

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

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PUBLIC HEARING

IN THE MATTER OF:

PASSENGER RAIL INVESTMENT

STB Ex Parte
No. 683

AND IMPROVEMENT ACT OF 2008

Wednesday,
February 11, 2009

Surface Transportation
Board Hearing Room
Patriot Plaza, Suite 120
395 E Street, S.W.
Washington, D.C.

The above-entitled matter came on
for hearing, pursuant to notice, at 10:00 a.m.

BEFORE:

CHARLES D. NOTTINGHAM, Chairperson
FRANCIS P. MULVEY, Vice Chairperson

W. DOUGLAS BUTTREY, Commissioner

Reporter: Chad Jackson

APPEARANCES:

William Crosbie, National Railroad Passenger
Corporation

Mark Yachmetz, Federal Railroad Administration

Keith Millhouse, Southern California Regional
Rail Authority

David Solow, American Public Transportation
Association

Ross Capon, National Association of Railroad
Passengers

J. Michael Hemmer, Union Pacific Railroad

Company

John M. Gibson, CSX Transportation, Inc.

Edward R. Hamberger, Association of American
Railroads

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Adjourn

1 P-R-O-C-E-E-D-I-N-G-S

2 10:00 a.m.

3 CHAIRMAN NOTTINGHAM: Good morning

4 and welcome to the Surface Transportation

5 Board's first hearing of 2009. Today's

6 hearing will focus on the Board's enhanced

7 role in passenger rail service, as mandated by

8 the Passenger Rail Investment and Improvement

9 Act of 2008.

10 The Board is determined to

11 successfully implement our new

12 responsibilities and to play a constructive

13 role in the process of delivering improved

14 passenger rail service across our nation.

15 In order for us to meet these

16 goals, we need to fully understand our new

17 legislative mandate and to carefully consider

18 the views of stakeholders, many of whom have

19 vast experience in the passenger rail policy

20 arena and were closely involved in the process

21 that produced the legislative provisions we

22 will discuss today. I appreciate the

1 witnesses who have joined us today to offer
2 their views and suggestions.

3 The new legislation gives the
4 Board the power to investigate, in certain
5 circumstances, failures by Amtrak to meet on
6 time performance standards. Those standards
7 will be established by Amtrak and the Federal
8 Railroad Administration, in consultation with
9 the Board and others.

10 Under the statute, if the new
11 standards have not been met for two
12 consecutive calendar quarters, the Board may
13 start an investigation on its own, and must
14 start one upon complaint filed by Amtrak, an
15 inner-city passenger rail operator, a host
16 freight railroad over which Amtrak operates,
17 or an entity for which Amtrak operates inner-
18 city passenger rail service.

19 If, as a result of the
20 investigation, the Board determines that
21 delays or failure to achieve the standards is
22 due to the host rail carriers' failure to

1 provide preference to Amtrak trains over
2 freight trains, the STB may award damages
3 against the host rail carrier and order other
4 relief.

5 Those damages would be paid
6 directly to Amtrak, to be used for capital or
7 operating expenses on the affected route.

8 The legislation contains other
9 responsibilities for the Board, such as non-
10 binding mediation to facilitate resolution of
11 disputes, if a commuter operator seeks access
12 to a freight rail carriers' tracks and
13 services, and down the road, the STB could be
14 called upon to develop cost allocation
15 methodologies to determine reasonable
16 compensation liability in terms of use, if a
17 state uses the facilities of Amtrak or has
18 services provided by Amtrak.

19 The legislation authorized the
20 Board to hire 15 new staff members to
21 implement these new responsibilities. The
22 Board, however, has not yet received an

1 appropriation to pay for these new positions
2 and our current budget is not sufficient to
3 fund the new hiring while simultaneously
4 meeting our other obligations.

5 Despite the strain the that new
6 workload will impose on our staff, we are
7 determined to fulfill our new responsibilities
8 in an energetic and focused manner.

9 I have already assigned existing
10 staff with relevant experience and skills to
11 a newly formed passenger rail team. Many of
12 these staffers are, in essence, working two
13 jobs.

14 The long term success of our
15 passenger rail work will, however, depend on
16 our ability to work with Amtrak and Congress,
17 to secure the necessary funding of the
18 additional staff authorized in the new
19 statute.

20 While I anticipate that much of
21 the discussion today will touch on procedural,
22 legal and regulatory issues, I want to assure

1 all the stakeholders who care deeply about the
2 health of our nation's passenger rail system,
3 that this issue is not simply an academic or
4 professional one to me.

5 I grew up in a commuter rail
6 village, as it was called, in Northern New
7 Jersey and most of my father's career was
8 spent commuting to and from jobs in New York
9 City and Wilmington, Delaware via commuter
10 rail and Amtrak.

11 More recently, I lived for 12
12 years within two blocks of the Amtrak and
13 Virginia Rail Express station in downtown
14 Fredericksburg, Virginia. During most of
15 those years, I commuted to Washington, D.C. by
16 Amtrak and by the VRE.

17 While passenger rail service along
18 the Fredericksburg to D.C. corridor that I'm
19 quite familiar with has improved in recent
20 years, I have many vivid memories of riding on
21 trains that stopped to give preference to
22 freight trains.

1 Clearly, the statutory requirement
2 dating back to the 1970's that requires
3 freight railroads to give priority to
4 passenger trains has not always been given the
5 attention that will now be required under the
6 new statute that we will explore today.

7 I look forward to hearing the
8 witnesses' thoughts about how to implement
9 this legislation as effectively as possible.
10 I am particularly glad to see that we have
11 with us, representatives from Amtrak and the
12 FRA and I'm eager to hear your perspective,
13 was well as the testimony of all the witnesses
14 here today.

15 Finally, just a few procedural
16 notes regarding the testimony itself. As
17 usual, we will hear from all of the speakers
18 on the panel, prior to questions from the
19 Commissioners. Speakers, please note that the
20 timing lights are in front of me on the dais.
21 You'll see a yellow light when you have one
22 minute remaining and a red light when your

1 time has expired.

2 Therefore, I'll be keeping an eye
3 on the clock and ask that you please keep to
4 the time you've been allotted.

5 I assure you that we have read all
6 of your submissions and there's no need to
7 read them in their entirety here. After
8 hearing from the entire panel, we'll rotate
9 with questions from each Board member until
10 we've exhausted the questions.

11 Additionally, just a reminder to
12 please turn off all cell phones.

13 Let me now turn to Vice Chairman
14 Mulvey for any opening remarks.

15 VICE CHAIRMAN MULVEY: Thank you,
16 Chairman Nottingham. Good morning and welcome
17 to our panelists and other attendees today.

18 I've been a student of Amtrak's
19 operations and history virtually from its
20 establishment. I wrote my doctoral
21 dissertation on Amtrak's economic future back
22 in the early 70's, when Amtrak was first

1 getting started and I was an intern with the
2 Federal Railroad Administration, researching
3 the newly formed National Railroad Passenger
4 Corporation.

5 So, I followed the road very
6 closely ever since, both professionally and
7 personally.

8 I'm honored that Congress has
9 given the Board additional responsibilities
10 with respect to Amtrak and the commuter
11 railroads through the Act, as I believe the
12 agency has played a vital role in passenger
13 rail routing's and operations in the past, and
14 we will continue to do so.

15 This hearing is one of the first
16 steps in what will be a continuing dialog on
17 our implementation of our additional statutory
18 responsibilities. I look forward to the
19 discussions we will have today and to the work
20 in which our staff, the FRA, Amtrak and other
21 stake holders will engage in the coming weeks
22 and months ahead. Thank you very much.

1 CHAIRMAN NOTTINGHAM: Commissioner
2 Buttrey.

3 COMMISSIONER BUTTREY: Thank you,
4 Mr. Chairman. I do not have a formal opening
5 statement. I would just like to say, if you
6 had chosen the Gainesville area as a place to
7 live, you would have had much fewer -- many
8 fewer delays because the service out there is
9 really great.

10 I take the VRE virtually every
11 day. I'm a great believer in commuter rail.
12 I think it's the transportation mode of the
13 future, so to speak. If we can ever figure
14 out how to get enough infrastructure in place
15 to support it, along with the freight rails,
16 then we'll be a long ways toward solving some
17 of our problems with the legislation.

18 In studying the legislation so
19 far, it seems to me that Congress certainly
20 had good intentions. I believe they had good
21 intentions, in trying to answer some of the
22 questions or solve some of the issues, but it

1 appears that they have turned that
2 responsibility over to the Surface
3 Transportation Board and being a short-timer
4 around here, Mr. Chairman, I hope you all have
5 fun working with that, because it's going to
6 be a major undertaking, I think, because there
7 are a lot of -- it seems to me, there are more
8 questions than answers in that legislation.

9 As I say again, I know it was well
10 intentioned, but there are a lot of questions
11 to be answered before we get very far down the
12 road here.

13 So, I look forward to the
14 witnesses testimony today and I certainly
15 wanted to associated myself with the remarks
16 of my two colleagues here and look forward to
17 the testimony. Thank you.

18 CHAIRMAN NOTTINGHAM: Thank you,
19 Commissioner Buttrey. It's now my pleasure to
20 turn to our first panel this morning. We'll
21 be hearing first from William L. Crosbie,
22 representing the National Railroad Passenger

1 Corporation, commonly known as Amtrak, and
2 after Mr. Crosbie, we'll hear from the Federal
3 Railroad Administration, represented by Mr.
4 Mark Yachmetz.

5 Mr. Crosbie, thank you and
6 welcome.

7 MR. CROSBIE: Thank you. Chairman
8 Nottingham, Vice Chair Mulvey and Commissioner
9 Buttrey, thank you for calling this hearing
10 today. I'm delighted to be here on behalf of
11 Amtrak, to offer our comments on the Passenger
12 Rail Investment and Improvement Act of 2008
13 and the Surface Transportation Board's
14 important role in implementing the Bill.

15 Are we going to have slides up?
16 Thank you. I'll move fairly quickly through
17 the beginning of these slides, assuming that
18 you have been familiarized with our testimony.

19 Amtrak operates a 21,000 miles
20 network. Last year, we carried over 28
21 million passengers. It was an all time
22 record. Some services average in the 80

1 percent range, but in one case, OTP averaged
2 as low as 18.6 percent. Our long distance
3 trains posted in fiscal 08, an one time
4 arrival average of 54.6 percent.

5 The number of long distance train
6 miles we operate has changed very little since
7 1971. The short distance routes can be very
8 dense. One-hundred-fifty-seven of the 310
9 daily trains run on some part of the NEC
10 between Boston and Washington.

11 In the Act, significant funding is
12 set aside for Amtrak's capital and operating
13 needs. Amtrak has been working for years to
14 return its infrastructure to a state of good
15 repair and the funds authorized in the Bill
16 will greatly assist in the effort, if
17 appropriated at the maximum level.

18 But the new law does more than
19 simply address funding needs. It addresses a
20 number of policy and service quality issues at
21 the heart of Amtrak and state inner-city
22 passenger rail service.

1 Amtrak has established an internal
2 re-authorization tax force, better known as
3 RTF, with representatives from all the major
4 departments of the company that have a role in
5 meeting the requirements and the deadlines in
6 the Bill.

7 The RTF meets regularly and has
8 already met several times with staff from the
9 FRA and also, members of the staff here at the
10 STB. We take this very seriously and we will
11 meet the deadlines and the mandates of this
12 Act.

13 Now, I'll touch on some of the
14 specific provisions of the Bill, where the STB
15 has a role and some of our thoughts on how we
16 will work with you along the way. I will
17 devote the bulk of my time to discussing
18 requirements set out in Title 2.

19 I will touch briefly on Title 3,
20 principally to highlight two provisions that
21 are authorized by the legislation. These are
22 involved with issues I will discuss when we

1 come to Section 213.

2 Certain of the findings the STB is
3 empowered to make by Section 213 can be used
4 to justify an application of capital funds
5 under the terms laid out for grant programs in
6 Section 301 and 302.

7 Section 207 requires that Amtrak
8 and the Federal Railroad Administration
9 consultation with the STB and others, work
10 together to establish uniform metrics and
11 standards. Specifically, legislation requires
12 improvement of existing or development of new
13 metrics and minimum standards for measuring
14 the performance and service quality of inner-
15 city passenger train operations, including
16 cost recovery, on time performance, minutes of
17 delay, rider-ship, on board services,
18 stations, facilities, equipment and other
19 services.

20 The law gives us 180 days to
21 complete the metrics and standards. The
22 President signed the Bill on October 16th, so

1 we must come to an agreement on the metrics by
2 mid-April. If we do not do so, the STB may be
3 petitioned to assist the parties in resolving
4 this disputes.

5 These metrics and standards are
6 very important. They'll be used as one
7 measure to evaluate passenger train
8 performance in Section 213 and they will also
9 be used to evaluate our performance under the
10 sections -- other sections of the Act.

11 For this reason, Amtrak takes
12 these very seriously and will work with the
13 STB and the FRA to develop them.

14 As mentioned earlier, on time
15 performance of our trains is highly variable.
16 We want to make every -- we want to make it
17 very clear that the on time performance of our
18 trains is the lynch-pin of our success.

19 The U.S. Department of
20 Transportation's Inspector General's March
21 28th report entitled "Affects of Amtrak's Poor
22 Performance -- Poor On Time Performance" found

1 that poor on time performance cost Amtrak over
2 \$100 million in lost revenue and increased
3 costs.

4 Reliable on time service is
5 critical on short haul and long distance
6 trains. For years, we have struggled with our
7 OTP numbers off the northeast corridor.

8 I have included a graph, which
9 you'll see on this slide, of our long distance
10 train OTP from fiscal 06 through December `08.
11 Generally speaking, the trend is upward, but
12 it's still far short of 80 percent, and has
13 never been sustained at any reasonable,
14 acceptable level for any length of time.

15 The performance you have just seen
16 is well short of the level we want to attain
17 and well short of the level that PRIIA
18 mandates.

19 Section 213 establishes that the
20 STB may initiate an investigation if the on
21 time performance of any inner-city passenger
22 rail train averages less than 80 percent for

1 any two consecutive calendar quarters or if
2 the service quality of inner-city passenger
3 train operations for which the minimum
4 standards are established under Section 207,
5 fails to meet those standards for two
6 consecutive calendar quarters.

7 The Surface Transportation Board
8 is also required to initiate an investigation
9 upon the filing of a complaint by Amtrak,
10 inner-city passenger rail operator, a host
11 freight railroad over which Amtrak operates or
12 an entity for which Amtrak operates inner-city
13 passenger rail service.

14 The purpose of this investigation
15 is to determine whether and to what extent
16 delays or failure to achieve minimum standards
17 are due to causes that could be reasonably
18 addressed by a rail carrier.

19 The Board is authorized to
20 investigate whether delays or failures to
21 achieve minimum standards are attributable to
22 a rail carriers' failure to provide

1 preference, a statutory right that affords
2 Amtrak preference over freight train --
3 freight transportation in using a rail line,
4 junction or crossing.

5 Among other things, the Board can
6 award damages under Section 213, if it finds
7 that Amtrak's preference right has been
8 violated.

9 I have included a graph of the top
10 three causes of delays to long distance trains
11 in fiscal 08. As you can see, the top causes
12 of delay are freight train interference and
13 slow orders. The question of freight train
14 interference gets into the vital issue of
15 preference.

16 The whole question of preference
17 to be accorded passenger trains is vitally
18 important to Amtrak. Our metrics show that
19 customer satisfaction tracks closely to on
20 time performance of our trains.

21 The Inspector General of the
22 Department of Transportation, in its September

1 8, 2008 report entitled "Root Causes of Amtrak
2 Delays", found that actions by the host
3 railroads, including dispatching practices,
4 violate Amtrak's statutory right to
5 preference.

6 We have been working hard with
7 host railroads on this situation, but when
8 collaboration is not enough, it is necessary
9 that Amtrak have tools available to it, to
10 enforce its rights.

11 We pledge to you today that we
12 will continue to work with our host partners
13 to meet or exceed the standards set in the
14 Bill, but if we do not hit those levels, we
15 anticipate that we will file a complaint to
16 begin the process of the Board's investigation
17 of on time performance.

18 We can and we must hit those
19 numbers and provide our passengers with the
20 kind of reliability and on time performance
21 that they expect.

22 The original Rail Passenger

1 Service Act of 1971 allowed states to contract
2 with Amtrak for passenger train service.

3 Since 1997, Amtrak has been allowed to set the
4 terms of its service and between '97 and 2002,
5 each business unit set its own pricing policy.

6 This led to significant variations and our
7 company is transitioning towards a consistent
8 state contribution basis.

9 Amtrak trains currently receive
10 operating support from 14 states. On my
11 slide, you'll notice the map that shows our
12 system corridors in red and the state
13 supported corridors in green.

14 The later trains receive varying
15 levels of support from states. The former
16 trains received no state support. Many of
17 them are designated as system trains and as
18 part of the national system, are running,
19 regardless of the level of state support. We
20 regard this provision as an important one and
21 we will implement it.

22 We also regard the state partners

1 as critically important, both to the
2 maintenance of the existing service and the
3 development of new service. Amtrak is going
4 to work closely with them and with the DOT, to
5 ensure that we get to a mechanism to provides,
6 as the law mandates, equal treatment in the
7 provision of like services.

8 As I mentioned earlier, just about
9 half of our daily trains use some portion of
10 the northeast corridor. It is a very busy
11 railroad and Amtrak is not the only user.
12 Eight commuter agencies and four freight
13 companies also the NEC main stem, a total of
14 some 2,500 trains a day.

15 Much of this infrastructure is
16 aging and to the question of basic
17 reliability, we increasingly face a question
18 of capacity.

19 Amtrak has established and
20 infrastructure advisory group to address this
21 issue and we are currently working with our
22 partners to develop a long term plan for

1 maintaining and improving the NEC.

2 We regard the implementation of a
3 process that will improve the allocation of
4 capital costs as a key step and we will work
5 closely with the DOT on the development of
6 this formula.

7 The next two slides deal
8 principally with an alternative program that
9 are designed to allow providers to enter the
10 inner-city passenger rail business, should
11 they wish to do so.

12 Go to slide 14, please. Finally,
13 we come to the two provisions from Title 3,
14 Section 301 and 302. They authorize capital
15 investments. Section 301 authorizes a capital
16 matching program, administered by the FRA for
17 the use of states, groups of states and public
18 agencies. Section 302 authorizes a capital
19 matching for projects that are designed to
20 facilitate rider-ship growth or mitigate
21 congestion.

22 An STB finding under the process,

1 authorized by Section 213 can be one of the
2 number of sufficient conditions that can allow
3 the Secretary to authorize funding of a
4 project.

5 These are important provisions and
6 I hope that the STB keeps them in mind, when
7 and if it is called upon to adjudicate cases
8 under Section 213.

9 In closing, let me reiterate to
10 you and the Board that our goal will be to
11 work through each of these areas with care and
12 consideration for all stake holders involved.

13 We will do our very best to solve
14 the challenges we face in a cooperative and
15 collaborative way. Along the way, we will be
16 sure to keep you and your staff fully apprised
17 and briefed, so that you know what is going on
18 at all times, with regard to these
19 requirements and where they intersect with
20 your new jurisdictional roles.

21 We hope to be a resource to you
22 and your staff and will make ourselves

1 available and accessible at all times. Thank
2 you.

3 CHAIRMAN NOTTINGHAM: Thank you,
4 Mr. Crosbie. I'm sure we'll have some
5 questions for you momentarily. I'd like to
6 now turn to Mr. Mark Yachmetz of the Federal
7 Railroad Administration.

8 Welcome, Mr. Yachmetz. We're very
9 pleased you're here and look forward to
10 hearing your testimony.

11 MR. YACHMETZ: Thank you, Mr.
12 Chairman and members of the Surface
13 Transportation Board. I appreciate this
14 opportunity to update you on the Federal
15 Railroad Administration's staff activities, to
16 implement sections of the Passenger Rail
17 Investment and Improvement Act of 2008, that
18 related to the expanded responsibilities of
19 the STB.

20 By way of introduction, I am Mark
21 Yachmetz, Associate Administrator for railroad
22 development of FRA. The Office of Railroad

1 Development is leading FRA's activities
2 associated with implementing PRIIA. We also
3 manage a wide range of programs that bear
4 directly on FRA's and STB's shared areas of
5 interest, that have resulted from this
6 legislation.

7 These include providing analytical
8 support to the development of the
9 Administration's inner-city passenger rail and
10 rail industry investment policies, staff
11 support to the Secretary of Transportation and
12 any secretarial designee as a member of
13 Amtrak's Board of Directors, the making and
14 oversight of grants to Amtrak for operating
15 expenses and capital investment, the making
16 and oversight of grants to states for inner-
17 city passenger rail development, including
18 grants to eliminate rail congestion adversely
19 affecting passenger rail service.

20 We also make and oversee grants to
21 states for rail line relocations, grants to
22 states for capital improvements for passenger

1 operations expected to operate faster than 110
2 miles an hour and we also make loans and loan
3 guarantees for capital improvements to
4 railroads, including commuter rail operations,
5 operating over the general system railways of
6 the United States.

7 I would like to note the FRA and
8 the Office of Railroad Development have a
9 history of effective cooperation with the STB
10 in areas of mutual interest. In deed, at the
11 present time, the STB section of environmental
12 analysis and my office are sharing
13 responsibility for the required environmental
14 studies for two construction projects, one in
15 Alaska and one in Southeastern California and
16 Southwestern Nevada.

17 Section 207 of the Passenger Rail
18 Investment Improvement Act directs FRA and
19 Amtrak in consultation with the STB and other
20 interested parties to develop new and improved
21 metrics and minimum standards, measuring the
22 performance and service quality of inner-city

1 passenger train operations.

2 If we cannot agree by April 16th,
3 any party involved in the development of those
4 standards may petition the STB to appoint an
5 arbitrator to assist the parties in resolving
6 their disputes -- our disputes.

7 FRA staff has been working since
8 the enactment of the legislation, to develop
9 options for the metrics and set standards for
10 various facets of inner-city passenger rail
11 service quality.

12 We are particularly cognizant that
13 while the statute looks for agreement between
14 FRA and Amtrak on those metrics and standards,
15 each entity is independent and agreement is
16 not mandatory.

17 FRA staff has had extensive
18 discussions with Amtrak over the past few
19 months on the concepts and issues to be
20 addressed, in establishing the metrics and
21 standards. We've also met with
22 representatives of the Class 1 railroads that

1 host Amtrak service and with the staff of the
2 STB.

3 We anticipate placing a proposal
4 for stake holder comment on our website no
5 later than the end of this month.

6 After allowing about two weeks for
7 comments to be prepared and received, FRA
8 staff will consider those comments and develop
9 options for the Department of Transportation's
10 decision makers.

11 Amtrak will also be providing
12 comments -- the comments we've received and
13 will undertake its own analysis and develop
14 options for consideration by its Board of
15 Directors.

16 During this process, FRA staff and
17 Amtrak staff will continue to keep each other
18 informed on the progress of completing this
19 effort, to identify and crystalize any areas
20 of disagreement that then can be presented to
21 our respective decision makers and I should
22 add, during that process, we expect to be

1 keeping the staff of the STB well informed, so
2 they can be preparing for your implementation
3 and your portions of this legislation.

4 While we continue to work on our
5 proposed metrics and standards, I'd like to
6 share with you, some of the principles on
7 which we are basing our ongoing work.

8 Our analysis of Section 207 of
9 PRIIA suggests that metrics and standards lend
10 themselves to grouping under four main
11 headings.

12 The first is financial metrics,
13 such as cost recovery. The second is on time
14 performance metrics. The third is other
15 service quality metrics, which would gauge
16 passenger satisfaction with the overall Amtrak
17 experience, both aboard the train and at the
18 station, and the fourth is the availability
19 and connectivity metrics that would address
20 Amtrak's ability to meet to mobility needs of
21 otherwise under-served communities.

22 For now, options under

1 consideration by FRA staff include proposing
2 to address each of these four main categories
3 of metrics in a way that will fulfill
4 Congress's intent that we use readily
5 available data, minimize the staffing
6 requirements for generating, assembling and
7 reporting on the data, and that the metrics be
8 open to changing circumstances, such as the
9 availability of new data sources.

10 Similarly, our current thinking on
11 standard setting would suggest that standards
12 should be motivational, yet realistically
13 achievable within the five year authorization
14 period. Hopeless goals motivate hopeless
15 behaviors.

16 For the same reason, the
17 consistently incremental, rather than all-at-
18 once improvement might offer a greater
19 possibility of sustained improvement over the
20 long term.

21 Perhaps the most intense interest
22 from stake holders may be devoted to metrics

1 and standards for on time performance and
2 train device. Freight railroads and Amtrak
3 have vital stakes in the outcome of this
4 topic. OTP has monetary consequences, both
5 good and bad, for both Amtrak and the host
6 railroads and the PRIIA as the dimension of
7 STB involvement and possible fines.

8 This is an especially complex
9 topic. The most fundamental aspect of this
10 complexity is the lack of agreement of how it
11 should be measured. Delays are based upon
12 detailed contractual arrangements between
13 Amtrak and the freight railroads, while OTP
14 per say reflects the -- Amtrak's public time
15 table.

16 Amtrak and the freight railroads
17 generate OTP data by different means. What is
18 the best way to objectively measure this data?
19 How is the cause of data -- how is the cause
20 of delay objectively determined and allocated?

21 OTP is currently reported to the
22 public as end point OTP, but as most Amtrak

1 passengers are not traveling between both end
2 points of a route, the public is actually
3 experiencing all stations OTP, the average
4 punctuality or tardiness of a train at every
5 point it serves.

6 Should delays for intermediate
7 portions of passenger routes be taken into
8 account or should delays only be considered
9 for trains that are late and their end points?

10 Underlying the issue of
11 performance against schedule is how the
12 schedules are set in the first place. Freight
13 railroads and Amtrak may have understandable
14 differences over the underlying schedules that
15 form the basis of both delays and OTP.

16 This is of particular interest,
17 not just to the railroads, but to FRA who must
18 report on the performance against schedule and
19 to the STB that must adjudicate matters
20 related to failures to perform. How can all
21 interested parties be assured that the
22 schedules are reasonable in the first place?

1 In developing schedules, how can
2 an agreement be reached by both Amtrak and the
3 host railroad, that there is high degree of
4 likelihood that on a normal day, the schedule
5 can be achieved? Are the schedules reflective
6 of the circumstances that have been shown in
7 the past, to adversely affect trip time, such
8 as summer track maintain seasons and heat
9 related slower orders, that experience show,
10 will occur with some degree of predictable
11 regularity?

12 In addressing OTP, should
13 conditions and unforeseen circumstances, such
14 as extended weather delays, be considered in
15 a context of schedule changes or in the
16 performance standards?

17 I would note that the ability to
18 model and predict rail operations has improved
19 significantly since 1971 and might offer a
20 science based approach to scheduling
21 adjustments that provide both passenger and
22 the railroads with more realistic expectations

1 of their departure and arrival time, than a
2 time table printed twice a year.

3 Finally, is there a way to use the
4 development of schedules to identify and help
5 prioritize capital improvements that could
6 lead to greater reliability, improved trip
7 time, which could then factor in to FRA's
8 evaluations of applications for grants by
9 states and by Amtrak.

10 In conclusion, FRA's staff work is
11 progressing on this very challenging effort
12 and we look forward to receiving comments from
13 all interested parties over the next several
14 weeks, as we prepare options for consideration
15 by the Department's decision makers.

16 I would like to note that the
17 observations I have made are those of a member
18 of FRA's career staff and not the decision
19 maker on these matters.

20 Some aspects of the inner-city
21 passenger rail service that are specifically
22 required to be covered by these metrics and

1 standards, such as the percentage of avoidable
2 and fully allocated operating costs, covered
3 by passenger revenues on each route, have been
4 central element in the Amtrak debate since
5 even before the corporation was created in
6 1971.

7 Each Presidential Administration
8 has had its own views on the Federal role of
9 inner-city passenger service in general,
10 Amtrak in particular, and I have no doubt, the
11 incoming Administration will as well.

