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February 7, 2024

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

Dear Chairman Oberman:

I am writing in response to the December 11, 2023 letter sent to Board members from the American Short Line and Regional Railroad Association (ASLRRA) and the Commuter Rail Coalition (CRC) that is posted on the Board's website. Amtrak believes it is important to point out the inaccuracies and omissions in that letter.

As ASLRRA and CRC recognize, this is a critical time for intercity passenger rail. Amtrak is working closely with other stakeholders to enhance and expand our services nationwide. Our goal is to work with our various partners to build and deliver frequent, reliable, sustainable, and equitable train service for millions of additional passengers so that we can double our ridership by 2040. Our efforts are helping to fulfill President Biden's and Congress's vision for intercity passenger rail growth, reflected in the bipartisan Infrastructure Investment and Jobs Act (IIJA). This law provided a once-in-a-generation opportunity for intercity passenger rail improvement and directed Amtrak to work with the Federal Railroad Administration (FRA) to support expansion of Amtrak service through the IIJA's Corridor Identification Program and Amtrak Daily Long-Distance Study. Amtrak looks forward to continuing to work with the Board, states, elected officials, our host railroads and other stakeholders to realize this historic opportunity.

Amtrak recognizes the vital roles played throughout our national network by commuter rail authorities and short line and regional railroads. However, Amtrak is concerned that the letter from ASLRRA and CRC is inaccurate in many respects and ignores critical points regarding Amtrak's creation and the essential host railroad access rights that Congress vested in Amtrak. In addition, ASLRRA and CRC have neglected to account for the immense benefits that flow to their members due to Amtrak, including vast investments of public funds. Amtrak requests that the Board bear in mind both Congress's intent and the benefits regional, short line and commuter railroads receive from federal funding for intercity passenger rail as it continues to carry out its role in connection with the enhancement of Amtrak's national network.

Amtrak's Creation and Statutory Rights

Amtrak was created in 1970 as part of a "public bargain"¹ that relieved railroads of their common carrier obligation to carry passengers and the associated operating losses and capital investment requirements

¹ Interstate Commerce Commission, *Study of Interstate Commerce Commission Regulatory Responsibilities* at 62 (Oct. 25, 1994).



that eroded those carrier's profits. While the Board is already intimately familiar with this history, it is important to understand that no railroad is being unfairly held to a bargain to which it was not a party.

First, what ASLRRRA and CRC object to is exactly what Congress intended. Amtrak's access rights, as set forth in 49 U.S.C. § 24308 (Section 24308), have applied to both "regional transportation authorities" and "railroads" (now "rail carriers") since the Rail Passenger Service Act of 1970 was enacted. The Board's predecessor, the Interstate Commerce Commission (ICC), held almost four decades ago that "there is no support in the statute or its legislative history" for applying Amtrak's access rights "only to rail carriers that discontinued intercity passenger rail service" when Amtrak was created.² The ICC also held that commuter railroads were both "regional transportation authorities" and "railroads" to which that statutory provision applied.

Both the ICC and the Board have consistently applied this principle. Congress has not changed the law, and there is no basis for the Board to adopt any of the new requirements, fashioned out of whole cloth, that ASLRRRA and CRC have suggested.³ Nor can the Board ignore, as they urge, the statutory requirement that any compensation in excess of incremental costs that Amtrak is required to pay must be based upon quality of service, or shift the burden of proof even where the statutory language expressly provides otherwise.

Second, almost all the commuter railroad-owned lines that Amtrak operates over were acquired *after* Amtrak was created by law in 1970. There was no unfair surprise here. The commuter railroads that acquired these lines did so with full knowledge of Amtrak's statutory rights. The letter's assertion that Amtrak "should give up its right of train priority" when operating over commuter railroads also ignores the fact that section 24308(c) does *not* confer any Amtrak preference over commuter trains. To the extent that Amtrak has any rights of preference or priority over commuter trains, those have been achieved through agreement. It also is bears mentioning that while Amtrak does not have a right of preference over commuter traffic, in reviewing best-practice scheduling and dispatching practices around the world, intercity train traffic generally does, necessarily, have some level of priority over local commuter service, owing to the higher speeds, limited stopping patterns and the need to maintain on-time performance across large networks. In working with our commuter partners, we seek to develop an approach to scheduling and dispatching that achieves good outcomes, appropriate for the service types, for all carriers.

