



December 11, 2023

Honorable Martin J. Oberman
Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Dear Chairman Oberman:

The American Short Line and Regional Railroad Association (ASLRRA)¹ and the Commuter Rail Coalition (CRC)² write to express certain concerns in connection with the potential expansion plans of the National Railroad Passenger Corp. (Amtrak), following the \$66 billion of guaranteed funding allocated for rail purposes in the Infrastructure Investment and Jobs Act.

Before we address the concerns though, we would like to state that we support the overall goals of improving and expanding passenger rail travel in the United States - it is an important initiative that serves to advance multiple priorities.

In its report entitled *Amtrak's Vision for Improving Transportation Across America* (June 2021)³, Amtrak presents a 15-year vision that includes adding service to 160 new communities, adding 39 new routes, and enhancing 25 routes. This vision includes introducing new service on the tracks of numerous commuter agencies and short line railroads that do not have Amtrak service today.⁴ As explained further below, commuter agencies and short line railroads are distinct historically and in practice from the Class I railroads that primarily host Amtrak, and therefore should be treated differently.

As you know, Amtrak's relationship with its Class I host railroads is the product of history and specifically the "grand bargain." In the late 1960s, the nation's Class I railroads provided both

¹ ASLRRA is a non-profit trade association representing the interests of approximately 500 short line railroad members and 500 additional railroad supply company members in legislative and regulatory matters. Operating 50,000 miles of track, or approximately 30% of freight rail in the United States, short line railroads play a vital role in the transportation network.

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³ See page 9.

⁴ [Maps - Amtrak Connects US](#)

passenger and freight service, but passenger operations, which were operating at a loss, were contributing to dragging already financially unsound railroads down towards bankruptcy.⁵ Railroads were prohibited by law from abandoning unprofitable passenger service without permission from either a state public service commission or the federal Interstate Commerce Commission (ICC), and the ICC (and some states) often denied requests.

The Rail Passenger Service Act of 1970 (RPSA) provided freight railroads the opportunity to transfer their chronically unprofitable intercity passenger operations to Amtrak. In exchange, those RPSA railroads were required to (1) allow Amtrak “to operate wherever it wished” over their lines; (2) “grant Amtrak trains preference over their own freight trains;” and (3) allow the ICC/Board to determine compensation for Amtrak’s operations if they could not reach agreement with Amtrak.⁶ Freight railroads were also required to pay some level of compensation to Amtrak. Twenty railroads opted to take advantage of RPSA,⁷ while six did not.⁸

Amtrak has repeatedly referenced this “grand bargain” as justification for preferential treatment in operations over freight-owned infrastructure. There are many examples, including:

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⁷ The twenty were: Atchison, Topeka, and Sante Fe Railway; Baltimore and Ohio Railroad (hosted no Amtrak service until the *West Virginian* later in 1971); Burlington Northern Railroad; Central of Georgia Railway (never hosted Amtrak); Chesapeake and Ohio Railway; Chicago, Milwaukee, St. Paul and Pacific Railroad; Chicago and North Western Railway (never hosted Amtrak); Delaware and Hudson Railway (hosted no Amtrak service until the *Adirondack* in 1974); Grand Trunk Western Railroad (hosted no Amtrak service until the *Blue Water Limited* in 1974); Gulf, Mobile and Ohio Railroad; Louisville and Nashville Railroad; Missouri Pacific Railroad; Norfolk and Western Railway (hosted no Amtrak service until the *Mountaineer* in 1975); Northwestern Pacific Railroad (never hosted Amtrak service); Penn Central Transportation (whose Northeast Corridor Amtrak acquired the majority of in 1976); Richmond, Fredericksburg and Potomac Railroad; Seaboard Coast Line Railroad; Southern Pacific Railroad; Union Pacific Railroad. *Sanders, Craig, Amtrak in the Heartland (2006)*.