12 Key players in the area of inner-
13 city passenger rail service are in transition.
14 As you know, Secretary LaHood has only been on
15 the job for three weeks. We don't yet have a
16 Deputy Secretary, Federal Railroad
17 Administrator or other people who may be part
18 of the Secretary -- LaHood's passenger rail
19 policy team.

20 I would also like to note that
21 Amtrak settling three of -- three of the seven
22 seats on Amtrak Board of Directors are

1 currently vacant and the Board will be re-
2 configured on April 16th, the same date that
3 the performance metrics are due and this all
4 presents issues of sustainability of the
5 effort that we are currently under.

6 So, once again, I would appreciate
7 this -- I appreciate this opportunity to
8 update the Board on our activities to
9 implement PRIIA and I would be happy to answer
10 your questions on these activities.

11 CHAIRMAN NOTTINGHAM: Thank you,
12 Mr. Yachmetz, for some very enlightening and
13 thoughtful testimony. I appreciate that.
14 I've got a few questions. I'm sure my
15 colleagues do as well.

16 You know, today's balmy spring-
17 like weather and -- combined with the fact
18 that we're just a few days away from pitchers
19 and catchers reporting for the spring training
20 for the Major League Baseball season, it sort
21 of forces me to think of a baseball metaphor
22 here.

1 I sort of feel like the umpire,
2 who is about to call balls and strikes for the
3 season, the new season, but the strike zone
4 has got to be negotiated first between the
5 pitchers' union and the batters' union or
6 organization, and then the umpires are
7 supposed to be consulted and have some input,
8 and all of that would be awfully important to
9 the umpires' ability to call a fair game and
10 to actually keep the game moving along.

11 And so, I don't know if that works
12 at all, to put anybody in the frame of mind,
13 to kind of understand kind of, how we view
14 this process, but we will be playing that
15 umpire-type role at certain aspects and
16 junctures of this new process that was -- has
17 been outlined in the new legislation. I do
18 have a few questions about it.

19 What's very important to us is the
20 reference to two calendar quarters of data
21 being looked at, six months, and I'd like to
22 get each of your thoughts on the question of,

1 you know, once the new standards and metrics
2 are developed, or whichever standards and
3 metrics are to be used and relied upon, when
4 does that clock start running for the two
5 consecutive calendar quarters, that would then
6 trigger our role, in conducting an
7 investigation under Section 213?

8 Is that something we should be
9 prepared to launch now, under the theory that
10 the data is pretty solid and we can look back
11 two quarters prior to enactment of the Bill in
12 October, or do we start with October or do we
13 view the language as setting forth a process
14 that will result in new metrics and standards,
15 that would then yield or need to have a two
16 month -- two quarter or six month process of
17 review starting in mid-April?

18 If you could maybe just help
19 reflect on that.

20 MR. CROSBIE: Sure, I'll start.
21 Just by way of background, since this is my
22 first time testifying before you, I've been

1 with Amtrak since '03. I have worked for a
2 freight railroad for over 10 years prior to
3 that.

4 So, when I look at on time
5 performance, I not only look at it through the
6 lens of passenger railroad, but also freight
7 railroading as well.

8 In terms of the data, I think the
9 data is solid today. So, it's really up to
10 the discretion of the Board. I think at a
11 minimum, you would have to start on April
12 16th, with the assumption that we're going to
13 come to some agreement between now and the
14 16th of April, on the metrics, and that's when
15 the clock starts to tick. I think that would
16 be the minimum you would start with.

17 But the data, in our view, is
18 solid and be careful of the questions you ask,
19 because every time I ask a question, I gets
20 volumes and volumes of information on how it
21 can be sliced and diced and presented.

22 MR. YACHMETZ: Well, it's actually

1 an interesting question and I, actually, are
2 similarly appreciative of the situation where
3 the Board is in, in which you all also are
4 lacking staff resources to undertake a lot of
5 this, as we are also grappling with that.
6 We've implemented the Emergency Recovery Act
7 with the resources we have.

8 It is my understanding that we
9 have to report on a quarterly basis, on the on
10 time performance, based -- against -- once the
11 metrics and standards are set up. So, it
12 would be highly unlikely, I expect, that we
13 would do an -- FRA would do a report before
14 the first of July, which would be the end of
15 the quarter in which the metrics became
16 effective and I think one of the things that
17 the larger group here, of railroads and the
18 STB and the FRA need to think about is, is
19 there some piece of time needs to happen, so
20 that all the players on the field, the freight
21 railroads and the Amtrak folks, have an
22 opportunity to both understand what's required

1 of them and how their to report it to us and
2 to you.

3 So, I would say, realistically,
4 even with the most aggressive schedule, the
5 first quarter you would start looking at would
6 probably be the fourth quarter of fiscal year
7 2009, and so, that would hopefully also align
8 with your ability to get some resources in the
9 Appropriation Act.

10 CHAIRMAN NOTTINGHAM: And so, it
11 sounds like the FRA looks at the quarterly
12 process as, based on the Federal fiscal year,
13 if I followed your question right. So,
14 October 1st to September 30th?

15 So, you've got quarters playing
16 out during that Federal fiscal year and then
17 in mid-April, April 16th, we have the deadline
18 for the new standards to be in place.
19 Hopefully, that will be a hit and then, we'll
20 have the next quarterly results after that
21 date would be, you're saying on July 1st and
22 then there will be the last quarter.

1 So, you would have -- come April -
2 - by October 1st, we'd have two full quarters
3 of FRA data on on time performance to look at
4 under the new standards?

5 MR. YACHMETZ: By October 1st, you
6 would have one under the new standards and one
7 that's half -- mostly, actually not under the
8 standards, and so, I would think that if
9 you're looking for two full quarters under the
10 new standards, it would probably January 1st,
11 before you had those quarters in.

12 But I'd like to preface this all
13 by saying that both I and Mr. Crosbie have
14 engineering and legal education here. So, the
15 actual meaning of calendar quarter may have
16 been addressed in the statute. I don't
17 believe it is. So, that's the reason why I'm
18 defaulting to fiscal year quarters.

19 MR. CROSBIE: If I could just
20 comment on Mr. Yachmetz's -- the calendar he
21 put forward. It will work towards a
22 cooperative approach to this, and I've said

1 that in my testimony, but I hope the Board
2 appreciates that for Amtrak, this is vitally
3 important to us.

4 Every day that goes by, where on
5 time performance is at not an acceptable
6 level, is money for us and customer service,
7 and the sooner we get on with this, the better
8 off we're going to be and I have a dedicated
9 team on this and if I need to put more
10 resources, I will put more resources on it and
11 I want to leave you with the message that we
12 are prepared to do whatever it takes to hit an
13 aggressive time line and to move forward
14 aggressively, to get this in place.

15 CHAIRMAN NOTTINGHAM: So, Mr.
16 Crosbie, do you anticipate the possibility --
17 I won't put you on the spot, about no one can
18 predict the future with exact certainty, but
19 do you anticipate the possibility that Amtrak
20 might be in a position earlier than Mr.
21 Yachmetz's January 1, 2010 time frame, to file
22 a complaint to the STB, to look into on time

1 performance problems?

2 MR. CROSBIE: Again, we want to do
3 this in a collaborative approach, so I'm not
4 going to answer the question directly.

5 Each situation is different and
6 different with each of the host railroads and
7 different with each road, and we'll evaluate
8 each situation as it presents itself.

9 But our approach is to try to do
10 this in a very cooperative manner and not
11 adversarial. In a way, we'd like to have all
12 parties agreeing to what the metrics are, have
13 them in place and move forward.

14 My only point earlier is that I do
15 want to move this along and not end up in a
16 long analysis and we had -- at some point, we
17 have to agree to the metrics and put them in
18 place and presumably, if we all find at the
19 end of the day, that something isn't working
20 quite right and we all agree that that really
21 didn't work as we thought it would, I would
22 assume we can change it. Again, I'm not a

1 lawyer, but I've spent way too much time with
2 them.

3 CHAIRMAN NOTTINGHAM: Well, I think
4 this Board would prefer not to be overly
5 legalistic. We certainly know what the
6 problem that Congress is trying to solve is,
7 and who they've asked to help solve it,
8 collectively, your organizations, our
9 organizations.

10 But let's be honest, if we get to
11 the point of assessing significant financial
12 penalties on private freight rail
13 corporations, based on something that's not
14 clearly understood in the law, our experience
15 with the freight railroads is, they're not
16 reluctant to appeal and challenge, if they
17 think their rights are being -- understandably
18 so, if they think their rights are being
19 trampled on. We'll hear from them later, of
20 course.

21 I guess a lot of this line of
22 questioning -- and I ask these questions for

1 a number of reasons. One is, we need to
2 staff-up. We are staffing-up, but it's a
3 meaningful difference to us, if we are
4 anticipating complaints in April or July or
5 October or January.

6 We're already getting mail. I
7 know each of your agencies, I'm sure, gets a
8 lot of mail on this topic and has for many
9 years. We're starting to get that mail now.
10 It's sort of a new experience for us, and
11 we're trying to understand how to best answer
12 those letters and make sure that passenger
13 rail customers that do have real concerns get
14 answers to their questions.

15 MR. CROSBIE: And as the situation
16 changes, I assure, Mr. Chairman, that we will
17 keep your apprised all the way, along the way.

18 CHAIRMAN NOTTINGHAM: I guess,
19 related to my line of questioning really is,
20 is the quality and the -- to use the phrase,
21 is it ready for prime time?

22 The data -- I'd like to hear each

1 of you talk about the data that currently
2 exists on on time performance. Is it -- was
3 it -- is it compatible with the new statutory
4 expectation of on time performance data? Is
5 there something ready for us to use?

6 My review of the data we've looked
7 at indicates that at the time of passage of
8 the new legislation in October, it's fair to
9 say that none of the covered long distance
10 routes, in other words, the -- our role is --
11 does not include the northeast corridor, is my
12 understanding in the statute.

13 We're not anticipating handling
14 complaints about on time performance regarding
15 track that Amtrak currently owns.

16 But so, if you take away the
17 pretty successful on time performing Northeast
18 Corridor and look at the rest of the country,
19 at the time of passage of the law in October,
20 there were no routes that were actually
21 complying with the 80 percent or better on
22 time performance.

1 I understand that's gotten a
2 little better, in the ensuing months. But
3 could each of you speak to that, both of kind
4 of the quality and it is ready for prime time
5 of the data that is currently available, and
6 just how far we are from the goal of 80
7 percent on time performance?

8 MR. CROSBIE: Sure. Take the long
9 distance roads, for example. We measure with
10 our conductors report, reported to a central
11 location. We believe that data is very solid.
12 It has been tested and the degree of error, if
13 any, is very small in it and we've had very
14 few issues with our host partners, on the data
15 largely. There's a couple of exceptions to
16 that.

17 But we believe that data is very
18 solid, even though it is, you know, it today's
19 automated world of GPS's and various other
20 things, it is very solid, in terms of the
21 times and the length of time that they were
22 delayed.

1 So, the basic information is
2 there. It can always be automated. That just
3 takes money to do, but that is something that
4 we would look to negotiate with each of the
5 freight railroads.

6 So, we think the information is
7 there and we have spent 37 or 38 years
8 measuring it, in every way you can imagine and
9 no matter how you look at it, it's always
10 pretty much the same.

11 Recently, as you've mentioned,
12 there's been some improvement. We think the
13 80 percent is attainable in a lot of cases and
14 recently, they've shown that in some cases, it
15 is attainable, under the existing schedules,
16 which I know, has been brought up in many of
17 the testimonies you'll hear today.

18 MR. YACHMETZ: Well, Mr. Crosbie is
19 correct, that the conductor's reports have a
20 long tradition at Amtrak and are the basis for
21 which the numbers that we see on a regular
22 basis, on on time performance and the freight

1 railroads have an opportunity to -- in some of
2 their newer dispatch systems, to separately
3 monitor the performance of trains and in fact,
4 some of them actually -- you know, Amtrak
5 submits its conductor reports to the freight
6 railroads and some of the freights actually go
7 back and look at records of their dispatch
8 systems and verify that.

9 So, I think that getting started,
10 you probably are very close, particularly if
11 there's agreement on the metrics and how the
12 metrics are going to be measured and that sort
13 of stuff, to be able to generate the data in
14 the relatively near term.

15 But again, the engineer in me
16 tells me that the -- particularly, as we have
17 a separate mandate to require positive train
18 control on the rail industry by 2015 and it's
19 going to be -- may be accelerated in a lot of
20 places, that these systems could actually be
21 designed to develop -- to spit out this data,
22 just cold, hard electronic facts, without any

1 human interference in it.

2 So, I think that what you will
3 probably see as this provision matures over
4 the years, is that it will become much more of
5 a technology based measurement system, but
6 right now, it is Amtrak conductors.

7 CHAIRMAN NOTTINGHAM: I want to
8 yield to my colleagues and just ask one more
9 question. Is there a standard practice review
10 now, in the passenger rail industry, about
11 what constitutes on time performance, as far
12 as -- you know, when you're looking at it in
13 a specific train-by-train analysis and the
14 commercial aviation world, we often hear about
15 within 15 minutes -- if you're within 15
16 minutes, pushing off the gate and arriving,
17 you're not marked down as late, is my
18 understanding.

19 I know, I used to have the
20 privilege of traveling a little bit with
21 former Secretary Mineta, and he was famous for
22 always -- he had the pad and paper out and his

1 pen and his watch and he would note every time
2 we traveled, when that plane pushed off and
3 when it landed.

4 Interestingly, traveling with him,
5 I noticed we tended to arrive on time more
6 than when I traveled without him. So, I miss
7 those days.

8 But is it -- what's the story with
9 in passenger route? I've been on trains a
10 lot, but I've really never known whether I
11 should be happy when we come in 12 minutes
12 late or 18 or, you know, what does success
13 look like?

14 MR. CROSBIE: Sure. So, Secretary
15 Mineta was doing his own version of a
16 conductor's report and submitting it. So,
17 interesting.

18 In terms of the northeast
19 corridor, we measure it on 10 minutes, in
20 comparison to airlines, which is 15 minutes,
21 which on the case of the northeast corridor,
22 that's our primary competition.

1 Off the northeast, take the long
2 distance routes, it's 30 minutes on the public
3 time table, is considered on time, and on the
4 corridor trains, it varies, for those -- the
5 state corridors. It depends on which one.

6 But generally, that is in the area
7 of -- it can be, for example, the capital
8 corridor is 10 minutes, in that case. In
9 other corridors, it's 20 minutes.

10 CHAIRMAN NOTTINGHAM: And would
11 that typically be end to end or point to
12 point?

13 MR. CROSBIE: End to end, so,
14 arriving at the final destination, final
15 depot.

16 CHAIRMAN NOTTINGHAM: Mr. Yachmetz,
17 do you have anything to add to that?

18 MR. YACHMETZ: No, I don't. I
19 mean, this is actually an interesting aspect
20 of where we're at. This is the traditional
21 way of doing things and one of the questions
22 that ultimately -- you know, the process may

1 have to ask, or you all as the arbitrator of
2 the process, is, is there some other basis to
3 set these up?

4 That's sort of one of the
5 questions that, you know, we're grappling
6 with, is, do we measure on time performance
7 end to end or station to station, as well as
8 end to end, and the latter becomes much more
9 complicated, but it actually may reflect
10 better, the experience of the passenger.

11 CHAIRMAN NOTTINGHAM: Very good.
12 Vice Chairman Mulvey, I know you've been very
13 patient and I'm sure you have questions. Let
14 me turn it over to you now.

15 VICE CHAIRMAN MULVEY: Thank you
16 very much, Chairman Nottingham. I do have few
17 questions. I want to be clear on the on time
18 performance measure. It's the same for long
19 haul trains and relatively short haul trains.
20 It's 30 minutes, whether the train is making
21 a two day trip from Chicago to San Francisco
22 or whether it's Chicago to Quincy, is that

1 correct?

2 MR. CROSBIE: Chicago to Quincy is
3 20, right? It's 20 minutes.

4 VICE CHAIRMAN MULVEY: To Quincy,
5 but 30 minutes to the west coast. I recall
6 coming to Los Angeles Union Station a number
7 of years ago and I looked up at the board, at
8 the Sunset Limited, and rather than minutes
9 delayed or hours delayed, you needed a
10 calendar to measure the delay. It was more
11 than a day late.

12 That kind of delay, I'm sure, is
13 not occurring as much today, but that was a
14 pretty poor performance.

15 Is on time performance though, a
16 significant determinant of long distance
17 travel demand? It strikes me that many Amtrak
18 riders, especially long distance riders, tend
19 to be relatively time insensitive, and that
20 it's not so much how long it takes, it's just
21 getting there on time. It's also getting there
22 when you're expected to get there. But, if you

1 know you're going to be delayed and you can
2 inform people who are going to meet you, when
3 you're actually going to arrive, that's really
4 more important than actually meeting a
5 schedule. Is that not true, for the long
6 distance riders?

7 MR. CROSBIE: I think it's a little
8 -- it's changed over the years. I think there
9 was a time when that may have been true.

10 What we're seeing now in our long
11 distance trains, which by the way, are the --
12 the rider-ship is still growing on those.
13 We've seen some softening on the northeast
14 corridor, for example, with Wall Street and
15 the economy.

16 But on the long distance trains,
17 it continues to grow, and part of the reason
18 it's growing is what's happening in the
19 airline industry and its removal of some of
20 the flights and the intermediate points.

21 So, on time performance for the
22 intermediate points becomes much more

1 important to them. They may be commuting, if
2 you will, on a long distance train, a shorter
3 distance, an hour trip or two hour trip
4 between two intermediate points.

5 On the long distance -- you know,
6 Chicago to L.A. and your example, I think it's
7 still very important and what our analysis has
8 shown and what the DOT's Inspector General
9 analysis has shown is, that is dollars and we
10 can show you the -- how those graphs match
11 exactly.

12 As the on time performance
13 degrades, so does our rider-ship. It goes
14 away, and they've made plans, maybe at the
15 other end, for whatever, in terms of maybe
16 vacationing or meetings and it is still very
17 important to our passengers, that they get
18 there.

19 You know, we've tagged
20 historically, 30 minutes on the two day trip,
21 as a reasonable amount of time.

22 VICE CHAIRMAN MULVEY: Following up

1 on that DOT IG report, as you may know, I used
2 to be the Department of Transportation's
3 Inspector General for rail, as well as transit
4 and other issues.

5 But I'm curious, and
6 unfortunately, I did not have an opportunity
7 to read the DOT IG report on causes of Amtrak
8 delays, if you can answer this question.

9 Was that an econometric analysis
10 of the causes of delay and the cost to Amtrak
11 or did it rely more on anecdotal or
12 testimonial evidence? How do they go about
13 measuring that hundred-million-dollar loss to
14 Amtrak? I know part of it is operating cost.
15 You can measure that in wages, salaries and
16 fuel and the like.

17 What I'm interested particularly
18 in the lost revenues from ridership and how
19 that was arrived at by the DOT IG's office?

20 MR. CROSBIE: I think you need to
21 speak directly with them, but I'll attempt to
22 answer the question for you.

1 We have -- within Amtrak, we look
2 at this and analyze it and are very good at
3 predicting the relationship between on time
4 performance and revenue, which is the other
5 side of it, and we can show you that if you
6 get a three point increase in performance,
7 what the equals in revenue.

8 Historically, that goes back,
9 those models go back 30 years, and are well
10 tested. We use a vendor, that we've used for
11 years, to help us with that, as well.

12 So, there is a lot of analysis and
13 science, if you will, behind that.

14 VICE CHAIRMAN MULVEY: I'm familiar
15 with Amtrak's analysis and science and to be
16 honest with you, a long time ago, Amtrak had
17 a fairly sophisticated operation, in terms of
18 measuring travel demand and looked at the
19 relationship between revenues, on time
20 performance, rider-ship, frequency of service
21 and the like, and what it would mean for their
22 rider-ship demand.

1 Unfortunately, Amtrak had been
2 starved for a long time and I think one of
3 the first victims of that starvation is
4 internal analysis and that operation has long
5 since gone away and you say, it's now gone out
6 to an outside vendor.

7 I would love to see Amtrak re-
8 build that in-house capability, to be able to
9 do that kind of assessment. I think it would
10 be very, very helpful, and hopefully, in this
11 current environment, where Amtrak is viewed
12 more favorably by the powers that be, that
13 indeed, you'll be able to reconstitute some of
14 that ability, because I worked very, very
15 closely with people who did it in those days,
16 like John Prokopy and others and there was a
17 very, very talented group and it was a shame
18 that that went away.

19 MR. CROSBIE: No argument here,
20 sir. I agree with you.

21 VICE CHAIRMAN MULVEY: I notice on
22 your chart, that only 54 percent of the causes

1 of delays were in that bar chart that you put
2 up, suggesting that 46 percent of the causes
3 of delays were not up there. Are those -- I
4 mean, are there major causes of delay that
5 were left out of that, because only one-fourth
6 of them was freight train interference and
7 more than 75 percent seemed to be causes,
8 other than freight train interference, which
9 is the issue that we're mostly charged with
10 addressing here, or could be charged with
11 addressing here.

12 MR. CROSBIE: In general, the three
13 top, as that slide indicated, was freight
14 train interference, slow orders and the next
15 one would be signal delays, like for failures
16 in the signal system.

17 Once you get beyond that, the top
18 three, it becomes a long list of smaller
19 delays involving third party, for example,
20 where you might have a crossing accident,
21 those types of things, and it's an
22 accumulation of those small delays.

1 So, we're not leaving some big
2 cause on the table and not talking about it.
3 It's just accumulation of small ones.

4 VICE CHAIRMAN MULVEY: Well, this
5 is for both of you, because very often, delays
6 have more than one cause. For example, let's
7 take slow order at mile post 500, on a long
8 distance train, and the slow orders from mile
9 post 500 to mile post 503, and that causes a
10 two hour delay.

11 Then, however, further on down,
12 I'll say mile post 620, because of scheduling
13 of the freight train, there's now a freight
14 train on that track because the Amtrak train
15 didn't show up.

16 So, now, the freight train has
17 caused some delay as well. You have multiple
18 causes in this case and you can actually have
19 more causes than that, but is your metric
20 going to be able to address multiple causes of
21 delay and how are you going to apportion the
22 responsibilities? Mark, do you want to deal

1 with that?

2 MR. YACHMETZ: Well, I'll deal with
3 it by recognizing that this is a complexity
4 that we are still grappling with and we'll be
5 looking for comments in the very near future,
6 from the interested parties and the general
7 public, on how do you deal with it.

8 Yes, one of the interesting things
9 that you raised is, suppose that slow order
10 was placed by the Federal Railroad
11 Administration, because of a safety issue that
12 needed to be corrected? How do you factor
13 that in? Do you factor that in to a change in
14 schedule or something based upon the
15 performance standards and metrics, and that's
16 again, something that we need to come to
17 closure with before we get this process going.

18 VICE CHAIRMAN MULVEY: Mr. Crosbie?

19 MR. CROSBIE: I think one of the
20 things that has to transcend the whole metrics
21 is common sense, and in your example, as Mr.
22 Yachmetz has said, if that's put on -- that

1 slower is put on for safety reasons,
2 absolutely, Amtrak supports that because we
3 don't want anything unsafe to happen, a
4 derailment or anything like that.

5 But what we do want to see is --
6 what we refer to, and I'm sure you're familiar
7 with, is the level of utility, is when is that
8 slow order coming off, and how long is that
9 going to take, and if that slow order exists
10 for some reasonable amount of time, whatever
11 metrics we come up with, needs to be able to
12 handle the positive side of that, and also, it
13 needs to be able to handle the other side,
14 which is if it's left for three years and not
15 addressed, that's a problem, and we take
16 exception to that.

17 And following on with your example
18 of, you have that slow order for whatever
19 reason, is the dispatcher has a choice, in
20 your example, of, okay, we have a freight
21 train there. We have a passenger train, and
22 that speaks to the whole issue of preference,

1 and we can show you in many cases -- and Mr.
2 Chairman, you referred to your experience,
3 your personal experience, where they chose the
4 freight train. Packages over people, and we
5 take extreme exception to that.

6 VICE CHAIRMAN MULVEY: Well, people
7 -- it's people who are delayed. I mean, quite
8 frankly, it's not the train that people care
9 about - -

10 MR. YACHMETZ: Right.

11 VICE CHAIRMAN MULVEY: -- it's
12 people that are delayed, and obviously, some
13 routes are more heavily traveled than others.
14 Is there any thought being given to weighing
15 the on time performance measures by the amount
16 of traffic on board?

17 So, a train that's delayed with
18 500 people on board would have a greater
19 weight than a train that was delayed, that had
20 only 20 people on board?

21 MR. YACHMETZ: Well, actually,
22 Congress has told us what the standard is.

1 It's 80 percent and so, I don't see us having
2 the ability to say that the cardinal, because
3 it's basically single track and heavily used,
4 that it's -- gets a pass at 60 percent. I
5 think we have to use 80 percent.

6 VICE CHAIRMAN MULVEY: Well, it
7 would be 80 percent, but you weight it by the
8 number of people on board the train. I mean,
9 I'm not sure that one precludes the other, but
10 maybe it does. Mr. Crosbie?

11 MR. CROSBIE: We wouldn't support doing
12 that. For us, every route, every train is
13 important. It's not like the -- in terms of
14 the long distance system, that it's any
15 surprise, those trains largely have been there
16 since 1971 and it's important to the
17 individual -- you're said the passenger riding
18 that train, and if we try to answer the
19 complaint letter with, "Well, we measure it on
20 that," that is not going to work, doesn't
21 answer to our customers.

22 They expect -- you know, they pay

1 to get on the train. They pay for the ticket
2 and they expect to arrive on time, and that is
3 the implicit contract with us.

4 CHAIRMAN NOTTINGHAM: Mr. Mulvey,
5 can I just ask for clarification? Were you
6 asking about when we have to assess a fine,
7 were you asking whether there was input on
8 whether we should be looking at --

9 VICE CHAIRMAN MULVEY: No, no, I
10 wasn't -- I was asking if I -- just simply
11 about the measure.

12 CHAIRMAN NOTTINGHAM: Okay.

13 VICE CHAIRMAN MULVEY: Let me have
14 just one more question, and then I'll turn it
15 over, and then we'll probably have a second
16 round of questions.

17 I know that we're responsible to
18 look at, perhaps, these long distance trains
19 and on time performance and the corridor is
20 not part of our responsibility.

21 But doesn't Amtrak operate the
22 northeast corridor? It dispatches the trains

1 in the northeast corridor. But on the
2 northeast corridor, 95 percent of the trains
3 that are operating on the northeast corridor
4 are not Amtrak trains or freight trains, but
5 in fact, they are commuter trains.

6 My question to you is, do you have
7 the same kind of complaint every once in a
8 while from commuter trains, where commuters
9 and commuter operators are complaining to
10 Amtrak that Amtrak dispatchers are giving
11 preference to Amtrak trains over commuter
12 trains? Do you get that same kind of
13 complaint or is this something that's just
14 between Amtrak and the freight railroads.

15 MR. CROSBIE: We tend not to get
16 that kind of granularity. We will get a
17 complaint, from time to time, with just a
18 general on on time performance, and usually,
19 it's associated with an infrastructure
20 failure, reliability of the infrastructure in
21 some way, catenary failure or there's been a
22 track problem or some sort.

1 But they don't get to, "Oh, we saw
2 the Amtrak train go by and why isn't our
3 training moving," and one of the benefits, of
4 course, of the northeast corridor is, we -- it
5 is a multi-track railroad and when we have
6 incidents like catenary failures, we do piece
7 it back together again and we try to get
8 everybody moving as quickly as we can to their
9 final destination.

10 VICE CHAIRMAN MULVEY: Thank you.

11 CHAIRMAN NOTTINGHAM: Thank you,
12 Vice Chairman Mulvey. Commission Buttrey, any
13 questions?

14 COMMISSIONER BUTTREY: Thank you,
15 Mr. Chairman. I'm just curious, Mr. Crosbie,
16 do you have any idea what a grain car costs,
17 to get it from some place in Montana to
18 Seattle, Washington?

19 MR. CROSBIE: The figure that we
20 used to use, and it's old, was roughly \$100 a
21 mile, at times, but that may be an old figure.

22 COMMISSIONER BUTTREY: It's my

1 understanding that it's not uncommon for a
2 rail car or grain car, going from some place
3 in Montana to the west coast, would be easily,
4 in excess of \$3,000.