Finally, ASLRRRA and CRC grossly exaggerate the effects of Amtrak's statutory rights upon their operations and fail to consider existing legal protections. Contrary to what their letter suggests, Amtrak *already* engages in joint planning efforts and negotiates agreements with commuter authorities and regional/short line railroads regarding expansions of Amtrak service. Such negotiations are generally a prerequisite to Amtrak's pursuit of relief from the Board under Section 24308. If negotiations fail because a commuter or regional/short line railroad believes Amtrak's proposal is unreasonable, the railroad could refuse to accommodate the additional service, in which case the Board is empowered to determine the just and reasonable terms for Amtrak's access. Amtrak is unaware of any documented case where Amtrak's

² *Nat'l R.R. Passenger Corp. Application Under Section 402(a) of the Rail Passenger Service Act*, 1 I.C.C.2d 243, 245-46 (1984), *aff'd sub nom. Metro. Transp. Auth. v. ICC*, 792 F.2d 287 (2d Cir. 1986).

³ In a January 12, 2024 letter that is also posted on the STB's website, Chairman Oberman, Vice Chairman Hedlund, and Member Primus recognized that there are no pending Board matters that involve the points raised in the letter from ASLRRRA and CRC.



operation over a regional/short line or commuter railroad has produced significant negative business impacts for our host carrier and no freight carrier has ever demonstrated that any proposed increase in Amtrak operations would “impair unreasonably” freight transportation.

Amtrak Benefits Commuter, Short Line, and Regional Railroads

ASLRRRA and CRC have failed to mention any of the numerous benefits that they receive from Amtrak service over their lines. Commuter railroads benefit directly from Amtrak’s services, including revenues from connecting Amtrak passengers. Amtrak trains also honor commuter rail tickets on some routes, allowing commuter rail authorities to provide enhanced services to their passengers without incurring the costs of operating additional trains.

More important, both commuter and regional/short line railroads receive, and benefit from, immense sums of public funds *because of Amtrak’s operations*. Since 2019, commuter railroads over which Amtrak operates have been awarded hundreds of millions of dollars in grants from the Consolidated Rail Infrastructure and Safety Improvements Program (CRISI) and Federal-State Partnership for State of Good Repair and Intercity Passenger Rail Grant Programs (FSP).⁴ Commuter railroads were only eligible to receive these grants because of the Amtrak operations over their lines.⁵ They were provided to improve commuter railroads’ tracks, to repair and replace their bridges, and to make other investments on rail lines and in stations that commuter rail authorities own and that are primarily used by their commuter trains. To give just one example, in 2019, FRA awarded Metra a \$17.8 million FSP grant for replacement of the Metra-owned A-32 Bridge used predominantly by Metra commuter trains because Amtrak trains also operated over the bridge.

Regional and short line railroads also receive significant public funding from states and through federal grant programs due to Amtrak’s operations. Of the four regional railroads over which Amtrak operates (or recently operated over in the case of Pan Am Railways, which is now part of CSX), three – Vermont Rail System, Pan Am and New England Central Railroad – made major investments benefiting their freight operations, which were funded by federal and state grants awarded to enable the initiation or enhancement of Amtrak services over their lines. These grants funded track upgrades and other infrastructure improvements, allowing for the operation of heavier freight trains and increases in freight train speeds.⁶

⁴ CRISI and FSP grants awarded to commuter railroads are listed at <https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/consolidated-rail-infrastructure-and-safety-2>,

<https://railroads.dot.gov/federal-state-partnership-intercity-passenger>, and <https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/federal-state-partnership-state-good-repair-1>.

⁵ 49 U.S.C. § 22905(f), which applies to FSP and CRISI grants, states that “No grants shall be provided under this chapter for commuter rail passenger transportation.” Commuter railroads receive funding for capital investments through the public transportation grant programs administered by the Federal Transit Administration, for which the IIJA provided \$107 billion.

⁶ These grants are described in <https://railroads.dot.gov/elibrary/us-department-transportation-announces-89-million-tiger-2013-grant-vermont-western>,



The fourth such regional railroad – Buckingham Branch Railroad – has also benefited from an approximately \$13.7 million FY20 CRISI grant and \$31 million in state funds for upgrading its line between Charlottesville and Clifton Forge, Virginia over which Amtrak’s *Cardinal* service operates.⁷

Congress has also provided \$300 million in Appropriations Acts through FY 2023 for installation of positive train control (PTC) or other safety improvements on rail lines over which Amtrak state-supported trains operate where PTC is not required by law or regulation. Most of this funding has been or will be used for investments on regional/short line railroads over which Amtrak operates that will enhance safety for both freight and passenger train operations.