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1. Amtrak has characterized the obligations of the participating freight railroads under RPSA as “a quid pro quo for the enormous financial benefit the RPSA conveyed upon the freight railroad industry.”⁹
2. In pending litigation, Amtrak refers to the exchange of rights and obligations between Amtrak and freight railroads as “the grand bargain.”¹⁰
3. Amtrak’s white paper on its relationship with freight railroads is entitled “Amtrak and Freight Railroads: The Public Bargain”.¹¹

Non-RPSA railroads – freight railroads and commuter agencies that did not transfer passenger operations to Amtrak – did not receive any practical benefit of the “grand bargain” contained in RPSA, which included relief from the passenger common carrier obligations of the private railroads in exchange for the right to priority access of their tracks for incremental cost.¹²

Similarly, they should not be held to a quid pro quo that they did not make. They should be considered differently than RPSA railroads. It would be inequitable to subject them to only the burden side of the grand bargain.

Rather, non-RPSA railroads should not be obligated to provide preferential treatment to Amtrak trains, absent a mutually acceptable agreement negotiated at arm's length with Amtrak. In particular, if Amtrak seeks to use its authority under 49 U.S.C. 24301 *et seq.* to operate over commuter lines or non-RPSA freight railroads and a commuter agency or non-RPSA freight railroad objects to Amtrak’s presence, Amtrak should be required to show that:

1. Amtrak is not merely seeking to avoid operating over a current host railroad for any reason, including failure of a host railroad to meet on-time performance measures for Amtrak’s trains on an existing route or desire to avoid other contractual disputes between Amtrak and an existing host railroad;

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2. Amtrak service on the subject route would not inhibit the commuter agency -- now and in the future -- from achieving its goal of providing safe, efficient, reliable commuter service or the non-RPSA freight railroad from serving its customers now and in the future, and that Amtrak affirmatively gives up its right of train priority on the commuter's line;
3. The market potential of the route over other alternative routes in terms of availability, adequacy, and energy efficiency substantially outweighs the burden to the commuter agency or the non-RPSA freight railroad;
4. Any alternative route does not provide equivalent or better service to major population centers than the subject route; and
5. The commuter agency or non-RPSA freight railroad is not subsidizing Amtrak in any way.¹³

In short, commuter agencies and non-RPSA freight railroads were not party to the grand bargain. Therefore, they should be treated differently if Amtrak seeks access to them. Moreover, they should not be seen as an "easy alternative" compared to routing over traditional RPSA railroads and consequently be subject to preferential treatment of Amtrak trains just because RPSA host railroads are not meeting their statutory, regulatory, or contractual obligations. Commuter authorities must be permitted to continue to realize the full, long-term value of the public investment that has been made in their lines and facilities and to protect their valuable passenger service, and non-RPSA freight railroads' investments in their lines and freight service must be similarly protected.

We appreciate the opportunity to share these key principles with you in the hope that they guide future considerations related to Amtrak and non-RPSA freight railroads and commuter rail agencies.

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Regards,

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Chuck Baker, President, American Short Line and Regional Railroad Association (ASLRRA)
cbaker@aslrra.org
(202) 585-3440

and

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KellyAnne Gallagher, Chief Executive Officer, Commuter Rail Coalition (CRC)
kag@commuterrailcoalition.org
(202) 689-9280



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Honorable Karen Hedlund
Member
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Dear STB Member Hedlund:

The American Short Line and Regional Railroad Association (ASLRRA)¹ and the Commuter Rail Coalition (CRC)² write to express certain concerns in connection with the potential expansion plans of the National Railroad Passenger Corp. (Amtrak), following the \$66 billion of guaranteed funding allocated for rail purposes in the Infrastructure Investment and Jobs Act.

Before we address the concerns though, we would like to state that we support the overall goals of improving and expanding passenger rail travel in the United States - it is an important initiative that serves to advance multiple priorities.

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Member
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395 E Street, S.W.
Washington, DC 20423-0001

Dear STB Member Fuchs:

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Before we address the concerns though, we would like to state that we support the overall goals of improving and expanding passenger rail travel in the United States - it is an important initiative that serves to advance multiple priorities.

In its report entitled *Amtrak's Vision for Improving Transportation Across America* (June 2021)³, Amtrak presents a 15-year vision that includes adding service to 160 new communities, adding 39 new routes, and enhancing 25 routes. This vision includes introducing new service on the tracks of numerous commuter agencies and short line railroads that do not have Amtrak service today.⁴ As explained further below, commuter agencies and short line railroads are distinct historically and in practice from the Class I railroads that primarily host Amtrak, and therefore should be treated differently.