5 So, when you say people are used
6 to paying their money and getting where
7 they're going on time, you know, I don't know
8 what it costs to go on an Amtrak train from
9 Chicago to Seattle or L.A., but I dare say,
10 it's not anywhere near \$3,000.

11 So, you know, you sort of have to
12 put this cost factor into some type of
13 context, I guess you would say.

14 Let me get to another question.
15 What is your definition of preference?

16 MR. CROSBIE: It's the -- the
17 legislation is very clear on this issue. It's
18 not conditioned in any way. It says that
19 passenger trains, Amtrak should get
20 preference, full stop.

21 The recent Act that was passed
22 didn't condition that in any way, didn't

1 modify it in any way. In our view, it
2 reconfirmed the original language in that
3 area.

4 So, if a dispatcher is given a
5 choice between operating a freight train,
6 giving them the clear signal out of the
7 siding, or letting Amtrak go through, our view
8 is, it's Amtrak.

9 COMMISSIONER BUTTREY: Do you
10 happen to know what the average load factor is
11 on long distance inner-city trains?

12 MR. CROSBIE: It is the --

13 COMMISSIONER BUTTREY: What the
14 average load factor is?

15 MR. CROSBIE: It varies by train
16 and it varies by season.

17 COMMISSIONER BUTTREY: Right.

18 MR. CROSBIE: And we'd be happy to
19 provide you all that detail. Many of the
20 trains recently, as I said earlier, are the --
21 the rider-ship is growing on them and in some
22 cases, we are at full capacity for large

1 sections of the entire route, particularly our
2 sleeper service is in high demand. On many
3 trips, our sleepers are full and you know,
4 with the coach side of the long distance
5 train, you get a lot of on's and off's with
6 it.

7 So, it does vary, but I think
8 everyone is surprised, when you go out and you
9 ride those trains -- and that's something I
10 would urge everybody to do, is to ride the
11 system and see with your own eyes. They are
12 very busy, very busy.

13 COMMISSIONER BUTTREY: But your --
14 but basically, implicit in your answer is,
15 that you don't know what the average load
16 factor is.

17 MR. CROSBIE: It varies by train.
18 The average --

19 COMMISSIONER BUTTREY: I'm not
20 asking you per train. I'm asking you on a
21 system wide average, Amtrak system wide
22 average, long distance trains, inner-city

1 trains, like from Chicago to L.A. or whatever,
2 what's the average load factor?

3 MR. CROSBIE: -- 60 to 70 percent,
4 but I think you need to look at it, coach
5 versus sleeper. It's not a simple answer. If
6 you want an average, it's 60 to 70 percent, is
7 the average.

8 COMMISSIONER BUTTREY: And what is
9 your break-even? What would be your average
10 break-even load factor?

11 MR. CROSBIE: Well, as you know, we
12 don't -- we lose money on our long distance
13 routes.

14 COMMISSIONER BUTTREY: All right.
15 So, basically, what you're saying is, is that
16 you come into the meeting with the freight
17 railroad and you lay your schedule on the
18 table and say, "Well, this is our schedule.
19 Now, what's your's?"

20 MR. CROSBIE: No, that's not the
21 way it happens.

22 COMMISSIONER BUTTREY: That sounds

1 like that's what happens.

2 COMMISSIONER BUTTREY: -- you get
3 an absolute preference. You lay your schedule
4 on the table and you say, "Figure out a way to
5 operate around this schedule."

6 MR. CROSBIE: If, on a normal day -
7 -

8 COMMISSIONER BUTTREY: I'm using
9 your definition.

10 MR. CROSBIE: On a normal day, the
11 schedules are agreed to, with the host
12 railroads. So, on a normal day, the
13 preference issue is really not an issue,
14 because it's already been determined.

15 So, the trains -- their trains are
16 running on schedule. Our trains are running
17 on schedule. It's not an issue.

18 Where the preference issue comes
19 in to play, is when there has been a delay and
20 they have a choice. That's where it comes in,
21 and the law is very clear on this issue, very
22 clear.

1 COMMISSIONER BUTTREY: Okay, and
2 you're also saying that that hasn't been
3 happening. Is that what you're saying?

4 MR. CROSBIE: We have many examples
5 of where it has not happened and -- on all
6 the routes, where it clearly has not happened.

7 COMMISSIONER BUTTREY: Previous to
8 the current legislation, the law provided that
9 you had an avenue of appeal, if you will, in
10 cases like that. How many cases have you
11 brought under that provision?

12 MR. CROSBIE: We have many avenues
13 and in a couple of cases, we have used those
14 avenues and been successful with them, our own
15 arbitration with the National Arbitration
16 Panel.

17 We have confirmed, by the way, the
18 issue of preference, unconditional and
19 supported it. That case was slightly
20 different, a slightly different issue, but it
21 also reconfirmed that.

22 So, we have used some of the

1 mechanisms that have been in place and we plan
2 to be a lot more aggressive in those areas,
3 going forward.

4 COMMISSIONER BUTTREY: There are
5 those who say that the legislation that just
6 passed has given the Board broad new powers
7 and responsibilities under the law, to get in
8 the middle of these matters, which hasn't been
9 the case in the past.

10 Do you envision the STB boring
11 down into contracts that are in existence
12 between the carriers -- between Amtrak and the
13 freight carriers, and possibly going in and
14 changing provisions or saying, "No, this won't
15 work," this provision doesn't work anymore.
16 It doesn't come -- it doesn't conform to the
17 preference provisions of the law, blah, blah,
18 blah?

19 Do you envision the Board, you
20 know, boring down and drilling down to these
21 contracts and possibly going in and trying to
22 change some of these provisions of the

1 contract, because normally, at the Board, our
2 experience and our mandate is, is that if
3 there's a contract that exists, the Board
4 doesn't get involved. It's the Courts.

5 You know, you have to bring your
6 case to Federal Court. You don't bring your
7 case here. If you bring it here, it just gets
8 dismissed because it's not -- this isn't the
9 right forum. How do you see that working?

10 MR. CROSBIE: This is an area where
11 our -- in the case of Amtrak, our legal
12 counsel is looking at it. I'm going to defer
13 to them. I'm not a lawyer on it, and the
14 jurisprudence that has been -- existed from
15 the past, as you have just stated, how you've
16 handled things in the past.

17 So, we're still dealing with that,
18 still looking at it. So, I really don't have
19 an answer today for you. It's an area where
20 I will leave it to the lawyers, to find the
21 best way to deal with it, because it is an
22 issue, as you pointed out, I think for

1 everyone.

2 COMMISSIONER BUTTREY: Have you
3 ever considered a money-back guarantee, that
4 if we don't get you where you're going, then
5 you get your money back?

6 MR. CROSBIE: I'm not sure I
7 understand what you mean, sir.

8 COMMISSIONER BUTTREY: I just mean
9 that if you buy a ticket on Amtrak and they
10 don't get you there within a certain agreed
11 amount of time, you get your money. You just
12 go to the counter and say, "Okay, you didn't
13 get me there on time. Here is my ticket.
14 Here is the arrival time. I want my money
15 back."

16 VICE CHAIRMAN MULVEY: Excuse me,
17 Doug, they had that program in place a while
18 back. They did have that money-back
19 guarantee.

20 MR. CROSBIE: Yes, it pre-dates the

21 --

22 COMMISSIONER BUTTREY: I'm not

1 aware of a situation where that money-back
2 guarantee was enforced. I'm asking the
3 question, has there -- is that a
4 consideration?

5 MR. CROSBIE: You know, given the
6 financial condition of the company, I don't --
7 and given the current performance of the
8 network, I don't think that would be a
9 fiscally prudent thing to do, as a company.

10 You know, depending on the
11 circumstances today, we look at it on a case
12 by case basis and if it warrants what we refer
13 to as a transportation certificate, we may not
14 give all the money back, but we'll provide a
15 certificate for purchase of a ticket in the
16 future.

17 But if we were to do that, that
18 lost that we sustain on long distance would be
19 a lot greater, given the current performance.

20 COMMISSIONER BUTTREY: Well, I know
21 on the VRE, for instance, the rail that I ride
22 every day I come to town, because I don't

1 drive to town, I take the railroad. It's
2 wonderful service, I might add, between
3 Manassas and L'Enfant Plaza down here.

4 I think in the whole time I've
5 been using that service, I think maybe we had
6 maybe a couple of days for a short period of
7 time. But other than that, it's been
8 basically flawless service.

9 They have a program that if you --
10 if they're over a certain amount of time late
11 getting you from your originating point to
12 your destination point, they give you a
13 voucher for -- they give you a free ticket
14 that you can use to go anywhere on their
15 system, basically, one ride on their -- one
16 free ride on their system.

17 That sounds like an awfully good
18 deal to me and it puts some pressure on the
19 organization to do what they say they're going
20 to do. If they don't do it, then they pay a
21 penalty for that. The penalty is, you don't
22 pay.

1 MR. CROSBIE: Yes.

2 COMMISSIONER BUTTREY: And that's
3 an awfully good -- sounds like a pretty good
4 deal to me.

5 MR. CROSBIE: But the presumption
6 in what you're saying is that it's Amtrak's
7 issue and we would bear the burden of that.
8 We'd be looking for compensation on the other
9 side, to make us whole, obviously, depending
10 on the cause, but in your example.

11 But I just don't think that's an
12 avenue that we want to go down.

13 COMMISSIONER BUTTREY: Thank you.
14 That's all I have at the moment, Mr. Chairman.

15 CHAIRMAN NOTTINGHAM: Thank you,
16 Commissioner Buttrey. I've got a couple more
17 questions and I appreciate this panels'
18 patience. This panel is very important to us,
19 because this panel is uniquely experienced in
20 the history and how we got here and also, your
21 respective organizations were presumably
22 pretty involved in the legislative discussions

1 and the legislative history leading up to this
2 new legislation, and we really weren't, and
3 I'm not complaining about that. It's just, as
4 a matter of fact, we don't have the benefit of
5 all of that background and experience.

6 We each come, and we heard Mr.
7 Mulvey's -- Vice Chairman Mulvey comes to this
8 job with a lot of experience. Mr. Buttrey has
9 experience every day that's relevant, as he
10 comes and goes and other experience, and I do
11 as well.

12 But this panel is really crucial. So, let me
13 ask a few more.

14 The background, the sort of how we
15 got here, it seems to me, Mr. Crosbie, this
16 may be more for you, but Mr. Yachmetz, feel
17 free to jump in.

18 Before this statute, Amtrak, I
19 guess, had the responsibility to, I'll say
20 blow the whistle on on-time performance
21 problems. In other words, to shed light on
22 it, to say, "Here is the data. There is a

1 problem," to work initially, presumably in a
2 collaborative way with the freight railroads,
3 if you thought they were the primary cause and
4 then, possibly pursue arbitration that you
5 mentioned.

6 But yet, we still -- one reason we
7 got this legislation, I believe, is that
8 Congress determined that there was a chronic
9 performance problem, that despite whatever
10 efforts were going on, it wasn't even -- the
11 situation wasn't even close to being -- to
12 meeting, kind of, basic standards and that
13 something significantly different, a very
14 different strategy needed to be taken.

15 Tell me -- update me on what
16 Amtrak's experience was. Did you bring -- my
17 understanding is, you had several tools at
18 your disposal, maybe the most blunt, but also
19 the formal would have been some type of
20 complaint in Federal Court, and we have a 1971
21 law about preference that is very important to
22 Amtrak, yet I don't know -- and I've looked

1 the history of this, I haven't found very many
2 -- or any cases or any Court determinations,
3 enforcing the preference and I'm just kind of
4 wondering if you can amplify on what Amtrak's
5 experience and kind of, what lengths you went
6 to, to address this problem, any lessons you
7 learned that might be instructive to us.

8 MR. CROSBIE: It is a very --
9 exists prior to the Act passing. It is a very
10 complicated area and as I understand it, and
11 greater minds than mine on the legal side, can
12 explain it to you, is that you have to take --
13 you have to present a case in front of the
14 Department of Justice, I believe, and that is,
15 as you can probably appreciate, is not an easy
16 thing to do.

17 I think there was one case in the
18 past, years ago, involving the Sante Fe
19 Railroad, I believe it was, many, many years
20 ago, but it was very complicated area, in
21 terms of putting together a case that the
22 Department of Justice would hear, and that

1 had, beyond that one example that I'm aware
2 of, I don't know of any other myself.

3 We did use -- seek some self-help
4 and -- through the National Arbitration Panel,
5 as I mentioned, but there is another side to
6 this that you do need to consider.

7 You'll hear testimony, I'm sure,
8 later today from our freight partners, that
9 they have capacity issues, schedule issues.
10 They also had a means to seek a remedy and
11 you'll note that they never did it, as well,
12 seek a remedy to that or file any sort of an
13 appeal to say, "Look, we can't run a train on
14 time because of these reasons," and you'll see
15 that that and the history that I'm aware of,
16 never happened.

17 So, hopefully, I've answered your
18 question on it, but it is -- it's not an easy
19 process and I think you hit the nail on the
20 head, in that Congress looked at the existing
21 mechanisms in place and they just were not
22 getting either party there, and attempted to

1 correct that situation.

2 CHAIRMAN NOTTINGHAM: I want to
3 make sure I understand the relationship -- the
4 past relationship with the U.S. Department of
5 Justice.

6 My understanding is, Amtrak would
7 need to develop a record, data, develop
8 something like a draft complaint, consult with
9 Justice Department lawyers and say, "Hey,
10 because we're Amtrak and we're a Federally
11 created entity, our lawyers tell us we need to
12 come to you, Justice Department, and bring
13 this, what we think is a legitimate complaint.
14 It's a violation of the 1971 statute, granting
15 passenger rail preference."

16 If I understand your comments,
17 that -- when those conversations happened in
18 the past, at a preliminary level, the Justice
19 Department lawyers didn't give much, in the
20 way of a supportive, "Yes, this is a great
21 case to bring or we think we can win this one,
22 or this is a good use of tax payer dollars to

1 prosecute this," or what kind of reaction did
2 you get?

3 MR. CROSBIE: I wasn't personally
4 there, so, I can't speak to the reaction that
5 was received. But I do know that the company
6 was dealing with many others issues. If you
7 recall in 2002, the company almost went
8 bankrupt and this was not something that they
9 were aggressively working on.

10 The company is now stable,
11 obviously, aggressively working on this to
12 improve its performance overall.

13 So, I was not personally involved
14 in bringing forward any of those cases. There
15 are others that may have been, but I do know
16 that it's not an easy task, to convince the
17 Department of Justice to take on a case like
18 that, where there is -- you know, where it's
19 very clear to them, that -- on the preference
20 issue.

21 CHAIRMAN NOTTINGHAM: Well, I
22 appreciate that background. You can

1 understand how we might feel, that we're
2 taking on a little bit of a challenging, new
3 role here, if the entire --

4 MR. CROSBIE: Yes, you are.

5 CHAIRMAN NOTTINGHAM: -- work
6 force of the Department of Justice couldn't
7 crack this puzzle over the last 30 years, that
8 a department of over 100,000 personnel, and we
9 have about 140, and plus 15 maybe, if we can
10 get those.

11 We're going to do it, but it's
12 just interesting to me, sort of how we got
13 here. There are other discussions on other
14 issues, I won't bore you with today, where
15 people come before us and suggest that we
16 should be yielding more of our regulatory and
17 economic regulatory responsibilities to the
18 Department of Justice.

19 It's kind of interesting here, we
20 have a case where for years, the Justice
21 Department was in a position to perhaps do
22 something, to help solve a real problem, and

1 didn't.

2 I used to work -- the Department
3 of Justice, I have very high regard for the
4 Department. I have family who have worked
5 there. It's just interesting.

6 Let me ask, the mechanics, we're
7 obviously looking into the mechanics of how
8 the STB might investigate and enforce the
9 provisions of this new statute. Let's just
10 play out a scenario we get.

11 Let's say we get two quarters of
12 solid data, indicating there is a long
13 distance route that is not even close to
14 getting -- of hitting that on time performance
15 measure of 80 percent. Amtrak files a
16 complaint. The Board starts looking into it
17 and we determine, yes, it's certainly a
18 chronically late route. There are several
19 causes. One of the causes is some freight
20 rail conflict and left of preference being
21 granted.

22 Other causes would be the whole

1 gamut of things that your testimony covers,
2 weather, slow orders, but other cases too,
3 typically pop up, as I've started looking at
4 this. Sometimes there is reference in the
5 schedules.

6 We might look into it and
7 determine that the Amtrak schedule at issue is
8 unrealistic. It maybe hasn't been adjusted
9 over years, when rider-ship has gone up 15,
10 20, 30 percent, and as an experienced rail
11 rider, I know the mechanics of getting on and
12 off trains.

13 We all like to think that happens
14 seamlessly, in a fixed period of time, but
15 when you have 20 percent rider-ship growth,
16 you're going to have presumably, an uptick in
17 the amount of time it takes to unload and load
18 at each station, and very often, schedules are
19 never adjusted accordingly and my
20 understanding also is that sometimes Amtrak
21 isn't actually setting schedules if there are
22 state managed routes.

1 I'm thinking about North Carolina
2 as one example, where state authorities
3 determine it's important to stick to an
4 aspirational schedule, rather than a realistic
5 schedule.

6 So, if we come in and find -- make
7 a whole range of findings, is Amtrak ready to
8 receive our full range of recommendations and
9 act on them or are you only looking for that
10 penalty against the freight railroad for their
11 piece of the puzzle?

12 MR. CROSBIE: Obviously, we would
13 welcome all of your recommendations. In terms
14 of the whole issue of schedule delay, it is
15 something we negotiate on a regular basis,
16 with our host partners.

17 We are open to taking into
18 consideration, gross and rider-ship, but we're
19 also on the other side, and historically, if
20 you looked at this, we've added time in many
21 occasions and maybe for a few months, if that,
22 the on time performance has improved, but it

1 always went back to its previous level.

2 So, if we're going to look at
3 schedules, we're absolutely open to that, but
4 it has to work both ways. It has to work on
5 shortening the trip time, when it's warranted.
6 For example, if a large section of track gets
7 improved and the speed can be increased, we
8 would be looking for -- to an improvement in
9 the overall trip time.

10 So, but we do welcome all of your
11 recommendations. We want to work with you, to
12 make sure that you make an informed decision
13 on both sides of it.

14 CHAIRMAN NOTTINGHAM: Mr. Yachmetz,
15 would you like to offer any thoughts on any of
16 those questions?

17 MR. YACHMETZ: Well, actually, I
18 think you all are going to have a very complex
19 package to look at, when and if -- hopefully,
20 we never get to that situation, somebody
21 brings a complaint to you, because the
22 schedule and whether somebody is performing

1 against the schedule will be the easy part of
2 the analysis.

3 It's then getting into what were
4 the contributing factors to non-performance
5 and how do you allocate relative
6 responsibility and that's not easy, and I
7 think that every case will be different and
8 it's not going to be one of those things
9 likely, that there's one, single, simple easy
10 cause. It's going to be a balancing of a
11 number of different causes that may be
12 assignable to more than one party.

13 CHAIRMAN NOTTINGHAM: For both of
14 you, in the event that we receive a complaint
15 and determine that in fact, it is -- there is
16 a problem caused by a freight railroad not
17 granting the legally required preference to
18 passenger rail, the new statute is silent on
19 the amount of -- and type exact sort of nature
20 and type of penalty we should assess. It
21 references fines.

22 In your experience, how much money

1 does it take to get a freight railroad's
2 attention, to correct a matter? What should
3 the fine be? Should it be different for --
4 depending on the inconvenience caused to
5 Amtrak or customers? Should we consider the
6 line of questioning Dr. Mulvey had referenced,
7 in a different context? Should we look at the
8 -- how many passengers were inconvenienced,
9 the cost to Amtrak?

10 Help me understand, or will that
11 kind of information be offered up to us in due
12 course, because that would be helpful to know.

13 MR. YACHMETZ: Well, you know,
14 again, this is an area where Congress was
15 silent and leaves both discretion, which is
16 both good and bad, when it's left there, and
17 I could see situations where the cause is
18 actually a capital issue, and investment
19 issue, an infrastructure issue, that may lend
20 itself to consideration and pricing out.

21 But I could also see situations
22 where it's not something -- it's more a

1 person-based caused and those are the ones
2 that would be more difficult to price out.

3 CHAIRMAN NOTTINGHAM: Mr. Crosbie?

4 MR. CROSBIE: Yes, I would defer to
5 Mark on the amount, on the person side, as FRA
6 has more experience in fining people, than
7 Amtrak.

8 But all of the things that you
9 mentioned, I think are important items that
10 you need to consider, in terms of the damage,
11 the lost revenue, the impact for the customer,
12 what we had to do to accommodate those
13 customers.

14 In a lot of cases, if the train is
15 really late, we put people up on hotels. We
16 bus them to their destination. There's many
17 things that we do and all of that needs to, I
18 think, be considered when it comes to like, a
19 person-defined word, dispatcher has clearly
20 made a choice to do -- run a freight train
21 over a passenger train.

22 But I would defer to other's

1 experience, as to how much is enough to get
2 their attention with it.

3 CHAIRMAN NOTTINGHAM: Mr. Crosbie,
4 are you currently conducting any special
5 training for your employees, whether it be
6 conductors who have been filing on time
7 reports for many years, but recognizing now,
8 those reports are going to be possibly used in
9 a different forum and be possibly scrutinized
10 and in a different way, to make sure the
11 conductors know that?

12 For example, when you do have to
13 put people up in hotels, if that's going to be
14 entered into some kind of record, that we're
15 collecting -- you know, do people know they
16 now need to keep receipts, that they might not
17 have needed to keep a few months ago, those
18 kind of -- just training across the board, to
19 make sure Amtrak is ready to engage in this --
20 under the new statute?

21 MR. CROSBIE: Training is obviously
22 very important to us. It's something we focus

1 heavily on, but I would submit that we have
2 been doing that very thing for 30+ years and
3 it has passed other investigations by our own
4 IG, because of the contracts between Amtrak
5 and the freight railroad.

6 So, the quality, in terms of what
7 is there, existed in the past, is definitely
8 a good quality and we continue to focus on it.

9 We have regular training sessions,
10 something we refer to as 'block training',
11 that's re-enforced as part of that, but it's
12 not something that we see as a problem. We
13 see that those conductor reports accurately
14 reflect what is occurring.

15 CHAIRMAN NOTTINGHAM: Mr. Yachmetz
16 was quite specific and I really appreciate
17 that, Mr. Yachmetz, about aspiring to have
18 something out on your website by the end of
19 this month, that would kind of begin sort of
20 a comment and feedback process, in the way of
21 -- if I heard you correctly, on time
22 performance type draft standards, something

1 that we can start to look at and the stake
2 holders can start to look at.

3 Did I hear you correctly, when you
4 mentioned that late this -- the end of this
5 month, being February?

6 MR. YACHMETZ: That's correct, and
7 it will cover the larger range of performance
8 metrics, OTP, while it gets -- on time
9 performance, while it gets the attention of
10 folks, there's a wider range of performance
11 metrics we were told to develop, and so, it
12 will be the whole range of those put out for
13 comment.

14 CHAIRMAN NOTTINGHAM: Mr. Crosbie,
15 do you have any similar sort of schedule of
16 when the public might be -- or when we might
17 be able to see your reaction to the FRA
18 offering and how your time table is working
19 out, to hopefully meet this mid-April
20 deadline?

21 MR. CROSBIE: We are moving very
22 aggressively. We've been meeting with the

1 FRA. We have proposals on the table, already,
2 of what we see are the metrics.

3 We're working through that with
4 their staff. We've also presented, I think,
5 some of that to your staff as well, and we'd
6 be willing to make those public in any way, but
7 again, we want to make sure it's a
8 collaborative process going forward and we
9 think that we -- strictly from Amtrak's
10 perspective, we're well along the way to
11 getting this done.

12 But obviously, as I said, you want
13 to do it in a collaborative way, have
14 agreement on all sides, which is the hurdle
15 we've got to get over.

16 CHAIRMAN NOTTINGHAM: At this
17 point, if I could ask you to maybe give me a
18 percentage, rough percentage, 50 percent, 80
19 percent, 90 percent, and I'm not talking about
20 passenger rail system on time performance.
21 I'm talking about your projection of whether
22 or not collectively, you think you can meet

1 the April 16th deadline or should we be
2 dusting off the yellow pages under arbitrators
3 and starting to line up the formal process
4 that we would then have to embark on, if you
5 didn't meet that deadline?

6 I recognize you've got decision
7 makers who are not necessarily all in place.
8 My understanding is, Amtrak has some vacant
9 Board seats and is about to have their Board
10 sort of re-constructed by the statute. FRA
11 has a number of decision makers that are
12 relevant to their process, that are yet to be
13 in place.

14 But are we looking 50/50 or is it
15 90 percent looking like it's going to happen?

16 MR. YACHMETZ: I would not want to
17 hazard a guess because part of it is,
18 ultimately, the decision makers -- I know the
19 staff work will have options available,
20 consistent with the time frame and it is just
21 then, who makes the decisions on the options
22 and whether they think more work is needed or

1 whatever.

2 So, that is one of the exciting
3 points of the career -- of a career civil
4 servant, is the transition between
5 administrations, and I just wouldn't want to
6 hazard a guess, when everybody will be ready
7 to make a decision. I am hopeful that it will
8 be April 16th.

9 CHAIRMAN NOTTINGHAM: Mr. Crosbie?

10 MR. CROSBIE: Our current Board is
11 very prepared to make a decision and although
12 it does change, I've worked at my time with
13 Amtrak for three different Boards and this
14 area is where there's always been a line that
15 -- in terms of what's important to the company
16 and important to our customers.

17 So, I don't see, just because we
18 have some change in the Board come April 16th,
19 any issue in this area, in terms of getting a
20 decision made. They are fully prepared to
21 make a decision and move forward, and have
22 made it very clear to staff that this area, as

1 well as all of the other areas in the Act, we
2 must hit all the dates.

3 CHAIRMAN NOTTINGHAM: Well, I want
4 to compliment both of your organizations and
5 both the witnesses personally, for being very
6 forthcoming so far. Your teams and colleagues
7 have been over here, meeting with us. It's
8 been a collaborative process so far.

9 I do want to put a strong plug
10 though, in, if you could take back to your
11 principals for me, and delivery this message.

12 We want this to continue to be an
13 actively collaborative process. If were to
14 unfortunately see an agreement arrive in our
15 inbox on the morning of April 16th, marked
16 'final' and that's the first time we've really
17 seen it, it's going to be -- we're not going
18 to be -- I mean, I can't say what we would do,
19 but it wouldn't be great. It wouldn't be a
20 great way to begin this relationship. So,
21 please --

22 MR. CROSBIE: Agreed.

1 CHAIRMAN NOTTINGHAM: -- do keep us
2 actively involved and give us a little bit of
3 time. Work that into your schedule, to offer
4 up our assessment before it goes final,
5 because we're going to have to enforce that.

6 MR. CROSBIE: Agreed.

7 CHAIRMAN NOTTINGHAM: Vice Chairman
8 Mulvey?

9 VICE CHAIRMAN MULVEY: Thank you,
10 gentlemen. Thank you, Chairman Nottingham.
11 A couple of questions. A couple of things
12 have come up in the other rounds of questions.

13 I have a question on the money-
14 back guarantee. Some of our colleagues behind
15 me, got \$200 back form Amtrak when that
16 program was in place, I guess about a decade
17 ago. You did have it and it, unfortunately,
18 proved very successful. But it was an idea
19 that Amtrak, in fact, did try.

20 MR. CROSBIE: That was part of the
21 glide-path, if I remember.

22 VICE CHAIRMAN MULVEY: Yes, glide-

1 path to... never mind. Along the same lines,
2 this whole question of what Amtrak has done in
3 the past, with regard to bringing a case
4 before the Department of Justice, it's my
5 understanding from having spoken with some of
6 the Amtrak CEO's in the past, in fact, most of
7 them, I guess, Amtrak has always been
8 reluctant to take that route and basically,
9 preferred to try and work out these issues with
10 the individual railroads that were involved.