Additionally, were it not for the creation of Amtrak and the funding the federal government provided for it, the railroad industry in its present form would not exist. The Rail Passenger Service Act of 1970 (RPSA) relieved railroads of their common carrier obligation to operate intercity passenger trains whose losses, which devoured 40% of the railroad industry’s profits in 1969, threatened the financial viability of the entire industry and were a major contributor to the bankruptcy of the largest U.S. railroad, Penn Central. Instead of the nationalization of U.S. railroads that many believed might be the only way to preserve rail service, the RPSA initiated the restructuring of the “railroads” then obligated to provide intercity and commuter passenger and freight rail service into today’s highly successful Class I freight railroads, regional and short line railroads, commuter railroads and Amtrak. It also led the federal government to provide tens of billions of dollars in funding for capital investments to restore and improve our nation’s most vital commuter rail artery, Amtrak’s Northeast Corridor, and to the preservation of Amtrak-served stations and rail lines in Washington, D.C., Denver, Los Angeles and elsewhere without which the commuter railroads that today serve those cities would never have been created.

Amtrak appreciates its partnerships with commuter and regional/short line railroads to improve passenger service and to strengthen the national rail network. However, there is no basis for the Board to ignore statutory requirements, Congress’s intent and the facts regarding Amtrak’s relationships with these railroads, as ASLRRRA and CRC urge.

Amtrak is a national railroad that depends upon the uniformity of federal law, as enacted by Congress and applied by the Board. Amtrak’s ability to add and expand service where demand warrants, and to improve the performance of Amtrak trains operating over host railroads, should not be subject to inconsistent

<https://www.progressiverailroading.com/amtrak/news/TIGER-grant-to-fund-Amtrak-service-extension-to-Burlington-Vt--48187>, <https://railroads.dot.gov/elibrary/us-transportation-secretary-lahood-announces-50-million-recovery-act-grant-vermont-high>, and Docket No. FD 36472, *CSX Corp. – Control and Merger – Pan Am Systems*, National Railroad Passenger Corporation’s Comments (filed Aug. 27, 2021), Verified Statement of Richard G. Slattery at 9-12.

⁷ These grants are described in <http://www.drpt.virginia.gov/media/3456/fy22-syip-sent-6-16-2021-w-page-nos.pdf> at 71-72, (<http://www.drpt.virginia.gov/media/1636/fy16-syip-final-approved-6-17-2015.pdf> at 79-80, and

<https://railroads.dot.gov/elibrary/fras-consolidated-rail-infrastructure-and-safety-improvements-crisi-program-fy20-project> at 7.



standards that vary based upon ownership of each segment of an Amtrak route. Such a result would undermine Congress's intent that Amtrak be permitted to operate over all rail lines owned by freight and commuter railroads, which was the right the public received in exchange for letting private entities shed their obligation to transport passengers.

Impeding the expansion of Amtrak service would also eliminate many railroad jobs. According to the Board's railroad employment data, Amtrak is leading the railroad industry in job creation as it expands its work force to advance the capital projects and other initiatives for which the IIA provides funding. At a time when freight railroad employment has been declining and commuter rail service levels have not fully recovered to pre-COVID levels, the Railroad Retirement Taxes paid by Amtrak's new employees, and by Amtrak on their behalf, are reducing Railroad Retirement funding requirements that would otherwise have to be borne by the rest of the railroad industry.

Amtrak looks forward to further engagement with the Board as we continue our plans to expand and enhance our operations. Amtrak was pleased by the Board's recent announcement of the creation of a Passenger Rail Advisory Committee, which will include membership from Amtrak, Class I railroads, commuter rail operators, rail labor, and regional/short line railroads, among other key stakeholders. That forum presents additional opportunities for interested parties to engage in productive discussions of these issues with the Board and to explore new ways to collaborate.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Gardner", is written over a light blue horizontal line. The signature is stylized and cursive.

Stephen Gardner
Chief Executive Officer
Amtrak