the facilitator to resolve these disputes is one the Board should approach vigorously, with an eye toward ensuring that mediation leads to meaningful results that improve access to the nation’s rail network for all of its constituents.

MTA hopes that the foregoing comments are helpful to the Board as it takes up the significant new responsibilities mandated by the Act. It has been my privilege to address you today. On behalf of MTA, I thank you for your time and attention to this matter.

DEPARTMENT OF TRANSPORTATION
MARYLAND TRANSIT ADMINISTRATION

Paul J. Whitefield, Administrator

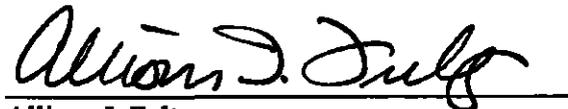
[MTA PASS STORE] [Print Version] [Text Only]



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Certificate of Service

I hereby certify that I have this 28th day of January, 2009, caused to be served a copy of the foregoing Testimony of the Maryland Transit Administration upon all parties of record by first class mail with postage prepaid and properly addressed.


Allison I. Fultz