11 Is that your understanding, as
12 well that there was this reluctance to
13 actually go the DOS route because it only
14 created a more hostile environment and that it
15 was better to try and work it out on a case by
16 case basis. Is that your understanding as
17 well, Mr. Crosbie?

18 MR. CROSBIE: It is, and I think
19 you have to put it in the context of each
20 point in time and where the company was in its
21 history, and as you know, it came through a
22 very difficult period, all joking aside,

1 around the glide-path in 2000 and 2001, and
2 the focus was elsewhere and it is a very -- in
3 order to prepare a case like that requires an
4 enormous amount of investment of time and it's
5 very complicated and you know, you may get it
6 to the door step of the Department of Justice
7 and that's where it stops.

8 So, it was not -- that avenue was
9 not their choice at the time, and they did try
10 to work it out with each individual railroad,
11 which we do have a contract with.

12 VICE CHAIRMAN MULVEY: I have a
13 procedural question. One of my former
14 colleagues on the transportation
15 infrastructure committee was often very
16 concerned about whether or not Amtrak's Board
17 of Directors constituted a legal quorum and he
18 argued that in many cases, they were not a
19 legal quorum and that what Amtrak was doing
20 was not legal and I notice that there's quite
21 a few vacancies on the Board right now.

22 Does Amtrak have a quorum or does

1 it require every member to show in order for
2 there to be a quorum?

3 MR. YACHMETZ: Well --

4 MR. CROSBIE: It is ---

5 MR. YACHMETZ: -- the '97 Act
6 requires four members to be a quorum and there
7 are four members right now.

8 VICE CHAIRMAN MULVEY: And they
9 must all show up for a meeting in order to be
10 a quorum. If only three show up, would there
11 still be a quorum or must all four show up for
12 the meeting, in order for them to take action?

13 MR. YACHMETZ: In 15 years of
14 observing Amtrak Board actions, they've always
15 had all the members take part of a vote.

16 VICE CHAIRMAN MULVEY: Okay, you're
17 familiar with the issue?

18 MR. YACHMETZ: Yes, I am.

19 VICE CHAIRMAN MULVEY: A former
20 colleague had raised that on numerous
21 occasions.

22 MR. YACHMETZ: And I'm hoping that

1 the Board, as configured on April 16th, takes
2 care of a lot of those issues too.

3 VICE CHAIRMAN MULVEY: Question
4 about on time performance and -- you mentioned
5 in your testimonies, that on the one hand, you
6 have Amtrak's operating schedule, Amtrak
7 schedule, it puts out a schedule of its
8 trains, its time tables, and yet, the freight
9 railroad are the ones who have to accommodate
10 that, as Mr. Buttrey was arguing.

11 Now, do you believe that freight
12 railroads ought to have some say in Amtrak
13 timetables and isn't there a way with modern
14 communications technology, to get away from
15 these printed timetables and have timetables
16 that are more real-time, so that they could be
17 adjusted relatively quickly, to take into
18 account slow orders, construction or what-
19 have-you, so that Amtrak is able to give
20 people a much better expectation, as to
21 whether they're going to be on time or not?

22 MR. CROSBIE: Okay, as you know, we

1 issue a time table twice a year and the
2 schedules that are in there are part of the
3 negotiations with each one of the behind-the-
4 scenes, the back office, if you will, with
5 each of the host railroads.

6 So, it's not like we drop
7 something on the table and say, "Thou shalt
8 run." It is discussed, negotiated. There has
9 been cases where we have added time, for
10 example, the auto-train. We added an hour to
11 that schedule recently, in the last couple of
12 years.

13 We do, from time to time, when
14 there's large track programs, for example,
15 California's effort, we make -- we'll make an
16 interim adjustment, publically, and issue that
17 and advise our customers through -- you may be
18 familiar with arrow and other means, as well.

19 So, we do do that, but it is --
20 but you have to have a standard by which
21 you're measured to and that is something that
22 they have agreed to.

1 MR. YACHMETZ: Yes, I agree, one of
2 the challenges of the whole process, is not
3 just the measurement and performance, but what
4 you're measuring it against. I think that, as
5 I mentioned in my opening remarks, technology
6 is evolving, so that the opportunities to do
7 these evaluations, both in the area of
8 considering more variables, but also, in real-
9 time, offers opportunities in the future that
10 one can have a much flexible schedule.

11 The other thing that's going on
12 too is, more and more of Amtrak's customers,
13 just like more aviation customers, are doing
14 the research online and not with the printed
15 schedule.

16 And so, that again, offers
17 opportunities for more flexibility and dealing
18 with situations as they arise.

19 VICE CHAIRMAN MULVEY: That's what
20 I was thinking, most people don't have a
21 printed schedule anymore. Most don't have
22 timetables. They go online to see what the

1 schedule is, and that can be adjusted much
2 more in real-time than you can re-print
3 schedules.

4 MR. CROSBIE: If I could just add
5 that, there's two issues in that. There's the
6 performance standard that you deal with, with
7 the host partner and then there's the
8 performance standard with the customer, and
9 our online systems today, if you go on
10 Amtrak.com or Amtrak-to-go on your Blackberry
11 pda, it will tell you the estimated time on a
12 particular train, when it's going to arrive.

13 It will take its current
14 performance and extrapolate, given the
15 schedule, it will extrapolate. You know,
16 you're going to be 15 minutes off the schedule
17 for that specific train. That exists today.

18 VICE CHAIRMAN MULVEY: Well, the
19 airlines had a requirement for a while, that
20 when the airlines published their schedules,
21 that they had -- in the last column of the
22 computerized reservations systems that the

1 travel agents use, the final column, it had on
2 time performance for the individual routes,
3 giving people information as to what their
4 expectations might be for that flight.

5 My understanding was, it didn't
6 have much of an impact on people's decision
7 making, that it wasn't so much whether it was
8 on time or not, it's whether or not it was the
9 flight that I wanted.

10 Unfortunately, people want the
11 flights that tend to be delayed because those
12 are the flights that operate in the most
13 congested times.

14 Along those same lines, frequency
15 of service is in classical travel demand
16 theory. Service frequency is an important
17 determinant of more choice and I was just sort
18 of wondering whether or not on time
19 performance has some relationship to
20 frequency, because it gets to that whole issue
21 of the preferred time versus the actual time
22 of the departure and arrival and that if

1 people's expectations are that it's not going
2 to make it on time, that it affects their
3 demand.

4 I was just wondering if you guys
5 have looked at any of that kind of thing.
6 Does this fits into the classical mode choice
7 modeling analysis or is it something that
8 hasn't been looked at yet by Amtrak or by the
9 DOT, FRA?

10 MR. YACHMETZ: Well, I think you
11 can almost back into this. We haven't done
12 the analysis on inner-city passenger, but I
13 think that if you back into the -- this by
14 looking at the customer service index, which
15 is are -- the CSI, customer service index, if
16 you look --

17 MR. CROSBIE: Yes, but if you look
18 at it, the top areas go to reliability of
19 service and so, if that's what people have
20 their complaints about, that probably is a
21 good indicator that that drives people's
22 mobile decisions, not maybe the first time

1 they take Amtrak, but whether they take Amtrak
2 a second time or a third time.

3 So, yes, I don't -- we don't have
4 any good analytical data, but I think that
5 that shows, you know, supports the contention
6 that this is a driver of rider-ship.

7 VICE CHAIRMAN MULVEY: Well, that's
8 always been an issue. If the experience is bad
9 enough the first time, too often,
10 unfortunately, there won't be a second time
11 and there is always concern that Amtrak was
12 going to run out of people and that that was
13 going to affect the overall long term demand,
14 but apparently, good for Amtrak, in the sense
15 that travel continues to increase year after
16 year, and so, it's still been a growth
17 industry.

18 I have one other question and that
19 is, you've mentioned the importance of the
20 intra-city rider-ship, that you know, we have
21 these trains that are scheduled take off from
22 Chicago and arrive in Los Angeles or Seattle

1 or San Francisco, but very often, it's the
2 travel that is within that long distance that
3 really is the bulk of Amtrak's demand, and
4 yet, when you're only running one train a day
5 or sometimes in some cases, tri-weekly
6 service, you don't really get very much, in
7 terms of quality of departure and arrival
8 times in these intermediate stops. This is a
9 long term problem for rail.

10 But it's strikes me that there
11 seems to be an opportunity here to begin to
12 address this, that if we substitute for these
13 long trains, much more intra-service, say,
14 between Denver and Salt Lake City or Omaha and
15 Denver, what-have-you, shorter distance
16 travels, and get the investment in the
17 infrastructure, the track infrastructure, that
18 would benefit both the freight and rail -- the
19 passenger and freight services, that would
20 allow simultaneously for more frequent
21 services, more timely services between these
22 intra-city paths, everyone would benefit, and

1 I'm just wondering if you have any comment on
2 whether or not this joint approach of
3 passenger and freight to increase capacity on
4 these intra-routes, would be a way to go,
5 which might solve a lot of this problem.

6 MR. CROSBIE: We agree with what
7 you've presented. The -- and as recent, I'll
8 say the last six months, I think you're aware
9 that on time performance on the freight
10 railroads has improved and we see growth with
11 that, where we're seeing currently -- rough
12 numbers, 10 percent growth on long distance
13 trains.

14 But when you dive down into, well,
15 what's the heart of that? It is what you
16 mentioned. It is those intermediate city
17 pairs that's driving that and we believe that
18 going forward for Amtrak, our primary business
19 model is growth and quarter service, which is
20 what you're talking about.

21 We actually have hard evidence now
22 that if the trains run on time, in between

1 those intermediate points, there is demand
2 there and we're seeing more and more of that.

3 They only have the one option
4 today, the one train, Salt Lake City to
5 Denver. We have to analyze, you know, the
6 business case for that and make sure it works,
7 but you know, inherently, we see that as the
8 future opportunity for Amtrak, as quarter
9 service in the country and it deals with a
10 whole bunch of other issues for other modes,
11 you know, in terms of more highway
12 infrastructure and the benefit there. It's a
13 lot less money for us to put a train on than
14 it is to build a new highway.

15 VICE CHAIRMAN MULVEY: Well, I
16 mentioned frequency of service, but a
17 frequency is also time dependent. A train
18 that that departs at 9:00 a.m. is very
19 different from one that departs at 3:00 a.m.

20 MR. CROSBIE: Right.

21 VICE CHAIRMAN MULVEY: And you
22 can't do much about that, if you're running a

1 train that's scheduled from Chicago to San
2 Francisco. You can't optimize the departure
3 time on intermediate points, unless you're
4 running multiple trains.

5 MR. CROSBIE: Multiple trains and
6 what I've seen in my experience, you know, the
7 typical number, you obviously run it during
8 the times when it makes sense, people are
9 awake and wanting the -- the peak demand
10 times.

11 But when you get to six or seven
12 frequencies, eight frequencies, that's when
13 demand really takes off.

14 VICE CHAIRMAN MULVEY: Right, I
15 think there used to be an old frequency delay
16 factor, which was, I think, one to the E-
17 minus-KF. I think. It basically, very, very
18 similar to decomposition or atomic decay, that
19 the importance of frequencies declines as you
20 get to about -- hourly operations.

21 MR. CROSBIE: Right.

22 VICE CHAIRMAN MULVEY: Anyway,

1 thank you.

2 CHAIRMAN NOTTINGHAM: Commissioner
3 Buttrey, any further questions?

4 COMMISSIONER BUTTREY: No further
5 questions. I'd just like to thank the
6 witnesses for their coming today and I
7 appreciated your testimony. It's been very
8 helpful. Thank you.

9 MR. CROSBIE: Thank you.

10 CHAIRMAN NOTTINGHAM: I have no
11 further questions either. I really appreciate
12 the patience of both you. Thank you. You can
13 tell, this is important to us. We're taking
14 this really seriously and we look forward to
15 working with you and your colleagues. So,
16 best of luck and we look forward to seeing you
17 soon.

18 I expect probably the next time
19 we're together at a hearing, I may well be
20 sitting next to you, rather than in front of
21 you, and up on the Hill, down the street. But
22 I hope to see you before then.

1 Now, we'll call up our next panel,
2 which is a one person panel. Representing
3 state transit agencies, we have the Southern
4 California Regional Rail Authority, also known
5 as Metro Link, with us today, represented by
6 Mr. Keith F. Millhouse and Mr. Millhouse,
7 welcome. Thanks for patiently waiting and
8 whenever you're ready, please do introduce
9 your colleague to us and we look forward to
10 hearing your presentation.

11 MR. MILLHOUSE: Thank you, Chairman
12 Nottingham. This is Chuck Spitulnik and he's
13 with the law firm with a lot of names, I can't
14 recite off the top of my head, but he's here
15 with me today, as long as -- as well as our
16 Chief Executive Officer, David Solow, who
17 you'll be hearing from later in your hearing.
18 He's with the American Public Transportation
19 Association on a Vice Chair role for the
20 committee.

21 CHAIRMAN NOTTINGHAM: Mr.
22 Millhouse, just make sure the mic is pointed

1 in a way that captures your full voice. I
2 struggle with that too, but I just -- and if
3 anyone in the back is having trouble with the
4 sound at any time today, if you could just
5 kind of signal, we have staff around the room
6 who can help us make sure we're on track.

7 VICE CHAIRMAN MULVEY: I think it's
8 on. Just bring it a little bit closer to you.

9 MR. MILLHOUSE: Okay, I'm on a
10 variety of Boards and panels and each one
11 works differently. So, I apologize in
12 connection with that.

13 I am the Chair of the Southern
14 California Regional Rail Authority for all of
15 one month now. The Metrolink, as it's
16 commonly known, is a joint powers authority,
17 consisting of the transportation commissions
18 from the counties of Los Angeles, Orange,
19 Riverside, San Bernardino and Ventura and I'm
20 pleased to have this opportunity to present
21 Metrolink's position on several of the issues
22 that the Board will be addressing, as it

1 implements the Passenger Rail Investment and
2 Improvement Act of 2008.

3 I think I can safely say that the
4 nation's commuter rail providers are all
5 committed to providing efficient, high quality
6 service to their constituents. But each of us
7 operates in a unique environment. That's
8 especially true of Metrolink.

9 Metrolink provides mass transit to
10 all five counties in the most densely
11 populated regions of coastal Southern
12 California, serving an area of approximately
13 21 million people.

14 We currently operate over 500
15 miles of commuter rail service, 124 of which
16 are in a shared corridor right-of-way with
17 Amtrak and the freight railroads. Our
18 operations in the shared corridor began in
19 1993.

20 Unlike many other commuter rail
21 providers in this country, Metrolink is the
22 host rail provider over a significant portion

1 of its network and the freight railroads and
2 Amtrak provide service over Metrolink lines
3 under agreements with Metrolink.

4 This arrangement differs from the
5 typical scenario in other regions, for
6 instance, the northeast, where the freights
7 are the host railroads.

8 In Southern California, Metrolink
9 and Amtrak have developed an effective working
10 relationship that allows efficient, reliable,
11 inter-city and commuter rail operations to
12 serve one of the densest and widest ranging
13 population centers in the United States, while
14 at the same time, accommodating a tremendous
15 amount of freight traffic.

16 We've submitted detail written
17 testimony in this proceeding, so my
18 presentation today will only briefly summarize
19 those issues of most concern to our agency.

20 First, we urge the Board to focus
21 on the need to take into account, the
22 potential impacts implementation of the Act

1 may have on commuter rail operators that share
2 corridors with Amtrak, as the FRA and Amtrak
3 lead the effort to formulate standards and
4 metrics for their inner-city passenger
5 service.

6 As the Board and other stake
7 holders participate with the FRA and Amtrak to
8 put such standards in place, commuter rail
9 operators must receive the same priority
10 treatment the Act specifies for Amtrak and
11 other inner-city passenger rail operations.

12 The metrics governing the
13 performance of inner-city passenger rail
14 providers must take into account the
15 preservation and expansion of commuter rail
16 service in the metropolitan areas linked by
17 long distance providers.

18 Now, this is not in any presumed
19 that the inner section of commuter rail
20 service with inner-city operations would
21 compromise either one of them. However, the
22 nature and operational patterns that

1 characterize commuter rail service and which
2 distinguish it from inner-city operations will
3 be an important consideration, in ensuring
4 that inner-city trains successfully navigate
5 congested metropolitan areas.

6 Second, the Board must take into
7 account, the need to preserve the
8 effectiveness of existing operations
9 agreements between Amtrak and commuter rail
10 operators, as the Board institutes procedures
11 for dealing with complaints about inner-city
12 rail service.

13 The Act's mandate that the Board
14 take an increased role in mediating disputes
15 between Amtrak and commuter operators is a
16 clear indication that Congress recognizes the
17 need to assist inner-city and commuter rail
18 operators in gaining access to the rail
19 corridors and the facilities they require, in
20 order to serve the public.

21 The enforcement procedures set
22 forth in the Act allows the Board to start an

1 investigation and enforcement action on the
2 basis of complaints by Amtrak or to launch an
3 investigation of its own. The procedure does
4 not mandate participation from the host rail
5 carrier and does not provide a mechanism to
6 settle or otherwise resolve any alleged
7 impediment to satisfactory inner-city service.

8 However, Metrolink's existing
9 relationship with Amtrak exemplifies the
10 framework, which is embodied in the
11 legislation, including such elements as shared
12 track, equipment and services.

13 Metrolink and Amtrak operate
14 successfully under private agreements that
15 they have carefully negotiated and have been
16 in place for a number of years.

17 As drafted however, the Act could
18 be construed as effectively abrogating
19 portions of Metrolink's existing contracts
20 with Amtrak, by permitting Amtrak to take any
21 complaints directly to the Board, without
22 first seeking the remedies set forth in its

1 agreements with Metrolink.

2 Metrolink in turn, would be
3 subject to a fundamentally changed
4 relationship with Amtrak, for which it did not
5 bargain and which could potentially harm our
6 ability to provide safe, effective commuter
7 rail services.

8 Metrolink urges the Board to keep
9 in mind that any regulations and complaint
10 procedures you adopt, as it implements the
11 Act, should be tailored to take into account,
12 instances where Amtrak and the host operator
13 have existing agreements in place and to allow
14 those parties to continue to rely on the
15 remedies and dispute resolution procedures
16 they negotiated and which are contained in the
17 agreements.

18 Finally, Metrolink is please to
19 recognize the potential for the Board to play
20 a significant and beneficial role through its
21 expanded powers, the mediator of access
22 disputes, between the commuter rail providers

1 and freight rail carriers under Section 401 of
2 the Act, which provides that after a
3 reasonable period of negotiation, if the
4 commuter rail operator cannot agree to terms
5 for a freight rail carrier to use trackage of
6 and have related services provided by the
7 freight rail carrier, for purposes of commuter
8 rail transportation, either party may submit
9 to the Board for non-binding mediation, using
10 the processes already in place for mediation
11 of freight rail rate disputes.

12 The Board should act to bring the
13 freight railroads to the table, to participate
14 toward resolution of access disputes involving
15 commuter rail operators.

16 Rather than leaving commuter rail
17 operators to negotiate in isolation for access
18 to a freight rail lines, the Act empowers the
19 Board to bring consistency and a well informed
20 policy perspective to the task of settling
21 disputes and allowing both the freights and
22 local commuter operators room to maneuver.

1 The continued accessibility and
2 reliability of commuter rail service is a key
3 component of the success of passenger rail
4 generally in the United States. Enhancing
5 opportunities for commuter rail providers to
6 serve their constituent communities will also
7 advance the interest explicitly set forth in
8 the Act, to preserve and expand access to the
9 nation's rail network by inner-city passenger
10 operators.

11 Metrolink submits that the
12 consideration of the foregoing factors will
13 aid the Board in its expanded role to increase
14 the effectiveness of the National Rail Network
15 for commuter and inner-city passenger rail
16 operations, and I thank you for the
17 opportunity to speak with you this morning.

18 CHAIRMAN NOTTINGHAM: Thank you,
19 Mr. Millhouse. We appreciate your coming all
20 this way and helping us understand the
21 commuter rail perspective on this legislation.

22 What's your, I guess, expectation,

1 if I could use that word, of the Board's --
2 you anticipate that -- I'm thinking about the
3 provision of the new legislation that
4 references non-binding mediation, that the
5 Board can oversee and administer.

6 Do you anticipate that commuter
7 railroads will take advantage of that
8 provision and be bringing some mediation cases
9 to the Board?

10 MR. MILLHOUSE: We have existing
11 agreements, with respect to Amtrak, and also,
12 some shared agreements, with respect to the
13 freight operators, in terms of priorities, and
14 I think we've negotiated those, our concern,
15 with respect to the freight railroads, and
16 we're in a little bit of a different position
17 than other commuter rail agencies, is that the
18 leverage in the negotiations sometimes is
19 inherently unfair.

20 Now, because we are the
21 owners/host railroad, we have some additional
22 authority that some other commuter rail

1 operations do not have. But I think it's
2 important to have the ability, for this Board,
3 to serve as a mediator subsequent to the
4 exhaustion of remedies within any contractual
5 agreements or to address those particular
6 concerns because the interest of moving
7 freight can, at times, be different than the
8 interest of moving people and passengers
9 officially.

10 We've done a very good job within
11 the Southern California region, of
12 effectuating that, but should it be necessary
13 to have the Board step in, in the cases that
14 deal with the freights, I think that in
15 certain situations, that may be proper.

16 CHAIRMAN NOTTINGHAM: I'd like to
17 take advantage of your presence here to ask,
18 what I might call a capacity question.

19 In your -- in Southern California,
20 in the area that you're most familiar with, is
21 there adequate rail capacity to have both an
22 outstanding system of commuter rail, passenger

1 rail and freight rail, or is there a need for
2 significant additional new capacity
3 investments?

4 MR. MILLHOUSE: We have challenges
5 within the Southern California system because
6 over 40 percent of all the goods that come
7 into the country come through the Ports of Los
8 Angeles and Long Beach, and much of that is
9 shipped out through the freight railroad
10 system.

11 Also, operating a commuter rail
12 systems that carries a million people a month,
13 capacity is an issue and I would like to see
14 enhanced capacity.

15 We are doing the best job we can,
16 under the current system. However, expansion
17 of capacity is certainly something that's
18 going to have to occur in light of the
19 tremendous success of our commuter rail
20 operations from a passenger standpoint, and
21 the need to accommodate additional freight
22 growth.

1 So, additional capacity will be
2 necessary in Southern California and we're
3 hoping that as part of new initiatives and
4 Congress and enhanced lobbying on our behalf,
5 that we'll be able to effectuate that as part
6 of a comprehensive program in the Southern
7 California region.

8 CHAIRMAN NOTTINGHAM: And if you
9 could, since we're speaking a lot today about
10 on time performance, how is Metrolink doing?
11 What are you able to report to your riders,
12 that -- what can they expect, regarding on
13 time performance on your system?

14 MR. MILLHOUSE: We're very
15 fortunate at Metrolink. Our overall average
16 is in excess of 90 percent on time and the one
17 line that we had some trouble with over the
18 course of time, was the Riverside line, which
19 had some dispatching that was being done by
20 the freight railroads.

21 We have sat down with the freight
22 railroads. We've worked that out and we seem

1 to be doing much better in connection with
2 that. But an overall one time performance in
3 excess of 90 percent is very outstanding.

4 One of the differences, I think,
5 between a commuter rail system versus an
6 inner-city system is that commuters have an
7 expectation of being on time, because they
8 need to be at their job, let's say at 9:00
9 a.m. or 8:00 a.m., and then when they leave to
10 come home, they want to get home in a timely
11 fashion.

12 There's a little more flexibility
13 in inner-city, but we're very fortunate
14 because of our working relationship with
15 Amtrak, to be a great feeder for their system.

16 The route up and down the coast
17 goes through the area that I represent, from
18 Ventura County and I'm an often rider of the
19 train that goes up to the Santa Barbara area
20 and then conversely, down to San Diego.

21 So, I've seen tremendous growth
22 within that system. We've worked with Amtrak

1 to accommodate them and I think we've got a
2 very efficient contractual relationship with
3 Amtrak.

4 I had the joy of reading it on the
5 plane ride out, and it's very lengthy, but one
6 thing I did notice was the prompt resolution
7 of any scheduling type of disputes, and I'd
8 hate to see some unintended consequences of
9 the Act, result in an abrogation of that,
10 because it is so efficient and timely.

11 For example, when our schedulers
12 get together, if there's an adjustment of the
13 schedule, if they can't agree upon that, then
14 the higher ups, for lack of a better term, and
15 I could pull the contractual thing out, are
16 required to meet within seven days and if that
17 doesn't get resolved, then within 10 days,
18 everyone appoints an arbitrator, so, you're in
19 essence, getting this done very quickly, which
20 is the key.

21 But we certainly are very
22 supportive of the Amtrak system. Again, we're

1 a great feeder for the system. We like to
2 respect the contractual relationships as they
3 exist and we'd also like to see the Board be
4 in a position, when necessary with the freight
5 railroads, especially in cases of disparate
6 bargaining power, have the ability to step in,
7 in terms of ensuring on time performance.

8 CHAIRMAN NOTTINGHAM: Well, you're
9 to be commended for hitting 90 percent and
10 better on time performance. That's
11 outstanding.

12 Vice Chairman Mulvey, do you have
13 any questions?

14 VICE CHAIRMAN MULVEY: Thank you,
15 Chuck, a couple. First, I want to say that
16 several years ago, I was out visiting
17 Metrolink and I visited their maintenance
18 facility and I was very impressed. You could
19 practically eat off the floor there. It was
20 really unbelievable, how modern, how
21 efficient, how clean the operation was and you
22 are to be commended for that new facility.

1 Would you say that commuter
2 travelers are more time sensitive than -- I
3 think I heard you say this, than Amtrak riders
4 and therefore, if that's the case, if the
5 elasticity of demand is much more responsive
6 to being on time, that maybe commuter riders
7 and commuter trains should have a preference
8 over Amtrak trains?

9 MR. MILLHOUSE: It's hard to
10 address, with respect to Amtrak. My personal
11 experience in riding Amtrak has been more
12 leisurely or I'm going to a business meeting
13 that I have planned some additional scheduling
14 time in.

15 So, I don't want to speak for the
16 system as a whole. I can only share my
17 personal experience.

18 But with respect to our commuter
19 rail operations, it is very time sensitive and
20 we never run time sensitivity at the expense
21 of safety, but it is important for us to get
22 people to their jobs on time, because if they

1 are habitually late, and this was something
2 that came up with the Riverside line, then
3 they say, "Ghee, I can't get to my job on
4 time. If I don't get to my job on time, I'm
5 not going to have my job." Therefore, I
6 revert back driving in an automobile, which is
7 something we want to discourage in Southern
8 California.

9 VICE CHAIRMAN MULVEY: Which also
10 makes it difficult to get there on time. But
11 the trip back and forth, you want people to be
12 there on time and the people want to get home
13 on time, by the same token.

14 Let me ask you a question on track
15 use costs. You provide the 500 miles. You
16 operate more than 120 miles where you share
17 the road with Amtrak and the freight railroads
18 and where you are the host. What is the basis
19 for your assessing track use costs, to Amtrak
20 and the freight railroads?

21 Do you use the incremental cost
22 method, which is what is typical of the Amtrak

1 and freight railroad relationship, or do you
2 try and capture some of the allocated costs as
3 well?

4 MR. MILLHOUSE: Not only wasn't I
5 good in economics in college, I'd have to
6 defer to our Chief Executive Officer. That's
7 -- as a Board member, I'm more at the macro-
8 level and I can't answer that specifically,
9 and I'd hate to give you mis-information.

10 So, when he testifies, I'm sure
11 he'll be able to address that and/or we can
12 get you that information.

13 VICE CHAIRMAN MULVEY: Okay, thank
14 you very much.

15 CHAIRMAN NOTTINGHAM: Commissioner
16 Buttrey, do you have any questions for this
17 witness?

18 COMMISSIONER BUTTREY: Thank you,
19 Mr. Chairman. I thank the witness. So, some
20 of your trains are dispatched by UP. Some of
21 your trains are dispatched by Amtrak and some
22 of your trains are dispatched by your own

1 dispatching, is that correct --

2 MR. MILLHOUSE: Well, we have a --

3 COMMISSIONER BUTTREY: -- or did I
4 misunderstand you?

5 MR. MILLHOUSE: We have a very
6 large system and we have a dispatch center in
7 Pomona, responsible for a large area of that.
8 I believe we have some on the freight system
9 that --

10 (Off mic comments.)