As you know, Amtrak's relationship with its Class I host railroads is the product of history and specifically the "grand bargain." In the late 1960s, the nation's Class I railroads provided both

¹ ASLRRA is a non-profit trade association representing the interests of approximately 500 short line railroad members and 500 additional railroad supply company members in legislative and regulatory matters. Operating 50,000 miles of track, or approximately 30% of freight rail in the United States, short line railroads play a vital role in the transportation network.

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³ See page 9.

⁴ [Maps - Amtrak Connects US](#)

passenger and freight service, but passenger operations, which were operating at a loss, were contributing to dragging already financially unsound railroads down towards bankruptcy.⁵ Railroads were prohibited by law from abandoning unprofitable passenger service without permission from either a state public service commission or the federal Interstate Commerce Commission (ICC), and the ICC (and some states) often denied requests.

The Rail Passenger Service Act of 1970 (RPSA) provided freight railroads the opportunity to transfer their chronically unprofitable intercity passenger operations to Amtrak. In exchange, those RPSA railroads were required to (1) allow Amtrak “to operate wherever it wished” over their lines; (2) “grant Amtrak trains preference over their own freight trains;” and (3) allow the ICC/Board to determine compensation for Amtrak’s operations if they could not reach agreement with Amtrak.⁶ Freight railroads were also required to pay some level of compensation to Amtrak. Twenty railroads opted to take advantage of RPSA,⁷ while six did not.⁸

Amtrak has repeatedly referenced this “grand bargain” as justification for preferential treatment in operations over freight-owned infrastructure. There are many examples, including:

⁵ [Amtrak at 50: The Rail Passenger Service Act of 1970 – The Eno Center for Transportation \(enotrans.org\)](http://www.enotrans.org)

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⁷ The twenty were: Atchison, Topeka, and Sante Fe Railway; Baltimore and Ohio Railroad (hosted no Amtrak service until the *West Virginian* later in 1971); Burlington Northern Railroad; Central of Georgia Railway (never hosted Amtrak); Chesapeake and Ohio Railway; Chicago, Milwaukee, St. Paul and Pacific Railroad; Chicago and North Western Railway (never hosted Amtrak); Delaware and Hudson Railway (hosted no Amtrak service until the *Adirondack* in 1974); Grand Trunk Western Railroad (hosted no Amtrak service until the *Blue Water Limited* in 1974); Gulf, Mobile and Ohio Railroad; Louisville and Nashville Railroad; Missouri Pacific Railroad; Norfolk and Western Railway (hosted no Amtrak service until the *Mountaineer* in 1975); Northwestern Pacific Railroad (never hosted Amtrak service); Penn Central Transportation (whose Northeast Corridor Amtrak acquired the majority of in 1976); Richmond, Fredericksburg and Potomac Railroad; Seaboard Coast Line Railroad; Southern Pacific Railroad; Union Pacific Railroad. *Sanders, Craig, Amtrak in the Heartland (2006)*.

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1. Amtrak has characterized the obligations of the participating freight railroads under RPSA as “a quid pro quo for the enormous financial benefit the RPSA conveyed upon the freight railroad industry.”⁹
2. In pending litigation, Amtrak refers to the exchange of rights and obligations between Amtrak and freight railroads as “the grand bargain.”¹⁰
3. Amtrak’s white paper on its relationship with freight railroads is entitled “Amtrak and Freight Railroads: The Public Bargain”.¹¹

Non-RPSA railroads – freight railroads and commuter agencies that did not transfer passenger operations to Amtrak – did not receive any practical benefit of the “grand bargain” contained in RPSA, which included relief from the passenger common carrier obligations of the private railroads in exchange for the right to priority access of their tracks for incremental cost.¹²

Similarly, they should not be held to a quid pro quo that they did not make. They should be considered differently than RPSA railroads. It would be inequitable to subject them to only the burden side of the grand bargain.