11 MR. MILLHOUSE: No Amtrak
12 dispatchers, there is a small freight
13 component, with respect to UP and the BNSF in
14 some of the outlying areas, which I believe
15 were San Bernardino.

16 But generally, most of the
17 Southern California operations are at the
18 Metrolink operations center.

19 COMMISSIONER BUTTREY: So, it's
20 either UP or BN, one or the other?

21 MR. MILLHOUSE: For that small
22 segment, yes.

1 COMMISSIONER BUTTREY: Yes,
2 otherwise, you're dispatching your own.

3 MR. MILLHOUSE: Correct.

4 COMMISSIONER BUTTREY: You're
5 controlling your own operations. Do you all
6 have a money-back guarantee? If you're late,
7 do you give your passengers a free-ride ticket
8 or anything like that?

9 MR. MILLHOUSE: We do have a
10 customer service guarantee, in connection with
11 trains that are delayed a certain amount of
12 time and the particulars of that, the Chief
13 Executive Officer, I'm sure can address.

14 But we've done a very good job, in
15 terms of customer service. I think one area
16 we are striving to improve on is when there
17 are delays, people that are waiting further
18 down the system, we're working on establishing
19 a better electronic passenger information
20 system, to alert to them the potentiality for
21 delays further down the line.

22 But I would consider our customer

1 refund policy very generous because we're
2 interested in retaining our riders and what we
3 have found is even after the run-up in gas
4 prices and the subsequent coming down of
5 those, we have retained a significant portion
6 of the people that ride the system.

7 So, once they ride it, they're
8 hooked and that's important for us. So, if
9 someone has a bad experience on Metrolink and
10 it's our fault, we like to give -- for
11 example, we have 10 trip passes or certain
12 discounts on a monthly pass, things like that.

13 COMMISSIONER BUTTREY: Okay. What
14 is your busiest O and D pair on your system?

15 MR. MILLHOUSE: I'm sorry, the O
16 and D pair is? The busiest. That was my guess,
17 the Los Angeles to San Bernardino line is the
18 heaviest traveled. We have a Los Angeles/San
19 Bernardino line and Los Angeles down, a little
20 south of Orange County, north, up to the
21 Antelope Valley, and then up to the end of
22 Ventura County, as well as some between the

1 Inland Empire and Orange County.

2 COMMISSIONER BUTTREY: Where is
3 your station in Orange County? I'm just
4 curious?

5 MR. MILLHOUSE: We have a number of
6 stations in Orange County, Buena Park, Tuston,
7 Anaheim, I'm sure I'm missing a few there.

8 COMMISSIONER BUTTREY: What's your
9 largest station down there?

10 MR. MILLHOUSE: I believe the
11 Irving station is.

12 (Off mic comments.)

13 MR. MILLHOUSE: Around Anaheim.

14 COMMISSIONER BUTTREY: Now, do you
15 own any of your right-of-way or is it all
16 owned by other carriers?

17 MR. MILLHOUSE: Most of --
18 technically, we own our right-of-way as the
19 member agencies. The transportation agencies
20 within the various counties own much of it.
21 We maintain the tracks for Metrolink within
22 there.

1 So, I guess indirectly, we have
2 control, although technically, it's not
3 ownership in a large part of that area.

4 COMMISSIONER BUTTREY: So, you have
5 a contract with the Government agency, to
6 operate the commuter rail service on those
7 lines?

8 MR. MILLHOUSE: We have operating
9 authority from the members -- the County
10 Transportation Commissions operating those
11 lines.

12 COMMISSIONER BUTTREY: Okay. Can
13 anybody else come in and go to those entities
14 and say, "You know, we think we could do a lot
15 better job than is being done. We want you to
16 knock those guys off and put us on." Is that
17 a possibility or is that not a possibility?

18 MR. MILLHOUSE: I don't think
19 that's a possibility.

20 MR. SOLOW: It's a technical
21 impossibility because we act for our members
22 agencies. So, they can choose someone else,

1 other than us.

2 MR. MILLHOUSE: So, if the joint
3 powers authority was either dissolved or they
4 decided a new joint powers authority should be
5 operating a commuter system on their lines,
6 then that would be the case, but since each of
7 the agencies is a member of the Metrolink
8 joint powers, I would that well, technically,
9 possible would be fairly unlikely.

10 COMMISSIONER BUTTREY: But so, your
11 agreement with them comes up on a regular
12 cycle, like a TV station or a radio station,
13 or something has to go in and say, "You ought
14 to give this right to us again, because we're
15 doing a good job," and then somebody else
16 could come and say, "Well, really, they're not
17 doing a good job. They failed in these areas
18 and we think you ought to put somebody else on
19 and we have an idea of who that ought to be."
20 You know, that is a technical possibility.

21 MR. MILLHOUSE: I'd have to defer
22 that to the Chief Executive or our contracts

1 attorney there, because I don't know the
2 micros of that and I'd hate to give you the
3 incorrect answer.

4 COMMISSIONER BUTTREY: I'm just
5 trying to figure out whether there is some
6 barrier to entry or no barrier to entry, if
7 you will, in that market, because if there is
8 no barrier to entry, your level of concern
9 over service is a lot higher, it would seem to
10 me.

11 But if there is a barrier to entry
12 that through contracts or whatever, you might
13 just take the position that, you know, this
14 business is our's. We'll run it any way we
15 want to, within limits.

16 MR. MILLHOUSE: I understand your
17 questioning and where you're going on that.
18 I think that although that may technically be
19 an occurrence, it is not a likelihood that the
20 pride we take in running the system is
21 reflected in the fact that each of our
22 jurisdictions carries the people we live

1 amongst.

2 And so, we hear directly -- you
3 know, if you live in Orange County and you
4 represent Orange County, I represent Ventura
5 County, and so, I have a personal stake in the
6 success of the commuter rail system out there
7 and if it's not being run well, I get stopped
8 at the grocery store, people come up to me,
9 they tell me suggestions, they recognize me
10 riding the train.

11 So, we have a vested interest in
12 the --

13 COMMISSIONER BUTTREY: They know
14 where you live.

15 MR. MILLHOUSE: Pretty much all of
16 that. They have my phone number, you know,
17 the whole nine yards, and --

18 COMMISSIONER BUTTREY: Now, you say
19 you represent Ventura County. Are there --
20 how many other people like you are there, in
21 the system? Are you --

22 MR. MILLHOUSE: We have an 11

1 member Board. We have four representatives
2 from Los Angeles County. Los Angeles County
3 contributes the largest share of funding for
4 the operation, and then there are two members
5 from each of the other counties, with the
6 exception of Ventura. We are the smallest
7 financial contributor in the system.

8 In addition to our 11 Board
9 members, we have 10 additional alternate
10 members, but those individuals are engaged in
11 the -- our discussion, although they
12 technically don't vote on issues.

13 So, we have a fairly robust Board,
14 representing a wide geographical area and it's
15 been very successful in regionalism for the
16 system. So, you don't find, for example,
17 Orange County being favored over San
18 Bernardino or Riverside.

19 The success of the system, is a
20 result of the diversity and the broad views
21 and the regional thinking that we have in the
22 Southern California region.

1 COMMISSIONER BUTTREY: Do you know
2 what your average load factors are, on your
3 trains?

4 MR. MILLHOUSE: I don't have the
5 specifics on that. I can tell you that
6 depending on the line -- and it does vary by
7 lines, some of the trains have -- can be
8 standing room only during the rush hours and
9 we have an order, we're expecting
10 approximately 115 new rail cars coming in.

11 They were designed in connection
12 with the Volpe Center and Department of
13 Transportation, to incorporate crash energy
14 management technology, so, they will be some
15 of the most technologically advanced, if not,
16 the most technologically advanced, rail cars
17 in the country and we're expecting the
18 delivery of the first batch of those at the
19 end of this particular year.

20 COMMISSIONER BUTTREY: Are those
21 double-decker type cars?

22 MR. MILLHOUSE: Yes, they're kind

1 of the tri-levels in the sense that, there's
2 a bottom, there's kind of a middle tapering on
3 the ends and then there's an upper level. So,
4 there's a bottom level, an upper level and
5 kind of a mezzanine level on the ends of the
6 cars.

7 COMMISSIONER BUTTREY: Sort of a
8 sounder type car?

9 MR. MILLHOUSE: Very similar in
10 style to the sounder cars. Now, the new cab
11 cars have the crash energy management
12 technology up front and recently, I traveled
13 to Korea, to take a look at the technology
14 there, because they're building the proto-type
15 there and then they'll ship it to
16 Philadelphia, where they will build, in mass
17 under the Buy American Program, once they get
18 the system and the car designed.

19 So, we're very excited about that.
20 We've seen tremendous growth in our rider-ship
21 over the course of time, where we're now
22 carrying almost, if not in excess, of a

1 million passengers each month. It's kind of
2 right at that level, it goes up and down.

3 So, the system has been very
4 successful. Obviously, everyone is aware of
5 the tragedy that occurred last year and we've
6 taken a bit of a beating in the press, albeit
7 much of it's speculative, as the investigation
8 continues.

9 But the Board and our staff has
10 responded very aggressively in trying to come
11 up with interim things, to make the system
12 even safer, because I believe in the system.
13 It's a safe system and I ride the train
14 personally, much like you. I don't do it on
15 a daily basis, because it doesn't take me
16 there activity-wise, but I ride it to see
17 what's going on on the rail, how can we make
18 this system, what are the unique challenges,
19 as you travel throughout the system?

20 COMMISSIONER BUTTREY: Thank you.

21 CHAIRMAN NOTTINGHAM: Okay. Just,
22 Mr. Millhouse, just quick, as housekeeping

1 question, and this might help our Court
2 Reporter we have with us.

3 You got a little bit of help from
4 a couple of questions from an associate in the
5 front row, which is fine, just maybe, if you
6 could just give the name of who said that.

7 MR. MILLHOUSE: Yes, that is David
8 Solow, S-O-L-O-W and he is the Chief Executive
9 Officer of Metrolink. So, he's the nuts and
10 bolts guy.

11 CHAIRMAN NOTTINGHAM: Great,
12 thanks. That's helpful. Just real quick, I
13 have one question. I think I may try to ask
14 this of each of our panelists.

15 How do you define late, as far as
16 late train, if you're keeping performance
17 standards? We heard from Amtrak that they
18 have some different definitions, up to now,
19 depending on the type of train, 10 minutes, 20
20 minutes, if it's a cross country train, I
21 don't know, was it -- it was an hour, the
22 longest that we heard from them. I can't

1 remember, but 30 minutes is the longest they
2 had used. How do you guys define that in your
3 work?

4 MR. MILLHOUSE: I believe we define
5 it as five minutes and 59 seconds late, and I
6 think our Chief Executive can confirm that --
7 or he's shaking his head in the affirmative.

8 So, you know, because it is a
9 commuter service and we run on tighter
10 schedules, that's the parameters we use.

11 So, when we get a 90+ percent on
12 time performance, and it's probably closer to
13 95 -- I know on the Ventura line, you know,
14 we've been 96 or 97 percent. Regularly, I
15 think we're the most on time line within our
16 system. But we're very proud of that fact.

17 CHAIRMAN NOTTINGHAM: And as your
18 system has grown and matured, have you found
19 that you've needed to occasionally adjust your
20 schedules to account for the time it takes for
21 more people to get on and off the train at
22 different stations?

1 MR. MILLHOUSE: There have been
2 schedule adjustments. I don't know if they
3 have been in particular relation to the people
4 that, you know, board and disembark at
5 particular locations.

6 But we've analyzed certain -- we
7 had certain speed direction rules that we put
8 in place, in connection with certain speed
9 zones, but as a result of that, we have
10 tinkered with the schedule.

11 But our passengers are fairly
12 understanding. I think we do a good job
13 publicizing when that is anticipated. There's
14 a good electronic network of information out
15 there. But it is necessary to kind of tinker
16 with the schedule at times, because of the
17 complexity of all the scheduling.

18 We try to avoid that, if we can,
19 but there are reasons to do that and if we add
20 service at times, there is additional -- other
21 considerations that come into play.

22 CHAIRMAN NOTTINGHAM: Thanks. I

1 have no further questions. Vice Chairman
2 Mulvey?

3 VICE CHAIRMAN MULVEY: A couple of
4 minor questions, operations questions. Does
5 the Amtrak San Diego operate over the
6 Metrolink's right-of-way?

7 MR. MILLHOUSE: Yes.

8 VICE CHAIRMAN MULVEY: And that's a
9 -- seven or eight trains daily, I believe, and
10 you dispatch those?

11 MR. MILLHOUSE: They have a number
12 of trains. When they enter our service area,
13 then we're responsible for the dispatch. I
14 believe south of our service area, there is a
15 different dispatch center.

16 VICE CHAIRMAN MULVEY: You wouldn't
17 know the on time performance of those trains,
18 would you, by any chance?

19 MR. MILLHOUSE: I do not have --

20 VICE CHAIRMAN MULVEY: We have
21 those data ourselves, but I just thought --

22 MR. MILLHOUSE: My personal

1 experience in riding it, because it take it
2 from Los Angeles station, down to San Diego,
3 it's been very punctual. I've been very
4 impressed by the Amtrak service, as well as
5 the number of people on the Amtrak trains.

6 VICE CHAIRMAN MULVEY: There's a
7 proposal to construct a high speed train
8 between Victorville, California and Las Vegas,
9 and I notice that your map of the operating
10 system, you go out to San Bernardino and I
11 believe Victorville is in San Bernardino
12 County.

13 But was there any thought of
14 extending the Metrolink's operations to meet
15 up with a Victorville train to Las Vegas if,
16 indeed, that was ever going to be built?

17 MR. MILLHOUSE: I don't think we've
18 had any hard-core discussions on that, because
19 I think the likelihood of that actually
20 happening is a little suspect.

21 There was a California high speed
22 rail bond measure that passed, however, they

1 have not engaged in active discussions with
2 the Metrolink system in Southern California,
3 although they believe they're going to use the
4 Metrolink right-of-way for their high speed
5 rail system.

6 So, it will be a bit of a
7 challenge there, in terms of actually bringing
8 that to fruition.

9 VICE CHAIRMAN MULVEY: They're
10 talking Metrolink right-of-way for the high
11 speed rail between Victorville and Las Vegas?

12 MR. MILLHOUSE: No, Victorville and
13 Las Vegas is not --

14 VICE CHAIRMAN MULVEY: That's a
15 different --

16 MR. MILLHOUSE: That's a different
17 high speed rail that's been talked about.

18 VICE CHAIRMAN MULVEY: That's an
19 operation --

20 MR. MILLHOUSE: Yes, the high speed
21 rail that was talked about by the high speed
22 rail authority and for which the voters

1 authorized a certain number of dollars of
2 bond, I think it's \$9 billion, and they'll
3 need \$40 billion. They have to get private
4 financing before they can use some of the
5 money.

6 VICE CHAIRMAN MULVEY: That's the
7 San Francisco line?

8 MR. MILLHOUSE: Yes, that's --
9 basically, Los Angeles, San Francisco, Los
10 Angeles, out to the San Bernardino type area,
11 and down to San Diego.

12 Again, the problem with that is,
13 operating in the environment that we're
14 operating in, you have to have complete grade
15 separations and as an example, to go from Los
16 Angeles to San Bernardino on a line we already
17 do, you could grade separate that for a
18 fraction of the cost of building a brand new
19 duplicative high speed rail network, and your
20 operating speeds are roughly the same, because
21 we could increase the operating speeds of the
22 Metrolink trains, such that the difference

1 between that and a high speed rail train, that
2 is making the same number of stops, would be
3 negligible.

4 So, that issue hasn't been
5 addressed. I'm also on the Regional Council
6 of the Southern California Association of
7 Government's, which is a body that represents
8 about 16 or 17 million people. It's the
9 Metropolitan and Planning Organization, and
10 we've studied extensively, the concept of
11 magnetic levitation and the potential for that
12 and the demand for that type of service, and
13 that was one of the problems, is that you
14 can't achieve the high speeds you need without
15 making the stops at a number of locations.

16 The more stops you make, the less
17 effectiveness of the high speed train and then
18 if you don't make the stops, you don't have
19 the passenger load that helps off-set the
20 costs. So, it's the horns of a dilemma there.

21 VICE CHAIRMAN MULVEY: I recall the
22 first mag-lev -- California/Nevada mag-lev

1 commission and actually rode the I15 corridor
2 to see all the problems it was going to run
3 into.

4 In fact, one of the things that
5 stopped it was the presence of the Mojave
6 ground tortoise. So, the world's slowest
7 animal stopped the world's fastest train, or
8 partly responsible for stopping the world's
9 fastest train. With that, thank you very
10 much.

11 CHAIRMAN NOTTINGHAM: Thank you,
12 Vice Chairman. Commissioner, Buttrey, any
13 further questions? Thank you, panel. This has
14 been very helpful and we appreciate your being
15 here. We look forward to working with you.

16 We'll do two things now,
17 concurrently. We'll invite the next panel to
18 come forward. The would be Mr. David Solow
19 and Mr. Ross Capon, and at the same time,
20 we'll take a three minute comfort break for
21 all concerned, including our stenographer
22 recorder and we'll be resuming in three

1 minutes. Thank you.

2 (Whereupon, the above-entitled
3 matter went off the record at 12:26 p.m. and
4 resumed at 12:31 p.m.)

5 CHAIRMAN NOTTINGHAM: Please take
6 your seats or step out into the hall, if you
7 need to converse. We are delighted today, to
8 be joined by two witnesses representing the
9 broad sector of passenger rail interest.

10 First, we will hear from Mr. David
11 Solow of the American Public Transportation
12 Association, who seems to be wearing multiple
13 hats today. We welcome you, Mr. Solow, and
14 also, we welcome Mr. Ross B. Capon,
15 representing the National Association of
16 Railroad Passengers, and we look forward to
17 both your testimony, and we'll start with Mr.
18 Solow.

19 MR. SOLOW: Thank you, Mr.
20 Chairman. I appreciate the opportunity to
21 speak to you today. I am Chief Executive
22 Officer of the Southern California Regional

1 Rail Authority, which you obviously know now,
2 because I responded from the cheap seats,
3 which provides commuter rail service in the
4 Los Angeles area. I also serve as the Vice
5 Chair for commuter inner-city rail, and that's
6 the capacity I'm in here today, and I act as
7 Executive Committee, which is the
8 Association's Policy Board.

9 Previously, you've heard from my
10 Board Chairman, Keith Millhouse, who spoke on
11 behalf of Metrolink. I might also add, Mr.
12 Chairman, that I used to be the director of
13 project development and train scheduling for
14 New Jersey Transit, which ran service into New
15 York and if there were any on time performance
16 problems, they came on my desk also. So, I
17 have both east coast and west coast
18 experience.

19 I appear before you today of
20 behalf of APTA and International Public
21 Transit Trade Agency, with over 1,500 public
22 and private sector members, who serve 90

1 percent of the American transit riding public.

2 The past three years, there have
3 been remarkable gains for public
4 transportation in the United States. Rider-
5 ship continued to increase, a pattern that has
6 been characteristic for the past several
7 years. Rider-ship on commuter rail was up 5.5
8 percent in 2007 over the previous year and
9 continues to grow, despite the economy.

10 In FY2006, APTA's commuter rail
11 members provided 441 million passenger trips
12 over some 350 million vehicle miles.

13 In terms of track on the ground,
14 FY2006 saw over 8,000 track miles in
15 operation, with some 125 additional route
16 miles under construction and almost 2,000
17 route miles in design in the planning
18 pipeline. Most of these are on freight and
19 former freight corridors.

20 All of the nation's commuter rail
21 operators are members of APTA and as our
22 constituents, they are the most likely to be

1 affected as the Passenger Rail Investment and
2 Improvement Act of 2008 is implemented.

3 Our first set of concerns relates
4 to the potential effects of the Act on
5 existing access agreements and are second to
6 the Board's implementation of its powers to
7 mediate disputes over access between host
8 freight railroads and commuter rail agencies.

9 As you know, the majority of
10 corridors in use by commuter rail providers is
11 owned by freight railroads. For instance, my
12 agency, Metrolink, as Mr. Millhouse stated,
13 shares track with the BNUS and Union Pacific.
14 Metro-North and the New Jersey Transit in the
15 New York Metro region share the northeast
16 corridor with CSX and Amtrak and metro in the
17 greater Chicago area shares lines with BNUS,
18 Union Pacific and Canadian National railroads.

19 The continuing necessity to
20 accommodate all these demands on a limited
21 network and to ensure access for commuter rail
22 providers who have neither the positional

1 advantage of the freight railroads or have
2 such great priority enjoyed by Amtrak, will
3 demand the Board vigorously take up this
4 expanded role.

5 To be sure many of the actions
6 mandated in Act, specifically, the increased
7 role of the Board, will potentially benefit
8 commuter rail providers.

9 However, in protecting Amtrak's
10 priority over freight traffic, as set in
11 Section 213 of the Act, APTA urges the Board
12 not to disturb existing access agreements
13 related to commuter rail operations or
14 otherwise impede commuter rail access to
15 facilities.

16 Commuter railroads provide vital
17 passenger service and have built their systems
18 based on carefully negotiated access agreement
19 with the freight railroads.

20 If the implementation of the Act
21 as the effect of rendering these existing
22 agreements invalid, the resulting impact on

1 commuter railroads and their paths will be
2 devastating.

3 APTA is very pleased to see that
4 many of the recommendations we offered during
5 the debate on the Bill are reflected in the
6 enacted legislation. Section 401 of the Act
7 directs the Board to mediate disputes in a
8 non-binding basis, between host freight
9 railroads and commuter rail providers, seeking
10 access to freight lines.

11 If one of the negotiating parties
12 requests the Board to do so, the process will
13 be helpful in ensuring that the public
14 benefits of providing commuter rail service to
15 communities and the citizens are recognized.

16 These provisions also provide a
17 forum to review the terms and cost, which
18 public commuter rail systems must pay to
19 operate service on private railroads, a matter
20 in which the Board's nationwide perspective
21 will be valuable.

22 A number of our member agencies

1 across the country are spanning their systems,
2 including such markets are Greater Los
3 Angeles, Denver, Salt Lake City and Tampa.
4 These efforts entail a great deal of
5 negotiation with the freight railroads for
6 access to corridors.

7 As one academic study has
8 commented, there is no single best shared use
9 agreement. It should counter-commonly
10 include, for example, the purchase or lease of
11 right-of-way, exchanges of property,
12 relocation of existing facilities, acquisition
13 of easements and need to maintain service to
14 the freight's existing customers, as any plan
15 in construction and service start up go
16 forward.

17 There is no question that the
18 nation's rail network is severely congested,
19 particularly in the urban areas where commuter
20 railroads are most needed, and the freight
21 railroads enjoy the opening advantage in
22 negotiations for access.

1 For these reasons and promulgating
2 mediation practices, we believe the Board
3 should prescribe mandatory good faith
4 participation access negotiations, with
5 potential penalties for the failure to do so.
6 This is vital to ensuring the mediation system
7 is viable and valuable, rather than an
8 opportunity to delay in resolving disputes.

9 While the demand for commuter rail
10 and all forms of public transportation are
11 growing, public transit providers are -- now
12 face a difficult fiscal environment that is
13 without precedent. We must conserve our
14 limited resources and put them in the most
15 efficient use we can muster.

16 If, because unforeseen effects of
17 this legislation, our members are forced to
18 re-negotiate agreements, in which they have
19 relied for years, it will take resources away
20 from serving the millions of riders who depend
21 on public transportation.

22 Furthermore, as commuter rail

1 providers pursue the expansion and enhancement
2 of their systems, the Board's assistance in
3 bringing the freight rails to the table, to
4 engage in meaningful negotiation may make the
5 difference on whether or not a project which
6 benefits the public, goes forward.

7 Effort not spent in spinning-
8 wheels negotiation can be expended getting
9 real wheels in the motion on the rails.

10 I appreciate the opportunity to
11 address the Board this morning and I, of
12 course, would be willing to answer any other
13 questions about Metrolink and I hope that the
14 views of the commuter rail industry will be
15 useful, as the Board makes the vital policy
16 decisions required to implement the Passenger
17 Rail Investment and Improvement Act of 2008.
18 Thank you very much.

19 CHAIRMAN NOTTINGHAM: Thank you,
20 Mr. Solow. Mr. Capon?

21 MR. CAPON: Mr. Chairman. Thank
22 you very much. I'm President of the National

1 Association of Railroad Passengers. I've
2 watched Amtrak closely since its existence.
3 I was hired by the Massachusetts Executive
4 Office of Transportation and Construction four
5 months after Amtrak began operating in `71.
6 I have worked for the Association since `75.

7 Our association takes some credit
8 or blame for the new authority you've been
9 given, because my 2006 letter to then Chairman
10 Buttrey, apparently started the conversation
11 that led Capitol Hill to take a very intense
12 interest in on time performance and the
13 inadequacy of previous law to deal with it.

14 It then showed up, as you know, in
15 various appropriation Bills. That is the
16 concern about on time performance.

17 I note with some pride, the
18 similarity between the reference in my 2006
19 letter to delays caused by "actions that might
20 have been reasonably avoided" and laws'
21 reference to causes that could reasonably be
22 addressed, that is by the private railroads.

1 To take the extreme example at
2 page 15 of Mr. Hamberger's testimony, we
3 certainly agree with delaying Amtrak one
4 minute, rather than delaying a freight train
5 an hour. But by the same token, we would
6 oppose delaying Amtrak an hour, to avoid a
7 five minute delay to a freight train.

8 With reference to the inadequacy
9 of the previous law, the one case that I know
10 was U.S.A. versus Southern Pacific, that
11 involved the Sunset Limited. I would be happy
12 to submit for the record, our report on that
13 hearing that we ran at the time, with Copia's
14 interesting quotations from the testimony
15 before the Judge.

16 The Judge never rendered a
17 decision. The Department of Justice did agree
18 with Amtrak's definition of what constituted
19 on time performance, but one thing -- two
20 things, I think, to remember about the problem
21 with the previous law is, one is that for much
22 of its existence, the Administration has

1 opposed Amtrak or tried to cut it out of
2 funding, and so, there was little reason to
3 believe that the Department of Justice of this
4 Administration -- of a given Administration,
5 would be at all supportive, and the second is
6 the simply fact of the mechanics of how it
7 works, is laying out in detail, doing all the
8 staff work that Mr. Crosbie referred to,
9 without any assurance of productive use of,
10 but also, of laying out, in effect, before you
11 opponent, before a case is ever taken up, the
12 details of your case.

13 I would comment on slow orders and
14 underline Mr. Crosbie's reference to slow
15 orders that stay in place for years. On this
16 Coast Starlight route and the California
17 Zephyr route, that was the case. It may be
18 apocryphal, but there's a story that the --
19 going around, that the top management at Union
20 Pacific wasn't even aware of how bad the
21 California Zephyr route was until one of their
22 executives was in an office car on the rear of

1 the California Zephyr and ultimately, there
2 was an agreement between Amtrak and Union
3 Pacific that covered a couple of years that it
4 would take, to get the railroad back into
5 shape, which had been allowed to slide down
6 hill for over many years.

7 So, on the one hand, we certainly
8 do not favor running trains at unsafe speeds,
9 but on the other hand, a slow order, depending
10 on how long it's been in place, is not
11 necessarily something to be regarded as simply
12 not the railroad's fault or not because the
13 FRA just ran a track inspection car over it a
14 few hours or days before.

15 There is one important reference
16 that Mr. Hamberger made on page 12 of his
17 statement, which is to the tendency of law
18 enforcement officials to require trains
19 involved in accidents to wait until
20 investigations are completed, and I think
21 there are probably many examples that the
22 railroads can cite, where the rule of common

1 sense is simply not observed and the train is
2 -- delay of the -- the railroad is shut down
3 for longer than is reasonable.

4 I don't mean to make light of
5 accidents where lives are lost, but on the
6 other hand, in many cases, you're dealing with
7 law enforcement officials who are local, who
8 may be approaching the railroad as, this is
9 their first experience with the railroad.

10 There's another story that may be
11 apocryphal, I don't know, that Amtrak's
12 capital limited hit a trespasser or possibly
13 a suicide at Randolph Road in Montgomery
14 County, heavily used grade crossing, and the
15 engineer was in handcuffs until the right
16 authorities arrived.

17 I believe that the Canadian
18 railroads have been able to work some more
19 uniform nationwide standards on this, but it
20 certainly is a cause of delay that is not the
21 fault of either the host carriers or Amtrak,
22 that is worth looking at.

1 I wanted to comment on load
2 factor, which has been brought up a couple of
3 times. On Amtrak, as a general rule, load
4 factor is higher on the long distance trains
5 than it is on the short distance trains and
6 it's generally lower on Amtrak than it is on
7 airlines, largely because of the number of
8 intermediate stops, the exact load factor is
9 going to vary among a zillion different
10 intermediate stops, that the train, unlike the
11 plane, makes.

12 In many cases, they do get close
13 to 100 percent load factor on what they refer
14 to as their peak load segment. Unfortunately,
15 the demand is not distributed evenly, the
16 length of the route.

17 We completely agree that
18 consistent 15 minutes late is a much bigger
19 deal on a short trip, especially a commuter
20 trip, than on a long trip, but I would
21 discourage looking at anything more than 30
22 minutes late as a definition of on time for

1 the long distance trains. As Mr. Crosbie
2 implied, there are a lot of newer passengers
3 on those trains that are less forgiving than
4 the hardcore, some of whom might regard every
5 extra hour on the train as a delight.

6 Stationed well delays are not a
7 big issue, as reflected in Mr. Crosbie's slide
8 that's on page eight of his testimony. I
9 believe about 80 percent of the delays are
10 caused by the carrier. The schedules are
11 negotiated on a regular basis between Amtrak
12 and the freight railroads, negotiated and in
13 the situations where stationed well delay is
14 a consistent major problem, those regular
15 negotiations afford an opportunity to address
16 them.

17 We don't think that Congress
18 intended longer schedules to be the solution
19 for on time performance in drafting this law
20 and we do think that the railroads rights are
21 well protected, as to what must happen before
22 a new service is added and I believe the surf-

1 board already has the potential to deal with
2 issues of disagreement on that score.

3 We think that there are many
4 benefits to the freight railroads -- the
5 private railroads that occur, as the result of
6 the existence of passenger trains. One of
7 them is the fact that there are many grade
8 crossing improvement programs in many states,
9 North Carolina, perhaps being the most well
10 known, programs that were put in place by the
11 state legislators, as a result, primarily of
12 their interest in passenger service, but every
13 accident avoided because of those improvements
14 that involves freight trains is certainly a
15 benefit to both the private railroads and
16 everyone else.

17 Amtrak has also been helpful in
18 certain cases, in providing engineering
19 expertise that identifies the ability of
20 trains to run faster on existing -- safely on
21 existing track and is a kind of bell-weather
22 on municipal speed limits, that at different

1 times in the railroads history, have posed a
2 serious problem.

3 I'm assuming that you've read all
4 my statement as it said, and so, I'll just
5 leave it there. Thank you very much for your
6 time.

7 CHAIRMAN NOTTINGHAM: Thank you,
8 Mr. Capon. Mr. Solow, your testimony mentions
9 some concerns about the -- potential concerns
10 about the mediation process that could play
11 out between a freight railroad and a commuter
12 rail operator.

13 The statute references, I believe,
14 a non-binding mediation process, which we all
15 know, those words have real meaning, as
16 opposed to binding.

17 Your testimony expresses concern
18 that the railroads might ignore that process
19 or not in good faith, engage in it, and we'll
20 certainly be on the look out for that problem.

21 Our experience as a Board may be
22 in part because we do have so many

1 transactions where we deal with the railroads
2 and the railroads need us to deal with them
3 cooperatively on so many transactions.

4 We've not had a problem, in my
5 experience, getting railroads to come and meet
6 us at the mediation table. We don't always
7 get the results that everybody wants at the
8 end of it, but I can pretty much assure you,
9 we will get them to the table.

10 Now, the statute though, as I read
11 it, doesn't guarantee success for commuter
12 railroads.

13 MR. SOLOW: Right.

14 CHAIRMAN NOTTINGHAM: And so, I
15 just want to make sure we manage expectations
16 there.

17 MR. SOLOW: Right.

18 CHAIRMAN NOTTINGHAM: We hopefully,
19 have success.

20 MR. SOLOW: We clearly understand
21 the limitations on the process.

22 CHAIRMAN NOTTINGHAM: Okay. We've

1 heard some different things today about best
2 practices or expectations in the area of on
3 time performance. Could you offer anything in
4 your experience, both on the east coast and
5 the west coast and nationally now, on behalf
6 of APTA, about what we -- what types of time
7 periods we should be looking at, to define a
8 late train?

9 We've heard everything ranging
10 today from five minutes and 59 seconds, I
11 think, to 30 minutes.

12 MR. SOLOW: Right.

13 CHAIRMAN NOTTINGHAM: Do you have
14 anything to offer on that?

15 MR. SOLOW: Well, I mean, I would
16 only add that it's -- it probably is further
17 complicated, and you've heard about
18 complications all day, so, I'll just add that
19 when we have both commuter trains and Amtrak
20 trains in the same corridor, a lot of our
21 issues are, you know, who are the on time
22 performance metrics in those shared corridors,

1 between a commuter train and Amtrak train?

2 We basically, in the Southern
3 California area, because we own so much of the
4 property that Amtrak operates, we have 24
5 Amtrak trains a day, we basically take the
6 position that it's on a -- in the peak
7 direction, a first-come-first-serve process,
8 so, that there's no particular priority given
9 to Amtrak, or in my case, Metrolink.

10 We get trains as they arrive and
11 we move them as quickly as we can,
12 irrespective of who the operator is.

13 We use five minutes and 59
14 seconds. That's pretty common in the commuter
15 rail area, but a lot of the Amtrak trains on
16 these common corridors, they have longer
17 corridors than the commuter corridors are, so,
18 the interferences they may go through off of
19 a host freight railroad and when they arrive on
20 the commuter railroad property, may be
21 impacted by a number of things, which in my
22 instance, my dispatcher has no control over.

1 It's whenever it arrives at that point that it
2 goes on our property.

3 So, I think probably a corridor
4 train, an Amtrak corridor train, for example,
5 would have a longer on time performance
6 balancing act, maybe in the 10 minute range,
7 versus what I impose on my own trains, which
8 is five minutes and 59 seconds.

9 So, I think it depends on the
10 length of train, how many dispatch territories
11 you're going through, because with our hand-
12 offs -- and we've been able to do a pretty
13 good job in Southern California. A lot of
14 that is because when we started the service in
15 the early 90's, we made a pretty hefty
16 investment in capacity.

17 What occurred, it occurred about
18 five years before the growth of the Asian
19 markets, and so, we sort of crept up, with
20 very heavy freight traffic the last two or
21 three years. We've had a struggle, although
22 I can say that the freight railroads have been

1 very cooperative in attempting to keep our
2 trains on time.

3 We have a relationship with the
4 freight railroads, where they have an interest
5 in informing our passengers and ensuring that
6 when they have work windows or those type of
7 things, that they -- that's critical to their
8 operation, we have to compensate for that
9 factor, just like Amtrak would have to
10 compensate.

11 We have often times where we will
12 eliminate service during the middle of the
13 day, so freight railroads can get their major
14 freight -- major maintenance work done.

15 So, what we have found is we have
16 to be very receptive and have to be very long
17 range planning, in terms of work windows and
18 those types of things. They have a service to
19 provide. They have a maintenance to provide
20 and we have to accommodate to that, but we
21 still have to ensure that the bread and butter
22 of our operation, which is the peak direction,

1 peak period service, is kept on time and in
2 Southern California, we've been able to do
3 that.

4 I can't say that's true in all
5 parts of the country with our other commuter
6 railroad properties, that often have problems,
7 that -- the same problems that Amtrak is
8 experiencing, but they don't have the
9 legislative back up that Amtrak has in the
10 original legislation.

11 So, it is as problematic and
12 probably more for many of our commuter
13 railroad properties, in their relationship
14 with the freight railroads. Our's is a little
15 different because we do also maintain and
16 dispatch a lot of their trains out of the Port
17 Valley in Long Beach.

18 CHAIRMAN NOTTINGHAM: That's a
19 natural lead-in to my next question, which, if
20 I understand your testimony correctly, one of
21 APTA's concerns is that as we look into and
22 investigate a problem, Amtrak corridor or

1 route that has some serious on time
2 performance problems, we may hear from the
3 freight railroad in question, about the
4 challenging environment that they're operating
5 in, that they may well be operating and owning
6 a line that accommodates Amtrak trains,
7 commuter rail trains and freight trains, and
8 something is going to have to give,
9 potentially.

10 But yet, there are agreements that
11 are in place between commuter rail operators,
12 but then there's this Federal statutory
13 requirement and the possibility of fines being
14 levied on the railroad, for not addressing the
15 Amtrak late train problems, and I understand
16 the desire of APTA not to see any of those
17 agreements adjusted or impacted.

18 But help me understand how we'll -
19 - our -- as I look at the statute
20 preliminarily, and the hearing is helpful to
21 get more of a fuller appreciation of it, we're
22 going to be looking to the freight railroads,

1 potentially, to fix the problem and we're
2 going to be talking with them about possible
3 fines.

4 We may leave it up to them, to
5 figure out how they're going to fix that
6 problem, but it needs to be fixed, and they
7 may well have come back to -- I mean, I
8 anticipate, it may well need to come back to
9 some commuter rail entities and say, "Wow,
10 this is a little changed circumstance here.
11 We're getting hit with fines. We have a new
12 Federal mandate and we can't make it all work
13 with the schedules that we've previously
14 agreed to.

15 How do you see that playing out or
16 what are your concerns?

17 MR. SOLOW: Well, I would look at
18 it from two different areas, train scheduling
19 as an art. It depends on -- the circumstances
20 on the ground. Many of our commuter railroad
21 properties paid substantial capital investment
22 dollars, to have 'X' number of trains today,

1 based on on time performance regime that the
2 freight railroad had agreed upon.

3 Now, if the change of
4 circumstances is because of the commuter
5 railroad increasing the number of trains,
6 that's one set of issues and I think all my
7 members would probably agree that if we want
8 to increase the number of trains on a route,
9 then we have to compensate the freight
10 railroads from a capital investment
11 standpoint, in terms of being able to handle
12 that capacity.

13 The converse of that is that if we
14 bought and paid for capacity and the freight
15 railroads' traffic is increasing, that
16 increase of traffic, if we had paid to buy 'X'
17 number of trains a day invested, that
18 increase, that capital investment needed to
19 keep the commuter rail trains on time, we
20 believe, would be beyond the dime of the
21 freight railroads because it was their traffic
22 they increased, you know, on the line they

1 own, but it's their traffic they increased.

2 So, I think our members are really
3 agreeable on paying for up front and paying
4 for investments for the train service, where
5 contractually -- that they contractually
6 obligate to run, but we think they should pay
7 for any growth related to their increase in
8 traffic and the ability to keep our trains on
9 time.

10 CHAIRMAN NOTTINGHAM: Thank you.

11 Mr. Capon, thank you for being here and thank
12 you for your many years of tireless advocacy
13 on behalf of passenger rail riders, rail
14 passengers.

15 As a frequent rail passenger
16 myself, I appreciate your good works.

17 MR. CAPON: Thank you.

18 CHAIRMAN NOTTINGHAM: Let me ask
19 you, what do you think it will take, when we
20 get down to the nitty gritty of having to
21 figure out what our menu of fines should be,
22 what do you think it will take to get a

1 railroad's attention and get a railroad to
2 actually change conduct, if we do find that
3 there's a freight rail out there that's
4 causing a serious pattern of delays of
5 passenger rail of Amtrak?

6 MR. CAPON: Well, first of all, I'd
7 like to think that the very existence of this
8 law has already had a salutary effect on the
9 operations and that the railroads first goal
10 is to not get into one of these proceedings.

11 I frankly have been blissfully
12 ignorant of the fining regime that the ICC and
13 the surf-board have engaged in, with regard to
14 freight operations. So, I would like to have
15 an opportunity to think about that and get
16 back to you. I really -- it would be
17 irresponsible for me to pull a dollar figure
18 out of the air.

19 CHAIRMAN NOTTINGHAM: Thanks, I'm
20 just anticipating that no matter what we do,
21 we'll come under some criticism and that comes
22 with the job, but we can handle it. But some

1 will argue that whatever fine we come up with
2 is not enough and some will argue it's too
3 much, and if it's not changing -- if it's not
4 resulting in behavior change, maybe it needs
5 to be increased.

6 MR. CAPON: If the drone is equal
7 in both years, maybe you're doing the right
8 thing, and of course, the proof is in the
9 pudding, as far what the result is.

10 CHAIRMAN NOTTINGHAM: Thank you.
11 Let me yield to my colleague, Vice Chairman
12 Mulvey.

13 VICE CHAIRMAN MULVEY: Thank you,
14 Mr. Chair. The observation that you made, Mr.
15 Solow, about the increased freight traffic on
16 a right-of-way, isn't it true that if there's
17 increased use of any kind of asset, then the
18 value of that asset goes up and if the value
19 of the asset goes up, isn't it fair to expect
20 all users of the asset to increase their
21 contribution?

22 MR. SOLOW: I would say that we --

1 and I can only talk about my particular
2 experience. We share costs with freight
3 railroads on an allocated cost basis, not
4 unavoidable basis, as Amtrak does.

5 So, the whole economy -- the
6 economic relationship is different, than on
7 Amtrak and our particular avoidable costs per
8 train mile goes up by the AR index. So, it
9 increases every year and I think most of us,
10 most of our commuter railroad properties are
11 in basically the same type of environment.

12 We don't deal in an incremental
13 basis, so, we are, in essence, paying over
14 time, at least for the increased capital
15 maintenance, for increased expenses, related
16 to our commuter rail operations on freight
17 railroad property.

18 So, I would say that possibly,
19 that's true, but then how do we account for
20 the fact that we, in essence, bought and paid
21 for the asset, that the freight carrier is
22 using, to a large extent, 18 hours a day?

1 So, there are -- I'm sure there
2 are circumstances on both sides that would
3 have to be taken into effect.

4 VICE CHAIRMAN MULVEY: I suppose
5 what would be good for the goose is good for
6 the gander. In many, many cases, it is the
7 commuter rail operator that is the primary
8 user of the right-of-way and it's also the
9 commuter rail systems that have achieved the
10 greatest growth.

11 While there's been growth in
12 freight rail traffic in the past few years, it
13 is nothing compared to the almost
14 extraordinary growth that commuter rails have
15 achieved. Would, in fact, then if there's any
16 increase in capacity needed to accommodate the
17 commuter rail, would the commuter rails bear
18 all of that burden or would they ask the
19 freight rails to contribute more?

20 MR. SOLOW: You mean on a property
21 that's owned by a freight railroad?

22 VICE CHAIRMAN MULVEY: No, that's

1 owned by the commuter rail.

2 MR. SOLOW: I would love to ask my
3 freight partners to pay for some of the
4 capacity increases in our lines. They haven't
5 bellied up to the bar yet, but I'm sure, with
6 your assistance, we can make sure that that
7 occurs.

8 I think it's important that the
9 user pay for the advantage that they get to
10 use the railroad right-of-way. I'm not an
11 advocate of paying the least cost, because
12 then you get what you pay for, typically.

13 So, whether the agreements we have
14 with the freight railroads right now are fair
15 or they were fair in 1990, but they're not
16 fair now, those might obviously be issues that
17 we can discuss with them, but I think public
18 agencies in general, when they are asking the
19 freight railroads to provide more service,
20 should be paying for their fair share of that
21 increased service, keeping in mind that the
22 freight railroad operator who doesn't have a

1 peak period driven schedule, can use the
2 capacity at other times of the day.

3 So, I mean, I think there's a
4 balancing act. I don't think any of us are
5 afraid that we have to pay for the capacity we
6 use.

7 VICE CHAIRMAN MULVEY: Well, we're
8 talking here about capacity. Capacity is an
9 important factor in determining the
10 availability of time slots to handle both
11 commuter and freight and Amtrak trains.

12 Has APTA taken a position on any
13 of the FRA's proposals for investing tax
14 credits or other support for investment in the
15 rail infrastructure?

16 MR. SOLOW: I believe APTA has
17 taken a support position for tax credit
18 bonding for high speed rail. I believe, and
19 I'll --

20 VICE CHAIRMAN MULVEY: No, no, for
21 freight rail?

22 MR. SOLOW: Okay, I think they

1 have, right? Yes, Kathy Waters of Merck &
2 Public Transit Association, I believe we have
3 been supportive of both, both on the freight
4 side and on the high speed rail side.

5 VICE CHAIRMAN MULVEY: Okay. Do
6 you have a view -- I'm sure you do, but
7 whether or not a project such as the Alameda
8 Corridor in Los Angeles, where you operate,
9 and the CREATE project in Chicago, are these
10 beneficial, not only for freight rail, but
11 also, have they been beneficial for commuter
12 rail and Amtrak as well, and are these kinds
13 of projects basically public/private
14 partnerships? Are these part of the answer to
15 the question of capacity for commuter and
16 Amtrak and freight rail?

17 MR. SOLOW: I think they definitely
18 are on a going forward basis. One of the
19 problems with public financing of commuter
20 rail improvements is, the dollars don't come
21 as quickly as you'd like. They don't come
22 basically, with the color of money you'd like

1 all the time, and I think to the extent that
2 we can work with our freight partners to
3 increase capacity in general --

4 Just, you take the LA basin, where
5 as Chairman Millhouse said, 40 percent of the
6 containers that come to the United States
7 comes through the Port of LA and Long Beach.

8 I think we would be remiss if we
9 didn't attempt to find some crate-type project
10 environment, like the Alameda Corridor that
11 occurred in LA, find a way to leverage public
12 investment and private railroad investment.

13 There's a lot of things that
14 private railroads are willing to invest in,
15 just from a historic basis. There is -- there
16 are things that public agencies typically
17 invest in.

18 So, if you put the two of those
19 together, I think to the extent that we could
20 work with the freight railroads on a cash flow
21 basis, because we always don't get money when
22 we like to get them, or we pass bonds in

1 California, but can't float the bonds, to the
2 extent that we could work with them to take a
3 corridor approach, as opposed to a commuter
4 rail versus freight approach, the fact is, we
5 want to move the goods.

6 It is in my best interest, as a
7 public employee, to move goods out of the
8 Port's of LA and Long Beach as quickly and
9 efficiently as possible, irrespective of what
10 carrier it is and irrespective of what line it
11 is on.

12 I, for one, have always taken the
13 approach that we have to get both the freight
14 railroads together, which they don't always
15 talk on the same wave length, that come out of
16 the port, and the public agencies together,
17 and come up with an approach for the basin,
18 irrespective of who owns the lines.

19 And so, I do think a
20 public/private partnership, in some way, is
21 ripe for the LA basin.

22 VICE CHAIRMAN MULVEY: A protocol

1 question, in the situation where an Amtrak
2 train and a commuter train both arrive at the
3 same time, at the same place, what is the
4 protocol for who gets priority?

5 Let's assume, for example, that
6 the Amtrak train is running late, for some
7 reason or another, regardless of who caused
8 the delay, but that train happens to arrive at
9 the same time as a commuter train. Is there
10 a protocol that's in place as to who gets
11 preference at that point?

12 MR. SOLOW: I can only use the
13 example of my operation. My operation is a
14 peak -- in the peak period direction, the --
15 on a first-come-first-basis.

16 So, if an Amtrak train, in the
17 peak direction, is coming there first, that
18 gets priority over a commuter train, and so,
19 the idea is that particularly in the shorter
20 corridors, where Amtrak operates, they have as
21 many commuters on their train as they do
22 longer distance Amtrak inner-city passengers,

1 and the whole intent is to move the flow,
2 irrespective of who the operator is, as
3 quickly as possible.

4 VICE CHAIRMAN MULVEY: That would
5 be especially true in Los Angeles --

6 MR. SOLOW: Right.

7 VICE CHAIRMAN MULVEY: -- where
8 you have the San Diegan and --

9 MR. SOLOW: Right.

10 VICE CHAIRMAN MULVEY: -- all the
11 Amtrak trains, as opposed to say, Chicago,
12 where there are more long distance trains.

13 MR. SOLOW: Right.

14 VICE CHAIRMAN MULVEY: Ross,
15 doesn't Amtrak operate primarily over the
16 Class I main lines?

17 MR. CAPON: Outside the northeast
18 corridor one-third fo Chicago, Detroit and
19 their own terminals in Chicago or LA.

20 VICE CHAIRMAN MULVEY: You
21 mentioned the slow orders and slow orders
22 sometimes go on for a long time. We have some

1 problems with some of the embargos that are
2 out there.

3 We're seeing embargos that have
4 been put in place for several years. Now,
5 there are special circumstances for those, but
6 that's not the purpose of an embargo.

7 The slow order is generally put in
8 place because of either a weather related
9 problem or a track related problem that needs
10 to be solved. But since these are the freight
11 railroads main lines, isn't in their own
12 interest for their freight operations to get
13 slow orders taken care of as soon as possible,
14 or do you feel that Amtrak sometimes is
15 suffering longer than it needs to, because of
16 slow orders?

17 MR. CAPON: Well, I think it is in
18 -- it is in the interest of the railroads to
19 keep their main lines in good shape and I
20 can't explain -- I mean, I guess if the Union
21 Pacific looks at its entire system, the line
22 from Sacramento to Portland, where a lot of

1 the problems that exist is not the top tier,
2 in terms of volume, but the line -- the old
3 southern Pacific route east from Sacramento
4 towards Salt Lake City and Denver, which is
5 where the California Zephyr problem got
6 terrible, I mean, that's a main line.

7 And so, I don't know how to
8 explain it, other than to say that it became
9 the subject of an agreement and presumably,
10 has been or is almost fixed by now and
11 hopefully, that kind of condition will not be
12 allowed to develop in the future.

13 VICE CHAIRMAN MULVEY: Up until
14 recently, the freight railroads-- as a group,
15 have had a fairly aggressive program in place,
16 to upgrade and maintain and expand the
17 capacity especially of their main lines,
18 albeit the recent decline in traffic seems to
19 have caused some of them to back off from
20 those expansion plans.

21 But do you think things have
22 gotten better as the freight railroads have

1 increased their infrastructure investment
2 spending in the last few years?

3 MR. CAPON: Well, certainly, if you
4 go back to 1980, it's world's better and I
5 think it's gotten better. Of course, some of
6 the track improvement may have been masked
7 from the passenger's point of view, by the
8 congestion.

9 I did want to mention that our
10 association and APTA are both members of the
11 one rail coalition, which was recently formed
12 and is referred to on page four of footnote
13 three of Mr. Hamberger's testimony, where we
14 and the freight interests are all supporting
15 everything good for both passenger and
16 freight, including the tax credit that you
17 referred to.

18 VICE CHAIRMAN MULVEY: One last
19 question, and that is, the legislation, I
20 believe, was to deal with the problem of
21 freight trains delaying passenger trains and
22 the freight operators not living up to their

1 responsibilities under the law, to give Amtrak
2 trains priority.

3 But, because both the freight
4 railroads, as well as Amtrak and states, can
5 come before us, do you think that freight
6 railroads also should be able to come before
7 the Board and ask for relief, if an Amtrak
8 train is delaying freight trains and should
9 there be in place, penalties against Amtrak,
10 if indeed, they're delaying freight trains,
11 that are 120 cars long with high value goods
12 coming out of the Ports of LA and Long Beach?

13 Do you think that can be the case
14 or should we really be focusing on the need to
15 make people in time, rather than freight on
16 time?

17 MR. CAPON: Well, I think that the
18 freight operators -- I think the word common
19 sense, which we hear on Capitol Hill all the
20 time, as frustrated legislators look at the
21 financial mess. I'd like to think that common
22 sense would prevail here, and as I referred to

1 in my spoken testimony, if you have a
2 situation that's developed, where skiers at
3 Glenwood Springs are on a daily basis, adding
4 five minutes to the dwell time, Amtrak and the
5 freight railroad are negotiating on a regular
6 basis with schedules, and I would think that
7 that sort of thing would not rise to anybody's
8 need to come here. If it does, then maybe
9 they need a brain transplant.

10 As far as whether -- and the other
11 issue is Amtrak -- reliability of Amtrak's
12 equipment, if that becomes a really big deal,
13 that -- a major problem, in terms of the
14 operation of the freight railroads, as opposed
15 to one or two anecdotes or whatever, I believe
16 that the law does give the railroads the right
17 -- the private railroads the right to come
18 here -- was -- there was a period during the
19 gestation of this law, when one of the Hill
20 staff told me that the railroads need to focus
21 on the equal opportunity aspect of the new
22 law.

1 The direct question about whether
2 it should be possible to levy fines against
3 Amtrak for habitual problems, with respect to
4 their equipment or their refusal to negotiate
5 schedules that reflect passenger dwell times,
6 I have to think about that. It's a new
7 concept, I guess, that tells you where I've
8 been sitting.

9 It's not an unreasonable question.
10 I just don't want to -- as with the Chairman's
11 question, pull an answer out of thin air.

12 VICE CHAIRMAN MULVEY: Thank you
13 very much. I'm glad to hear that you are a
14 believer in common sense and having been in
15 Washington as long as you and I have, that we
16 still believe common sense can prevail--is
17 very optimistic. Thank you.

18 CHAIRMAN NOTTINGHAM: Commissioner
19 Buttrey?

20 COMMISSIONER BUTTREY: Thank you,
21 Mr. Chairman. Mr. Capon, you cause me to
22 completely lose my train of thought there,

1 when you mentioned Glenwood Springs. I
2 started thinking about things that I probably
3 shouldn't be thinking about, skiing and that
4 sort of thing.

5 Just a comment, I've heard two
6 terms sort of being tossed about here this
7 morning and one of them has to do with fines,
8 which to me, means something that's punitive,
9 and then I've heard the term damages, which to
10 me, means something like compensation.

11 I'm advised that the word fines
12 does not appear anywhere in the legislation.
13 The term damages, however, does, and the terms
14 damages sort of indicates to me, maybe I'm
15 being too legalistic here, but damages in the
16 ordinary classical sense, would be something
17 that would have to be proved. Evidence would
18 have to be adduced, etcetera, etcetera. There
19 has to be documentary evidence and that sort
20 to thing presented, to be able to prove
21 damages.

22 And you know, you could be very

1 unhappy about something and very disturbed
2 about something and maybe even offended by
3 something, that's one thing. But being able
4 to prove that you've been damaged is something
5 else again, other than just being offended or
6 you're angry or something like that.

7 So, I think maybe one of the
8 things we need to do is to get our terminology
9 aligned, if you will, with the legislation,
10 and for my money, anyway, not talk about
11 fines, punitive kinds of things, but talk
12 about damages and compensation kinds of
13 things. That's just one man's opinion.

14 But I just raise that as an issue,
15 in terms of how we cast our dialog here and
16 then maybe even in the future.

17 So, I just wanted to see if I can
18 get some clarification on that and is that
19 something -- is that idea or that comment
20 something that you would agree or are you
21 really thinking about fines?

22 MR. CAPON: Well, I'm, first of

1 all, thinking about Congressional intent and
2 results and I'm always a supporter of
3 Chairwoman Brown's comments, "It always helps
4 to read the law, as well."

5 I think that the reason damages
6 come to mind is that may be implicit in that
7 DOT Inspector General's report, that tried to
8 set out, what was it, \$100 million or so, that
9 they thought Amtrak was losing, because of the
10 lateness in trains, so, to the extent that the
11 law refers to damages, as opposed to fines,
12 that's a cause to be careful in the use of
13 words, but not to lose sight of the concern
14 that led to this law and the idea that it
15 should be implemented in a way that is
16 consistent with the law and aims at getting
17 the right results.

18 I think part of that, as I alluded
19 to earlier, is I know that the private
20 railroads have a strong interest in not having
21 to come here and deal with a complaint and it
22 looks like they are reflecting that in their

1 operations.