Rather, non-RPSA railroads should not be obligated to provide preferential treatment to Amtrak trains, absent a mutually acceptable agreement negotiated at arm's length with Amtrak. In particular, if Amtrak seeks to use its authority under 49 U.S.C. 24301 *et seq.* to operate over commuter lines or non-RPSA freight railroads and a commuter agency or non-RPSA freight railroad objects to Amtrak’s presence, Amtrak should be required to show that:

1. Amtrak is not merely seeking to avoid operating over a current host railroad for any reason, including failure of a host railroad to meet on-time performance measures for Amtrak’s trains on an existing route or desire to avoid other contractual disputes between Amtrak and an existing host railroad;

⁹ “Amtrak and Freight Railroads: The Public Bargain” (2003) (hereinafter “The Public Bargain”), accessed August 2, 2023, from <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/position-papers/white-paper-amtrak-and-frieght-railroads.pdf>

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¹² Pub. L. No. 91-518, § 101, 84 Stat. 1327, 1334 (1970); *see also* [Amtrak | FRA \(dot.gov\)](#). “The basic purpose of this bill is to prevent the complete abandonment of intercity rail passenger service and to preserve a minimum of such service along specific corridors. This is to be accomplished by creating a National Railroad Passenger Corporation which would be responsible for providing all intercity rail passenger service. All railroads would be eligible to join the corporation, and those which join would be relieved of further responsibility to provide passenger service.” [House of Representatives Report No. 91-1580;91ST CONGRESS 2d Session; H.R. 17849.](#)

2. Amtrak service on the subject route would not inhibit the commuter agency -- now and in the future -- from achieving its goal of providing safe, efficient, reliable commuter service or the non-RPSA freight railroad from serving its customers now and in the future, and that Amtrak affirmatively gives up its right of train priority on the commuter's line;
3. The market potential of the route over other alternative routes in terms of availability, adequacy, and energy efficiency substantially outweighs the burden to the commuter agency or the non-RPSA freight railroad;
4. Any alternative route does not provide equivalent or better service to major population centers than the subject route; and
5. The commuter agency or non-RPSA freight railroad is not subsidizing Amtrak in any way.¹³

In short, commuter agencies and non-RPSA freight railroads were not party to the grand bargain. Therefore, they should be treated differently if Amtrak seeks access to them. Moreover, they should not be seen as an "easy alternative" compared to routing over traditional RPSA railroads and consequently be subject to preferential treatment of Amtrak trains just because RPSA host railroads are not meeting their statutory, regulatory, or contractual obligations. Commuter authorities must be permitted to continue to realize the full, long-term value of the public investment that has been made in their lines and facilities and to protect their valuable passenger service, and non-RPSA freight railroads' investments in their lines and freight service must be similarly protected.

We appreciate the opportunity to share these key principles with you in the hope that they guide future considerations related to Amtrak and non-RPSA freight railroads and commuter rail agencies.

We would be glad to meet in-person or virtually to discuss further.

¹³ Amtrak and the commuter agency or the non-RPSA railroad should negotiate all operations in advance, including liability for damages, performance incentive payments, and additional administrative costs. Freight hosts must evaluate all additional capital and ongoing expenses that would be incurred for the new service, including: grade crossing improvements, PTC or other signal system installation and maintenance, track investment to upgrade the class of track (and the associated maintenance-of-way expense), additional dispatching needs, additional facilities necessary for passenger rail service, and additional insurance needs and/or liability containment. Amtrak should pay fully allocated operating and capital costs. In cases in which Amtrak seeks to operate on a non-RPSA railroad that hosts a commuter agency, or on a commuter agency that hosts a non-RPSA railroad, the impact of Amtrak service on both the commuter operations and freight operations must given equal weight and consideration.

Regards,

A handwritten signature in black ink, appearing to read 'C. Baker', with a horizontal line underneath.

Chuck Baker, President, American Short Line and Regional Railroad Association (ASLRRA)
cbaker@aslrra.org
(202) 585-3440

and

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KellyAnne Gallagher, Chief Executive Officer, Commuter Rail Coalition (CRC)
kag@commuterrailcoalition.org
(202) 689-9280



December 11, 2023

Honorable Michelle Schultz
Member
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Dear STB Member Schultz:

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