2 COMMISSIONER BUTTREY: This may be
3 a little bit off point, but I'm just -- my
4 curiosity has peaked a little bit, and I don't
5 keep up with the political agendas of either
6 the American Public Transportation Association
7 or the National Association of Railroad
8 Passengers. If you can please excuse me for
9 that admission, but I just don't.

10 I'm just curious of either one of
11 your two groups are aligned with any of the
12 groups that are supporting what is generally
13 and maybe inaccurately called re-regulation or
14 that sort of thing on Capitol Hill and just,
15 my curious has peaked, about if you have a
16 public position or you've taken a public
17 position or aligned yourself with those who
18 are involved in the removal of the anti-trust
19 exemption for the railroads?

20 MR. SOLOW: I can tell you almost
21 certainly, the American Public Transit
22 Association has taken no position on that.

1 COMMISSIONER BUTTREY: Okay.

2 MR. CAPON: We have not taken a
3 position either. I have said on occasion, to
4 those who have asked, that I do not equate
5 every attempt to change the law with re-
6 gulation, but we certainly would not be in
7 favor of anything that demonstratively harmed
8 the ability of the private railroads to field
9 a good track system.

10 COMMISSIONER BUTTREY: Thank you
11 very much.

12 CHAIRMAN NOTTINGHAM: Just a
13 parting comment from me, if I could. I hope
14 we can count on both your associations to keep
15 in touch with us. Your members, it seems to
16 me -- we -- the statute envisions that we may
17 well play a role in reporting to the
18 Department of Transportation about specific
19 choke points or specific infrastructure
20 problems that are causing endemic delays.

21 It seems to me that for example,
22 Mr. Capon, your members may be singularly well

1 qualified to help us -- point us to where
2 those hot spots and those choke points are.

3 MR. CAPON: And I go to Porter,
4 Indiana.

5 CHAIRMAN NOTTINGHAM: Right, and I
6 remember when I was regularly riding Amtrak
7 between Fredericksburg, Virginia and
8 Washington, D.C., I felt like I had a pretty
9 good list of what they were. You know, the
10 Quantico Creek Bridge, which has since been
11 fixed and on and on and on.

12 So, riders know where the problems
13 are typically and we look forward to learning
14 from them and hearing from them.

15 MR. CAPON: Thank you.

16 CHAIRMAN NOTTINGHAM: Thank you.
17 We will -- Vice Chairman Mulvey, any other
18 questions for this panel?

19 VICE CHAIRMAN MULVEY: No other
20 questions, thank you.

21 CHAIRMAN NOTTINGHAM: Thank you
22 very much. We appreciate you being here.

1 We'll now invite Panel IV to come forward.
2 Representing the Freight Railroad Industry, we
3 have from the Union Pacific Railroad Company,
4 Mr. J. Michael Hemmer, from the CSX
5 Transportation Company, Mr. John M. Gibson and
6 from the Association of American Railroads,
7 Mr. Edward R. Hamberger.

8 Sure, Mr. Hamberger would like to
9 start. Let the panel work that out amongst
10 themselves and we will hear from Mr. Hamberger
11 when ever he's ready to begin.

12 MR. HAMBERGER: Okay, I know we can
13 work this out. We're going to use common
14 sense.

15 CHAIRMAN NOTTINGHAM: Welcome,
16 thank you for your patience today and it
17 sounds like we'll first hear from Mr.
18 Hamberger.

19 MR. HAMBERGER: Thank you, Mr.
20 Chairman, Vice Chairman Mulvey, Commissioner
21 Buttrey, thank you for the opportunity to be
22 here this morning, or this afternoon, as the

1 case may be, to speak to the STB's role, under
2 the Passenger Rail Investment and Improvement
3 Act.

4 While I am speaking today only on
5 behalf of the freight members of the AAR, I
6 want to emphasis that Amtrak is a full member
7 and a member of the Board, of the AAR and that
8 we have several commuter rail members and
9 well, and I was very pleased to hear Mr. Capon
10 mention, the one rail coalition.

11 I'd like to submit for the record,
12 the principles and the membership of that
13 coalition. It is not always intuitively
14 obvious that freight rail and passenger rail
15 advocates believe it the same thing, but we
16 do.

17 We believe that there needs to be
18 enough capacity to move America's freight and
19 America's passengers and we're committed to
20 working together to achieve that.

21 It is not only in the one rail
22 coalition. I was also interested to hear the -

1 - Mr. Millhouse mention the Korean passenger
2 car. We're pleased to have that car actually
3 proven under an FRA test out at the technology
4 center, the transportation technology center
5 that the AAR runs in Pueblo, Colorado.
6 Secretary Mineta was there and the then
7 Chairman was on his way to sign the contract
8 decree. So, he was very pleased to see that
9 the car actually met the standards when the
10 test was run.

11 Finally, of course, we are working
12 very closely with APTA, with Amtrak and Cathy
13 Waters, is a member of a committee we have
14 established to implement the positive train
15 control requirements that this same Bill
16 levied on the industry.

17 Let me say that I will address two
18 areas here today. One is the on time
19 performance for Amtrak and the second is the
20 non-binding mediation process and Mr. Hemmer
21 and Mr. Gibson will go into greater detail on
22 each of those respectively.

1 Since Amtrak trains operate and
2 are dispatched over the freight railroad
3 rights-of-way, it goes without saying that the
4 railroads are concerned with how standards to
5 measure Amtrak's performance are developed and
6 how they are interpreted and enforced by the
7 STB.

8 Because failure to meet those
9 standards can now trigger financial penalties,
10 damages against freight railroads, that
11 concern is obviously heightened.

12 We believe that as a fundamental
13 matter, when it comes to assessing
14 performance, the most logical, manageable and
15 transparent method to measure performance is
16 against Amtrak's published time tables. These
17 are the schedules that Amtrak passengers see
18 and rely upon. They are the schedules that
19 members of Congress ask about and I believe
20 that as such, they are the only useful gauge
21 for measuring Amtrak's on time performance.

22 In fact, I believe, it is my

1 understanding that it is the scheduled --
2 published schedule that Amtrak uses to measure
3 itself on its own on time performance on the
4 northeast corridor. So, it seems that is an
5 accepted way to go and should be what the FRA
6 comes up with.

7 Okay, we now have the yard stick,
8 the published schedule, but how do we
9 determine whether or not that is a good yard
10 stick?

11 I was very pleased to hear Mr.
12 Crosbie say that he is open to having a -- re-
13 addressing the schedules that Amtrak has
14 published for its trains and he positive that,
15 of course, conditioned that on whether or not,
16 not only does a schedule get longer, but can
17 it get shorter, and the answer to that is, of
18 course, yes.

19 One example on UP is the Gasconade
20 Bridge in Missouri, which used to be a single
21 track bridge, is now a double track bridge and
22 that has a beneficial effect, not only for the

1 freight trains, but also, for the Amtrak
2 trains going across Missouri.

3 So, as things like that happen, as
4 slow orders go on or come off, then of course,
5 the schedule should be adjusted.

6 When Amtrak was created in '71,
7 freight railroads had significant excess
8 capacity and since that time, as Mr. Yachmetz
9 and Commissioner Mulvey have observed, much
10 has changed. Much of that excess has been
11 consumed by an increase in traffic growth and
12 many of our segments are now constrained and
13 with the forecast in freight to double by the
14 year 2035, we can expect that to get much more
15 of an issue, and as you have just heard from
16 your previous two panels, there is an
17 increased demand for commuter rail traffic,
18 which also has an impact on Amtrak getting it
19 over the line.

20 So, schedules against which
21 performance will be measured must be based on
22 rational data driven models, that

1 realistically incorporate the constraints and
2 operational realities of today's U.S. rail
3 system.

4 Now, let me very clear, freight
5 railroads recognize the obligation to give
6 Amtrak trains priority. However, schedules
7 must account for the realities of the rail
8 network. Both freight railroads and Amtrak,
9 on its northeast corridor operation, use
10 network models to establish schedules that can
11 be readily adapted for these purposes.

12 We believe that these models
13 should be used to establish realistic and
14 achievable expectations, both for Amtrak
15 passengers and for policy makers.

16 Once a schedule or performance
17 standard is established, the next obvious step
18 should be to determine the cause of any
19 failure to meet that standard and an
20 understanding of why those delays occurred.

21 We believe that there are
22 basically three broad categories of reasons

1 for delay. One is those delays caused by or
2 otherwise attributable to Amtrak. Examples
3 might include Amtrak equipment failures or as
4 you observed, Mr. Chairman, longer than
5 expected station stops.

6 The second bucket would be those
7 delays attributable to freight railroads, for
8 example, freight equipment failures that block
9 tracks or dispatching decisions that fail to
10 give Amtrak reasonable preference, and I use
11 the word reasonable because I do disagree with
12 Mr. Crosbie's assertion, that this preference
13 is absolute, and I was pleased to hear Mr.
14 Capon agree that there is some flexibility
15 that even he would agree with, and we're
16 talking about being reasonable.

17 We must give dispatchers some
18 flexibility to exercise reasonable judgment,
19 to keep the network fluid, because by doing
20 so, we help not only freight trains, but also,
21 the passenger fleet as well, and I guess I'll
22 just throw in there, Mr. Chairman, you've

1 asked a couple of times, what does it take to
2 get the attention of freight railroads?

3 I will tell you, based on the
4 scrutiny given to my budget, about \$100 does
5 it. So, I think that should be a pretty good
6 fine, if that's where we are. But I mention
7 that really a little bit flippantly, but I
8 mention it because I'm a little concerned that
9 there seems to be an assumption and a
10 presumption that there will be fines imposed
11 under this statute.

12 As I read the statute, it makes it
13 very clear that the only time a penalty will
14 be assessed or damages will be assessed, is
15 when an Amtrak on time performance falls below
16 80 percent for two quarters in a row, because
17 of lack of giving preference.

18 I do not believe that our
19 railroads will -- we are committed to giving
20 preference and if you can set up a system
21 where we take a look at adequately allocate
22 the causes for delay, I do not believe that

1 you will ever find that an Amtrak train falls
2 below 80 percent because of lack of getting
3 preference.

4 The third bucket, of course, is
5 for those delays for which it is unknown or
6 the cause is not attributable to either Amtrak
7 or the freight railroad. They may include
8 grade crossing accidents, acts of nature, such
9 as hurricane or blizzards and directives from
10 law enforcement officials.

11 In addition, as Commissioner
12 Mulvey has indicated, it is important to note
13 that there are usually consequential effects
14 of an initial delay. When something goes
15 wrong somewhere on the rail network, such as
16 a grade crossing accident, it often has the
17 cascading effects, leading to delays of other
18 trains elsewhere, including Amtrak trains.

19 Measurements should ensure that
20 all delays are properly reported under the
21 initial or root cause, and this leads to our
22 recommendation, again, echoing a

1 recommendation from our friends at the
2 National Association of Railroad Passengers,
3 that the reports of train delays must be
4 objective. They must be from both the
5 conductor, as well as whatever other sources
6 are available.

7 I believe Mr. Mulvey mentioned --
8 or actually, it was Mr. Yachmetz mentioned,
9 perhaps PTC will be able to, when it's
10 implemented, give data, GSP out there, reports
11 from dispatch centers. A bottom line, I
12 guess, is that we do not share the high level
13 of confidence in the conductor delay reports
14 that Mr. Crosbie voiced earlier today.

15 Our bottom line in this area is
16 that a performance measurement system must
17 one, decide on the yard stick. We believe it
18 should be the published schedule, that that
19 schedule must be reasonable and should be
20 achieved through a network model.

21 Three, that we must accurately,
22 transparently and objectively identify the

1 causes of any failure to meet that standard
2 and apportion responsibility for such failure
3 to the party at fault.

4 Now, this will enable all of the
5 stake holders to better address problems and
6 improve service, and after all, that is the
7 ultimate goal of this exercise, is to improve
8 service and not to cast blame.

9 Turning to the second issue, I
10 would like to address, of course, it's your
11 authority to conduct non-binding mediation
12 between freight railroads and commuter
13 authorities, with respect to railroad usage.

14 It is important that all parties
15 recognize that this process is not designed to
16 mandate access and that it is non-binding. It
17 is mediation.

18 We are hopeful that the non-
19 binding process will facilitate communications
20 between the parties and in that regard, we
21 believe the Board should establish principles
22 to be addressed in these proceedings, which

1 would recognize one, that any arrangement with
2 commuter authorities must be voluntary. Two,
3 that the freight railroad should be fully
4 compensated. Three, that the commuter
5 authorities must provide for the additional
6 capacity necessary for their operations.
7 Four, that the freight railroads would be
8 protected from liability associated with the
9 passenger operations and five, that all other
10 operating issues must be addressed.

11 Essentially, the need for the
12 preservation and expansion of freight railroad
13 ability to provide the freight transportation
14 services our nation needs, should be a
15 critical component of any such mediation, and
16 I'd like to emphasis here, I read the -- in
17 several of the -- I'm closing, if I may, Mr.
18 Chairman.

19 I read in the written testimony,
20 some concern, whether or not the freight
21 railroads would come to the table, in good
22 faith.

1 We supported this legislation when
2 it went through the House and Senate. You
3 commented on the freight railroad track record
4 of, in fact, coming to the table in good
5 faith. Mr. Chairman, I thank you for that,
6 and let me just emphasis that we will, in
7 deed, come and participate in these mediation
8 proceedings because we do believe that it is
9 the way to bridge the gap and achieve --
10 hopefully, achieve consensus with the commuter
11 rail operators.

12 Thank you for the opportunity to
13 be here and I apologize for running a little
14 bit over.

15 CHAIRMAN NOTTINGHAM: Thank you,
16 Mr. Hamberger. Mr. Hemmer or Mr. Gibson, who
17 would like to go next?

18 MR. GIBSON: Yes, John Gibson.

19 CHAIRMAN NOTTINGHAM: Please
20 proceed.

21 MR. GIBSON: Thank you. How do we
22 get this up? Okay, all right, the -- my name

1 is John Gibson. Thank you very much for the
2 opportunity to speak today.

3 I work for CSX Transportation in
4 the Transportation Department and I oversee,
5 among other things, all of our passenger
6 service and all of our contracts for
7 passengers, including about 57 trains a day,
8 of Amtrak train starts, and about 160 commuter
9 trains a day, on the Monday through Friday
10 services.

11 CSX employs about 34,000 people.
12 We operate in 23 states, District of Columbia
13 and in Canada and we serve two-thirds of the
14 U.S. population in more than 70 ports. So,
15 we're very familiar with passenger operations
16 and the day to day issues that can arise from
17 them.

18 I would like to essentially skip
19 over a couple of the first slides that talk to
20 the U.S. rail system in the 1970's. I think
21 it's well documented. We made a deal and so
22 did Amtrak, to help get Amtrak created and we

1 did that with everybody's eyes open, I think.

2 Today's rail system is very
3 different. I think that's been discussed
4 quite a bit in the previous presenters and
5 don't want to cover what's going on there very
6 much, except for the bottom point there, on
7 that slide, which talks to recent studies
8 where even though we're the most capital
9 intensive industry in the U.S., our investment
10 will fall about \$135 billion short of the
11 investment needed to carry existing freight
12 share into the future, and if we want to add
13 capacity to handle additional passenger
14 trains, with reliability, the estimate is that
15 that requires another \$225 billion of
16 investment that currently, is not available in
17 any programs, but hope is in the air. We have
18 a lot of reasons to think that it is possible
19 to start to address these capacity issues.

20 We have found, working in concert
21 with Amtrak and with our commuter agencies,
22 that there are three ways, key elements, to

1 improve reliability and performance of
2 passenger trains, even on the existing
3 capacity strained networks.

4 The first of those is effective
5 investment, making the dollars count and
6 putting them in the right places.

7 Second is management focus and
8 that focus is not just the two Presidents or
9 the two Chairmans coming together and agreeing
10 on something. This has to go all the way down
11 to the individual train masters, the
12 individual ticket clerks, and then reliable
13 schedules.

14 We have an example of this. CSX's
15 auto-train is a train that is very popular and
16 I believe, one of the more profitable of
17 Amtrak's services. It carries automobiles and
18 passengers. It doesn't run quite as fast as
19 other Amtrak trains, and over time, we saw
20 miserable performance on this train.

21 We, with Amtrak, at first, with
22 Amtrak's insistence, and then as we got into

1 it, it's become a very collaborative and a
2 very productive approach to the problem. But
3 you can see, we were averaging very low
4 percentages, under 20 percent, in both the
5 north bound and the south bound trains.

6 On the effective investment, CSX
7 has, over the last three to five years, spent
8 more than \$100 million hardening the
9 infrastructure of the I95 spine that this
10 train runs on. We have had also, about \$100
11 million of public investment, including the
12 bridge you mentioned, Mr. Chairman, the
13 Quantico Creek, and we have also modeled the
14 entire network, all the way to Miami, working
15 with Virginia and North Carolina and that
16 modeling suggests that there are more than 100
17 projects, capital projects, that would be
18 required to get an 80 percent on time
19 performance with a 90 percent confidence, in
20 the current schedules, that investment is not
21 available to anybody at the moment, but again,
22 we continue to be hopeful.

1 Management focus, accurate
2 reporting of delays, we've worked hard with
3 Amtrak to improve that reporting. We have
4 joint performance reviews. We have those
5 daily -- daily, calls not every day, but a
6 couple of times a week at one level, but on
7 the ground with folks, we meet monthly or
8 quarterly, and we have senior level meetings
9 quarterly as well.

10 There is freight train root cause
11 analysis. That is not strictly a delay
12 report, but it's the delay report, plus other
13 available information, which includes
14 information from the dispatchers and other
15 things.

16 We've coordinated that capital
17 projects, particular curfew type maintenance,
18 the ones that cause disruption to Amtrak
19 trains and that coordination has gotten better
20 and longer range in its planning. It's been
21 more effective and schedules have been made
22 when appropriate.

1 This effort in the management
2 focus side has become the performance
3 improvement plan. It's a process that has
4 been expanded to other routes, including CSX's
5 and other railroads, including most of the
6 freight railroads who have Amtrak now.

7 Reliable schedules, we can work to
8 create reliable schedules with tools that were
9 not available in the 1970's. These tools are
10 available in terms of simulation modeling.
11 There are statistical analyses that are
12 available. The auto-train example suggested
13 that a 40 to 50 minute increase in each of the
14 train schedules would, in fact, allow an 80
15 percent on time performance that was less than
16 five percent of the total schedule of time.

17 All modes of transportation,
18 service providers, use an approach similar to
19 this. We do not go out on the freight side,
20 on the freight forwarding side, on the steam
21 ship companies, on the cruise companies, on
22 the airlines, and make promises to our

1 customers that cannot be met. We do not plan
2 for failure. We plan to be successful.

3 And so, that is the basis upon
4 which we believe scheduling should be done.
5 The results speak for themselves. We've been
6 over 80 percent since the change in the
7 schedules and you have to pull all three
8 levers. We have to be able to get the
9 investments in and we have to be able to have
10 the management focus and that management focus
11 can't be one sided. It has to be both parties
12 working together collaboratively.

13 The dips that you see in those
14 lines were heavy maintenance periods that the
15 schedules were not adjusted for. If they had
16 been, then we would have an even higher on
17 time performance.

18 We also did the same thing with
19 MBTA and we have done it with several of our
20 commuter agencies. This is just the most
21 recent example. We applied the same process,
22 used the same approach with them, came up with

1 a better way of making our investments in the
2 infrastructure, hardened that infrastructure
3 to make it more reliable.

4 We also adjusted schedules, again,
5 by a very small amount, to reflect the reality
6 of the current congestion.

7 The change was dramatic, in terms
8 of the customer reactions in the MBTA and the
9 operator of that service, the MBCR, has been
10 out in public, talking about this process as
11 the way approach the scheduling. We currently
12 use the same approach with VRE.

13 In summary, you know, the delays
14 that we see are driven by transportation
15 demand, changes in regulations, changes in our
16 operation and capacity.

17 Then we need improvements to
18 Amtrak customers, that can be achieved by
19 pulling all three of these levers, including
20 the realistic schedules. Longer term,
21 significant public investment and capacity is
22 required to provide what I think the traveling

1 public probably really wants. They want that
2 high on time performance and they want shorter
3 schedules. They want better velocity.

4 The freight railroads are vital to
5 the nation's economy and we're environmentally
6 friendly. The sound public policy to protect
7 both freight and passenger interest and
8 partnership and cooperation are critical, as
9 we attempt to solve these problems. We
10 believe in problem solving, not cause finding
11 as the objective. Thank you.

12 CHAIRMAN NOTTINGHAM: Thank you,
13 Mr. Gibson. We'll now hear from Mr. J.
14 Michael Hemmer from the Union Pacific
15 Railroad.

16 MR. HEMMER: Thank you. I have to
17 pull up the slide, on order to create
18 confusion about who I am.

19 Chairman Nottingham, Vice Chairman
20 Mulvey, Commissioner Buttrey, I am not Jerry
21 Wilmoth. I am Mike Hemmer, Senior Vice
22 President, General Counsel of Union Pacific.

1 Unfortunately, Mr. Wilmoth was
2 unable to testify today. He is -- he had a
3 death in his immediate family and that was
4 transportation back and forth across the
5 country several times. It was just too
6 difficult.

7 So, I will attempt to capture some
8 of the points he wanted to make and to answer
9 questions as best I can.

10 You may not think of Union Pacific
11 as a major commuter carrier, being out in the
12 west, but in fact, we have had a long record
13 of successful commuter relationship, some of
14 which are quite substantial.

15 I won't take you through every one
16 of these, but we are the largest commuter
17 train operator in Chicago, for Metra. It's
18 kind of an unusual arrangement. We actually
19 run their trains with our employees. We had -
20 - that makes us the seventh largest commuter
21 operation in the nation and we have
22 consistently had a 98 percent on time record

1 for Metra.

2 As my first slide indicates, we
3 have other arrangements, particularly in
4 California and I might also mention that we
5 operate Amtrak's capital corridor service
6 between San Jose, Sacramento and Auburn, which
7 Mr. Crosbie alluded to, that service is
8 running consistently, as we are graded 95
9 percent on time or better.

10 We have as well, been working with
11 a large number of additional communities that
12 are interested in adopting new service. We
13 have worked with, successfully, with the Utah
14 Transit Authority, to establish their new
15 heavy rail system. They also have a light
16 rail operation.

17 We use parallel lines with Union
18 Pacific and UTA on separate tracks, between
19 Salt Lake City and Ogden. That's the model we
20 will use at Salt Lake City, but they are also
21 on our tracks north of Ogden. This is just
22 one of a number of projects that have been

1 under development in recent years.

2 Union Pacific recognizes that
3 commuter rails are very important to public
4 interest. As you proceed to implement your
5 responsibilities, as mediators, we urge you
6 though to keep in mind that there are public
7 benefits from both commuter rail and freight
8 rail, that need to be taken into consideration
9 and both of them need to be protected.

10 We think that balance can be
11 struck and we think the arrangements we have
12 made with commuter authorities thus far, have
13 done that.

14 Freight rail, we would argue,
15 provides at least as many benefits as commuter
16 rail. In some respects, they're the same
17 benefits. In both instances, we are taking
18 vehicles off of the roads. We're reducing
19 traffic. We are cutting emissions. We are
20 curtailing highway congestion, but freight
21 rails does more than that.

22 We also save customers billions of

1 dollars by providing efficient transportation.
2 Importantly, by having goods on rails, we
3 avoid the public having to fund very expensive
4 infrastructure projects in additional
5 highways, bridges and so forth, and we are
6 quite essential to the nation's economy.

7 So, our request to you is that as
8 you proceed with implementation, that you
9 recognize that both -- that the nation has
10 very strong interest in both the commuter rail
11 service and in the freight rail service.

12 When public transportation
13 authorities request access to our property, we
14 try to achieve the balance that will meet
15 these objectives. Mr. Hamberger has already
16 gone through a set of basic principles, of
17 which we agree, but I'd like to emphasis a few
18 more for your consideration.

19 First is safety. Mr. Solow and I
20 had the -- unfortunately, spent part of the
21 evening together on September 12th at
22 Chatsworth and we watched the really superb

1 efforts of the emergency crews to help the
2 people who were victims of that accident.

3 That really brings home what's at
4 stake when passenger and freight rail mix, and
5 some of that -- some of those risks will be
6 addressed by positive train control in the
7 coming years, but there will still always be
8 some risk associated with that inter-mix and
9 the arrangements that we make with commuter
10 rail authorities need to take that into
11 account, and have so far.

12 I will mention in passing though,
13 that the suggestion, which I hope you'll
14 explore with CNJ, that light rail vehicles
15 that do not meet FRA safety standards should
16 be allowed to mix with freight, if that's what
17 they are implicating. That is a very
18 dangerous idea.

19 Second, we suggest that reliable
20 service for both freight and passengers ought
21 to be taken into consideration. At Union
22 Pacific, we are actively involved in

1 developing a program where we do the span of
2 variability in our freight services. It
3 matters to our customers enormously, they tell
4 us that all the time.

5 So, it's not as though we don't
6 care whether our freight trains arrive on
7 time. We care, just like passengers do.

8 Third, we urge you to ensure that
9 capacity remains available, both for today's
10 freight operations and the operations which we
11 hope will return to a higher level here in
12 coming months, but also, to preserve the
13 ability to add additional capacity in the
14 future.

15 In short, please don't strangle
16 freight railroads in the interest of commuter
17 rail.

18 Nothing I heard from any of the
19 commuter agencies and representatives that
20 have appeared before you today, inconsistent,
21 I think, with the -- with those concepts.

22 We urge you to ensure that

1 railroads are fairly compensated. We
2 sometimes encounter -- when we're dealing with
3 people like Mr. Solow or Metra in Chicago,
4 they understand the costs of commuter rail and
5 the demands that it places on both them and on
6 us.

7 Sometimes when we're dealing
8 smaller communities or those that are new to
9 the process, they come in with some
10 unrealistic expectations. I could imagine
11 some of them coming to you and saying, "Hey,
12 Union Pacific isn't bargaining in good faith,"
13 when the answer is, they don't have anything
14 like enough money to run a commuter rail
15 operation.

16 Finally, we'd ask you to keep in
17 mind that we should not be exposed to
18 liability that would not exist in the absence
19 of commuter operations. When we add an
20 additional box car load of grain, it doesn't
21 significantly increase our liability posture.
22 When we add human beings, it very definitely

1 does.

2 I'd like to pause for just a
3 moment, to talk a little bit more about
4 capacity because I want to mention on nuance,
5 and that is that when we -- when any railroad
6 adds capacity, it will add the least expensive
7 capacity that will do the job first, and that
8 means that the next mile of additional
9 capacity is going to be more expensive.

10 So, I've shown you a picture of a
11 bridge here. Working with a commuter agency,
12 we were able to double track the railroads on
13 both -- the railroad on both sides of that
14 bridge, but that left a bottle-neck.

15 Then as freight transportation
16 demands increased, it became our
17 responsibility to spend the much greater
18 amount of money to add a second track on the
19 bridge, which we did.

20 As we work with commuter agencies
21 now, we've been very successful in getting
22 them to understand this principle, that they

1 work with us and basically help us stay
2 relatively neutral, with respect to the next
3 incremental capacity cost.

4 So, in short, we are glad that you
5 will be available mediator for us. We support
6 this process. We look forward to working with
7 you and we simply ask that you keep in mind,
8 all of the benefits of transportation to the
9 nation's interest, as you discharge your
10 responsibilities. Thank you.

11 CHAIRMAN NOTTINGHAM: Thank you,
12 Mr. Hemmer. Vice Chairman Mulvey, would you
13 like to start with questions this round?

14 VICE CHAIRMAN MULVEY: Sure. Thank
15 you, and I noticed you recited in your
16 testimony, the number 436. Four-thirty-six is
17 becoming as well known a number as 1776 or
18 666.

19 MR. HEMMER: I'm hoping you notice
20 it a lot more in weeks ahead.

21 VICE CHAIRMAN MULVEY: I might add,
22 by the way, that the American Waterways

1 Operators have taken up your mantle and are
2 now pointing out that they get 600 ton mates
3 per gallon, so, you never can tell what the
4 results are going to be of these strategies.

5 Let me ask you about something
6 which we have raised before. Mr. Gibson points
7 out the results of the Cambridge systematic
8 study, which shows that there's going to be a
9 shortfall, about \$135 billion from what it
10 going to be needed just to keep the railroads
11 at existing capacity levels and what the
12 railroads can spend to make investments in the
13 infrastructure.

14 It does strike me though, if we're
15 talking about also accommodating more commuter
16 rail, there does seem to be a need to have
17 some redundant capacity, some excess capacity,
18 which of course, was a problem for the
19 railroads for a long time because the
20 railroads with excess capacity wound up
21 bidding rates down to the long-run margin
22 costs and caused some of the problems.

1 But clearly, there does need to be
2 more capacity and the railroads do not have
3 the where-with-all to make the needed
4 investments.

5 So, let me raise this question
6 again, about whether or not something like a
7 railroad trust fund's time is now, whereby
8 both the commuters, Amtrak and the railroads
9 would all contribute, similar to the way an
10 aviation trust fund or a highway trust fund is
11 structured, taking into account some of the
12 problems that they've had and in correcting
13 for those. We would create a pot of money
14 which is contributed by users, not by the
15 taxpayers, which I know that you don't want to
16 put a burden on the taxpayers in your slide,
17 paid for by users, which would go to invest in
18 the railroad infrastructure, investment that's
19 clearly needed.

20 We've been seeing right now, for
21 example -- I don't want to go too far on this
22 question, but right now, as traffic has

1 fallen, the railroads have, in fact, backed
2 away or put on hold, a lot of the
3 infrastructure spending projects that they had
4 planned.

5 So, wouldn't this really start to
6 create a source of money, a pot of money that
7 the railroads could find useful? Ed, do you
8 want to take that or you could all --

9 MR. HAMBERGER: I'd be delighted to
10 take it. I thought where you were going to go
11 was that we also needed a Cambridge systematic
12 study on the amount of capacity needed to
13 accommodate the demand for the increased
14 passenger traffic and I was going to tell you
15 that we're in the process of doing that study
16 and we hope later this spring, to be able to
17 come forward with some more specifics about
18 the amount of money needed to accommodate a
19 growth in passenger and what the benefits of
20 that would be, or put it another way, if we
21 don't achieve that capacity, what the cost
22 would be, in terms of congestion and CO2

1 emissions and energy use.

2 But to get to your issue, Mr. Vice
3 Chairman, this has been kicking around for
4 some time and we have consistently opposed the
5 creation of a railroad trust fund for a couple
6 of reasons.

7 One, as you have heard many times
8 in this room, we -- our customers already
9 believe that they are paying -- certainly
10 don't want to pay anymore for the services
11 which we provide, and so, if there is going to
12 be a tax or a levy of some sort, on our
13 customers and they don't want to pay more,
14 than that would either drive them to a
15 competing mode or it would drive us to lower
16 the rate that we charge, so that the amount of
17 money they're paying is the same, that is, the
18 rate plus the tax equals what the rate is now,
19 in which case, we're basically paying the tax.

20 We believe secondly, that the
21 trust fund decision making authority might not
22 be as efficient as letting the railroads,

1 which have the network models and know what
2 their customers tell them what they're going
3 to need and can go out and make those
4 investment decisions without going through a
5 Government process, is much more efficient and
6 avoids what may now not be a problem, but
7 avoids earmarking, etcetera and so, actually
8 lets the money go directly where it's needed
9 in a much quicker basis.

10 Instead, we have supported two,
11 which we think are just as positive ways of
12 addressing capacity. One is public/private
13 partnerships and I don't know what's going to
14 happen in the current stimulus or
15 revitalization plan that's now in conference,
16 but there is some money in the Senate side,
17 that is allocated for the Secretary of
18 Transportation to use on projects of national
19 significance.

20 We would expect that to be a
21 public/private partnership, like the create
22 program, which I think all of you have toured

1 in Chicago. There are others around the
2 country, and then also, just giving, under the
3 STP program, more flexibility to states and
4 MPO's to spend their money for public/private
5 partnerships. Again, if the Secretary of
6 Transportation of Maryland decides that the
7 appropriate priority is to double track or
8 triple track the train up to Germantown, maybe
9 they should be allowed to have that
10 flexibility and that would be done, again, in
11 conjunction with CSX.

12 CSX would pay for the private
13 sector benefits and the public would pay for
14 the public sector benefits. We think that is
15 a better way to go, but share your concern,
16 that there needs to be more focus and more
17 acknowledgment of the need for investment in
18 rail capacity, both for passenger and for
19 freight.

20 VICE CHAIRMAN MULVEY: I thought
21 you also going to raise the investment tax
22 credit, but I'm sure that's another --

1 MR. HAMBERGER: I did say there
2 were two, you're exactly right. The
3 investment tax credit, thank you, which does
4 have bipartisan support on both the House and
5 Senate, was not included in the stimulus
6 package because the financing ways and means
7 committees decided that a broader accelerated
8 depreciation would be more helpful, but we
9 hope that they'll come back and visit the ITC
10 and now that you've reminded me, I would like
11 to just point out that while our members have
12 announced in general, some cut back in their
13 plan cap-X, it is unbalanced. My numbers look
14 at it at about a 10 percent cut, from '08 to
15 '09.

16 We have gone back and taken a look
17 at what our numbers did in previous
18 recessions, some of which were not as dire as
19 the one we're in now, and we saw cap-x cuts of
20 30 to 40 percent.

21 So, I do believe -- and I think
22 Michael Ward announced here in Washington a

1 couple of months ago, that he's not cutting it
2 all. He's keeping right on the three year
3 plan they have.

4 I do believe that all of our
5 members are expecting that there will be a
6 bounce back, that this economy is too strong
7 to keep on going down forever. It will come
8 back and when it does, what we're hearing is
9 that our customers, actually are keeping
10 pretty low inventories and when demand does
11 pick up, they're going to pick up the phone
12 call their railroads and want service, and
13 right now, we have about 150,000 cars in
14 storage, 3,000 locomotives, over 10,000
15 employees on furlough, but we are trying to
16 keep cap-x up, so that we'll have the capacity
17 to meet the customer demands when it comes.

18 VICE CHAIRMAN MULVEY: Thank you.
19 I certainly agree with your concerns about
20 having a trust fund situation, with all the
21 earmarks and all the other political problems
22 that attended the other trust funds.

1 Hopefully, we can correct for that.

2 With regard to the elasticity of
3 demand, I do recall mentioning this before a
4 group many years ago and someone in the
5 audience from one of the railroads, who I will
6 not mention, raised their hand and said, "A
7 one percent waybill tax would cause us to lose
8 half of our traffic," and at the time that
9 that was being said, the same railroad was
10 putting in a five percent across the board
11 rate increase.

12 So, if their representative in the
13 audience was right, they must have lost all of
14 their traffic. I didn't quite follow that.

15 Let me ask another question about
16 recording the causes of delays, and Amtrak
17 conductors recording it. Do you think that
18 freight railroad conductors ought to be
19 required to record the causes of delays and
20 that they need to be able to respond when we
21 have these delays? For example, if they see a
22 train in front of them and say, "Oh, the

1 freight train must have caused it," but in
2 fact, it was something in front of the freight
3 that caused the delay.

4 MR. HAMBERGER: We have -- we're
5 probably one the folks that Bill Crosbie
6 mentioned when he said there might be an
7 exception, about the validity of the conductor
8 delay reports.

9 Two basic issues there, I think.
10 One is, the conductor has a lot of
11 responsibilities. He's got to run his train.
12 He's got to keep everybody safe. He's got to
13 be safe. He's got to be aware of all the rules
14 and those are paramount.

15 Then at some point, he's got to
16 record what he thought the delays were at the
17 time that he saw them, and it -- with all due
18 respect to a 35+ year process, there's a lot
19 of technology that's occurred in between, that
20 hasn't been taken advantage of.

21 This is a process where the person
22 with all these responsibilities is reporting

1 what he sees outside the windshield, and so,
2 it's helpful. It's not that it's wrong. It's
3 not that it should be thrown out, but it does
4 give us a granularity of at least what they're
5 observing, looking out the windshield.

6 But they are not able to see the
7 network, and so, when you use it, it has to be
8 among the tools that you use, to find root
9 cause for delay issues, and you need to be
10 able to look at other sources of data that are
11 available.

12 I think you should be able to get
13 away from a hand written document that's faxed
14 and then transposed and all of that and make
15 use of technology as well. But it's not
16 Amtrak's fault that they haven't had money for
17 those kinds of issues in the past.

18 So, we're not saying it's useless,
19 but statistically, relevant in a true
20 statistical sense, we have trouble with that.
21 That is the source document, the only source
22 document.

1 VICE CHAIRMAN MULVEY: Once again,
2 you've provided a very, very good statement
3 for the hearing, but there's a question, on
4 page 20 of your statement, it says that the
5 freight railroads believe it would be helpful
6 if the STB provided, through regulations or
7 policy statement, operating issues that the
8 STB would suggest the parties address in any
9 mediation.

10 Could you please suggest where
11 some of these operating issues would be and
12 what level of detail you're looking for there?

13 MR. HAMBERGER: I think what I was
14 referring to there, several years ago, Bill
15 Millar and I sat down and tried to come up
16 with our members participation, some sort of
17 a roadmap, if you will, as to how a community
18 should go about in sitting down with the
19 freight railroads and trying to determine how
20 to proceed, to set up commuter rail, and we
21 have a whole list.

22 I know I've got that in my file

1 folder somewhere. We never did sign it and
2 ink it, but I think at the time, we had pretty
3 much agreement what that list includes. If I
4 might, I'd like to make sure that Bill agrees
5 that we make that available to you and then
6 make that -- it's very detailed kinds of
7 operating procedures.

8 VICE CHAIRMAN MULVEY: Thank you.
9 I've had experience dealing with the commuter
10 rail/freight railroad operations discussions
11 with the Northstar program and the estimates,
12 as to what that was going to cost, for what
13 the freight railroad suggested and what the
14 commuter suggested were, to say the least,
15 widely different.

16 MR. HAMBERGER: Right.

17 VICE CHAIRMAN MULVEY: And it would
18 be good to have some sort of protocols or some
19 sort of issues decided that what this actually
20 costs, because you don't want to have gold
21 plating on the one hand, and on the other
22 hand, you don't want to have an

1 unrealistically low expectations of what these
2 costs are. The Northstar project did get more
3 agreement between the freight railroad and the
4 agency over time, but it took a long time to
5 narrow the estimates between the freight
6 railroads and the commuter authority.

7 MR. HAMBERGER: I can't remember if
8 we actually agreed on this, but I know one of
9 the things we were talking about was a
10 recommendation that together, they would agree
11 on one consultant. So, you would not have the
12 battle of the consultants, and the consultant
13 would be working both for the commuter agency
14 and the freight railroad and therefore, would
15 be perhaps, cognizant of both.

16 VICE CHAIRMAN MULVEY: That was
17 exactly right, there were two very, very
18 different estimates, two very different
19 consultants.

20 One last question, and that is,
21 you mentioned the CNJ's testifying next, with
22 regard to the modern or European or Japanese,

1 designing lighter rail cars, operating off of
2 freight railroad rights of way, and it struck
3 me that one of the problems we've had in this
4 country, with regard to high speed rail, is
5 that some of the FRA regulations require that
6 we run a high speed tanks.

7 They are so heavy to meet FRA
8 crashworthiness standards, that you could
9 never possibly run trains at the same kinds of
10 speeds as the Shinkansen, or the TGV, or the
11 trains in Germany.

12 Now, part of that is because they
13 have dedicated rights of way and we do have a
14 mix with freight trains, but do you think that
15 things like PTC, for example, which would
16 allow better separation, might be a vehicle
17 for allowing high speed -- lighter density
18 trains -- I'm sorry, lighter trains,
19 constructionwise, to operate on the same
20 rights of way as freight rail?

21 MR. HEMMER: I agree with you, that
22 PTC will make a difference, but it won't solve

1 the problem and I'll give you a specific
2 example.

3 As a result of that, if someone
4 wants to operate substantially lighter
5 equipment or high speed equipment, our view is
6 they ought to be on a separate right of way,
7 and that's consistent with the one rail policy
8 statement.

9 South of Denver, Colorado, there
10 is a segment of track where UP owns, I think,
11 one track and BSNF owns two, but don't hold me
12 to that, and the closest parallel to that is
13 a light rail line.

14 I believe it was about a year ago,
15 when UP coal train derailed, spilling coal and
16 coal cars all over all five tracks and we
17 missed a -- one of those light rail vehicles
18 by about 90 seconds.

19 If that had been -- if that had
20 occurred 90 seconds later, we'd be having a
21 very different discussion right now.

22 Then on the same track, I think it

1 was about a month and a half ago, a BNSF train
2 spilled liquid sulfur all over all five
3 tracks.

4 So, while the railroads are
5 getting better at preventing derailments, we
6 achieved double digit improvement virtually
7 every year. Derailments will occur and if
8 they occur with light rail vehicles or high
9 speed vehicles close at hand, there is a risk.

10 VICE CHAIRMAN MULVEY: Thank you.
11 That's all I have.

12 CHAIRMAN NOTTINGHAM: Commissioner
13 Buttrey, do you have any questions for this
14 panel?

15 COMMISSIONER BUTTREY: Well, I'm --
16 since Mr. Hemmer brought the subject up, I'm
17 sorely tempted to delve into this limitation
18 of liability issue, which has been a great
19 interest of mine over the last few years.

20 But it is not germane enough to
21 what we're talking about, I think, for me to
22 do that, although I would love to do it.

1 MR. HEMMER: A beer later?

2 COMMISSIONER BUTTREY: Pardon me?

3 MR. HEMMER: I said, I was offering
4 a beer later?

5 COMMISSIONER BUTTREY: Can't do
6 that either. But anyway, I'm -- I had some
7 questions here that I wanted to ask, but I'm
8 not going to do it because I just don't think
9 they are germane enough to our discussions to
10 get into it and we just have to save that for
11 another time.

12 But in view of that, I'm not going
13 to ask any questions of this panel. Thank
14 you.

15 CHAIRMAN NOTTINGHAM: Thank you,
16 Commissioner Buttrey. I have a few questions.
17 Mr. Gibson, it appears to me that your
18 railroad, the CSX, may well have the most
19 interaction with passenger rail of Amtrak and
20 commuter rails. Is that fair to say? Do you
21 guys keep track of that?

22 MR. GIBSON: We don't. We've

1 occasionally looked across the fence. I'd say
2 the BN is probably either equal with us or
3 slightly ahead of us, in terms of that kind of
4 thing and the UP with some of the commuter
5 operations, is becoming that we too.

6 CHAIRMAN NOTTINGHAM: I'll throw
7 this question to anybody on the panel. Are
8 the railroads -- are the freight railroads
9 conducting additional training and briefing of
10 employees in preparation for this new
11 legislation?

12 We may well be spending more
13 quality time and have more people spending
14 more quality time, looking at things like
15 conductor delay reports and we heard about
16 Amtrak's conductor delay reports. I assume
17 the freight railroads have employees who file
18 reports about what might be the cause of
19 delays on incidents on the track and if all
20 kinds of new people are going to be
21 scrutinizing those, potentially, are you
22 talking with your employees about the

1 importance of that data and how to make sure
2 it's documented in a way that's understandable
3 to all concerned?

4 MR. GIBSON: Not because of this
5 legislation, because we care about trying to
6 solve problems. Over the last two years,
7 we've stepped up our check rides. We've
8 increased the amount of scrutiny we give to
9 trains and their reporting on a spot basis.

10 But in terms of things like
11 dispatchers and all of that, it has -- as
12 several people have put it, I think it's in
13 their DNA. They don't go out trying to delay
14 Amtrak trains or any passenger trains.

15 They do try to preserve the
16 fluidity of the network and we have -- for
17 instance, modeled some of our single track
18 sections in North Carolina and South Carolina,
19 and if absolute preference were given to
20 Amtrak trains in those corridors, you would,
21 within a matter of a few days, essentially
22 shut down the corridor and slow down all

1 Amtrak trains and all freight trains.

2 So, the training on preference is
3 inbreed. You've got to protect the fluidity
4 of the network and where ever there is an
5 option, you let the passenger train go first
6 and the passenger train must go first and must
7 have the most clear route available.

8 But sometimes, it has to sit in a
9 fleet and go, as that fleet can go, to get by
10 a problem or that kind of thing.

11 In terms of the data itself, we're
12 looking at what can be done technology wise to
13 get better. We are in the process of
14 upgrading our dispatch system and there will
15 be things that could be coming out of that,
16 but it's not timed because of this legislation
17 at all.

18 CHAIRMAN NOTTINGHAM: All right.

19 MR. HEMMER: At Union Pacific,
20 again, we are doing training. We are doing
21 an enormous amount of training and we have
22 completely rebuilt the processes that we use,

1 by which we monitor our performance for
2 Amtrak.

3 The reason for that is that Amtrak
4 has brought an arbitration proceeding against
5 us, which I am -- have my fingers crossed,
6 we'll successfully resolve in discussions
7 later on this afternoon, but that remains to
8 be seen.

9 With respect to the data, frankly,
10 we're one of the railroads that I think was
11 mentioned, that has not spent a lot of time
12 monitoring the conductor reports and I don't
13 have statistically valid data to report to
14 you, because we haven't done that. We'll have
15 to do that going forward, I think, because of
16 this statute.

17 We did take a quick look at a
18 month's worth of performance on a route where
19 there are slow orders, the coast of star light
20 route, from Sacramento north. We've made a
21 commitment to Amtrak to resolve those slow
22 orders, to a specified level by a specified

1 date.

2 We took a look at one month of
3 conductor reports and frankly, the conductor
4 reports identifying slow order related delay
5 bounded around like a ping-pong ball.

6 One day, there were no slow order
7 delays. The next day, there were very longs.
8 So, that underscores for us, how much judgment
9 is going into the data and the need to take
10 the steps that all three of us have talked
11 about, about getting better data sources that
12 are more reliable and less created after the
13 fact and based on judgment.

14 CHAIRMAN NOTTINGHAM: Are the
15 freight railroads able to monitor on a real-
16 time basis, how Amtrak is tabulating its --
17 and developing its own conductor delay
18 reports?

19 In other words, if a couple of
20 months were to go by and there was a pattern
21 of one or two Amtrak conductors punching off
22 duty and submitting reports saying, "Late

1 again, caused by a freight railroad," and
2 months would go, when and how would the
3 freight railroads learn about that pattern or
4 that problem?

5 MR. GIBSON: We'd look at conductor
6 delay reports daily, but with 60 trains and
7 not very many people, we don't look at every
8 one, every day, and we're not trying to use
9 the data that way, and that is a concern I
10 have, frankly, is that we will start to use
11 the data from a litigation standpoint instead
12 of from a problem solving standpoint.

13 We think that the data should be
14 used to try and root out the causes of poor
15 performance and address those issues, and
16 sometimes those issues are documented very
17 well, by the conductors in what they see and
18 what they write down, and even with those
19 kinds of issues of being something that they
20 put down, maybe at the end of the run, with
21 not absolutely clear memory.

22 But it, from our standpoint, is a

1 tool to try and get better performance and to
2 see it become a litigation tool, I think, is -
3 - I mean, we'll have to -- if that's the path
4 we end up down, that, to me, would be a sad
5 day and it would also probably change our
6 approach.

7 CHAIRMAN NOTTINGHAM: It seems to
8 me, based on the testimony we've heard from
9 this panel and others, that along many
10 corridors that serve both freight rail and
11 passenger rail, we're talking about schedules
12 and slots.

13 If a passenger train, for whatever
14 reason, arrives in the hands or enters the
15 property and the track of a second freight
16 railroad, sort of the hand off type scenario,
17 and it's already late, it's an hour or maybe
18 two hours late and it's missed its slot, and
19 perhaps it encounters -- at that point, it
20 encounters a slow moving coal train and the
21 conductor then documents -- the Amtrak
22 conductor documents running late because I'm

1 behind a freight train that's not letting me
2 pass, how -- what other data sets -- and if
3 we're ever asked to go and to look into
4 situations like that, what we will be needing
5 to ask our investigators to look for, to find
6 a full balance of information, to get a real
7 sense of the different causes of lateness and
8 what else might explain it?

9 MR. GIBSON: Well, I think Mark
10 Yachmetz said he didn't envy that task because
11 the more you know about it, the more difficult
12 that task appears.

13 I think it will require at a
14 minimum, a review of what was the schedule
15 that was in place and then what was the
16 operational situation at the time, and so, I
17 think you're going to find, in a lot of cases,
18 there are multiple and inter-related issues.

19 But as the freight railroads have
20 become more scheduled, Amtrak trains out of
21 slot regardless of cause, are much less likely
22 to recover lost time these days than they

1 would have been in prior transportation
2 regimes of a decade or more ago, because we
3 are so much more scheduled.

4 I think some of what I've seen in
5 the testimony that was written for today, you
6 also get a little of that frustration from
7 some of the commuter operators as well. If
8 the Amtrak train wanders into the commuter
9 slots, you know, if it's going to be given
10 absolute preference, then it will decimate the
11 flow of the commuters that day, in that
12 direction.

13 And so, the only legitimate
14 dispatcher decision, in my mind on that kind
15 of a situation, is that it goes with the flow
16 of the rest of the traffic and it has to,
17 depending on the geographic characteristics,
18 the operational situation that they're
19 involved in and the choices that are
20 available.

21 It can't be coming out of this
22 side and against that train and that's why the

1 windshield view of the conductor is -- has
2 limits, in terms of what information it can
3 provide to answer that question.

4 CHAIRMAN NOTTINGHAM: What other
5 information sources would you suggest that we
6 be looking for?

7 MR. GIBSON: Dispatcher retrievals,
8 you know, of -- and then schedule retrievals,
9 you know, what was suppose to be there, what
10 was actually there, I think are going to be
11 the likely additional sources.

12 Some of the newer generation
13 dispatching systems have replay capability.
14 We do not, at this point. We are gravitating
15 in that direction and will have it at some
16 point with our cads investments.

17 But you can accommodate a lot of
18 that through steam lines of prior -- that
19 days' operation or that territories operation.

20 CHAIRMAN NOTTINGHAM: Mr. Gibson,
21 you mentioned that there are some single track
22 sections in South Carolina and North Carolina,

1 that are particularly challenging to you.

2 Now, if Amtrak trains are running
3 along those corridors, those challenging
4 corridors and they're on schedule, they're
5 where they're suppose to be, are you
6 suggesting that you still have the -- the
7 railroad still has a problem granting
8 preference?

9 MR. GIBSON: I don't call it
10 granting preference. I call it making good
11 dispatching decisions. The schedules are a
12 part of that question.

13 I don't think you would find -- I
14 would suggest you find very few instances of
15 an available dispatching decision that was
16 better that may have caused delay, because of
17 the single track nature of the territory they
18 were running through.

19 There are lots of analogies. I'll
20 just make one up, which is dangerous, but I-95
21 between the Baltimore beltway and the
22 Washington beltway is, I sort of remember,

1 about 35 miles, speed limit is like 70 or so,
2 and so, there is a pure run time, so to speak,
3 theoretical pure run time that you can
4 calculate to.

5 But I don't think anybody
6 schedules that way, particular at five in the
7 afternoon and even if you have preference, you
8 were an emergency vehicle with your lights
9 flashing and your horns going, you wouldn't
10 make that theoretical speed because of the
11 congestion that's there.

12 You might come a lot closer than
13 the average vehicles that's there, but you
14 wouldn't make it, if that was what you had to
15 measure to.

16 So, I think that's the crux of a
17 lot of what we're going to be trying to work
18 together on, to try and fix it going forward.

19 CHAIRMAN NOTTINGHAM: Does that
20 loop back to the scheduling predicament, that
21 that's -- so, ideally, that situation be
22 worked out at the -- in the scheduling

1 discussions between the freight railroad and
2 the passenger railroad?

3 MR. GIBSON: Well, I'd look at it
4 that way for a period of time, until the
5 investments can be made, and certainly, if
6 there is investment money available,
7 particularly from the public side, we should go
8 for those aspirational schedules at a future
9 point in time, when the modeling suggests that
10 enough investment has been made that it can
11 happen.

12 CHAIRMAN NOTTINGHAM: Is there --
13 and I'll let anyone on the panel respond to
14 this. Do you believe that the new legislation
15 that we're talking about today, allows a
16 freight railroad in that kind of challenging
17 predicament, to actually come forward and say,
18 "Hey, we need a waiver or we need an exemption
19 along this corridor. We can't reasonably be
20 expected to grant preference and be held to
21 the potential damages, given this
22 environment."

1 And I know prior to this
2 legislation, I believe you could petition the
3 Secretary of Transportation. Has anybody
4 looked at that issue in the new legislation?

5 MR. HEMMER: I believe that, if I
6 heard Amtrak's spokesman correctly, the
7 suggestion was that we were obligated to do
8 that. I don't think that's what the statute -
9 - I don't interpret the statute that way,
10 because it all depends on what the standard
11 is, against which you are being tested, and
12 that is yet to be determined by the FRA,
13 Amtrak, all other stake holders.

14 So, I think until we know what
15 that standard is, I think -- I can't say
16 whether we would need to come to you, but I do
17 think we have the ability to come to you. I
18 think that's pretty clear.

19 CHAIRMAN NOTTINGHAM: I'm advised
20 by counsel, just a moment ago, that the new
21 statute did not change the pre-existing law,
22 which did allow and does then, go forward,

1 allow freight railroads to bring the attention
2 the Secretary of Transportation, the
3 situation, which I just commend to your
4 attention, that may be wise to get out ahead
5 of some of these situations.

6 MR. HEMMER: True, but if I may
7 make one point, from now and for the next few
8 years, we're in the same situation as the
9 commuter agencies who have appeared before
10 you. We had a contract. We're in a
11 proceeding under that contract right now.

12 That contract, in our view,
13 establishes our respective rights and
14 obligations and opportunities on both sides
15 and we believe that that contract governs our
16 relationship with Amtrak until it expires.

17 Now, if the statute strongly
18 encourages us, if a new set of standards are
19 developed to work with Amtrak, to revise the
20 contract and embed them, and I assume we would
21 try to do that, but until we do, we think the
22 contract is governing.

1 MR. HAMBERGER: I guess I would
2 just like to echo Mr. Crosbie's comments that
3 the goal is to sit down and work this out and
4 not try to look for what are our rights to go
5 to Court or go to a regulatory agency to work
6 this out.

7 And so, as I read the new statute,
8 it gives you the authority to go back and take
9 a look at the causes of delay, including the
10 schedule, that is specifically mentioned.

11 And so, my view of the world is
12 that if you're going to sit here and at some
13 point, after a train has experience two
14 quarters worth of under 80 percent on time
15 performance and decide that in your judgment,
16 that the schedule may have had a role to play
17 in that, why don't we get that done right up
18 front and take a look, as the FRA is
19 establishing these yard sticks, against which
20 we're going to be measured, and take a look
21 at, with a model, what is a reliable,
22 consistent, achievable schedule and get that

1 in at the front, rather than rely on some sort
2 of litigation later, to go back and take a
3 look at it.

4 So, that's where I'm hoping and I
5 think has in mind, the idea of trying to sit
6 down and work through this.

7 CHAIRMAN NOTTINGHAM: And we
8 certainly encourage that friendly and more
9 collaborative resolution process that would
10 hopefully, happen before we ever get involved.

11 Unfortunately, no one asked us,
12 but it's our role in this, is sort of, all
13 that's broken down, unfortunately, or has --
14 or is somehow, not worked, and we're asked to
15 enter and step into it, into the breach, so to
16 speak, and figure out what to do.

17 I would just suggest to the
18 parties, both this panel and others, it would
19 certainly help us understand in the future,
20 the challenges and the circumstances that
21 parties might be wrestling with, if we're
22 notified or copied on letters, because if we

1 walk into a situation and we find -- we hear
2 that it's not realistically achievable to give
3 Amtrak the preference that's in the statute,
4 we're going to be probably be looking for,
5 well, how did this happen? How did agreements
6 get made, contracts get entered into?

7 Was there any -- has there been
8 any discussion of this? Have you been made
9 aware of this, because then ultimately, we, in
10 another part of the statute, have the option
11 to make recommendations to the Department of
12 Transportation about infrastructure
13 improvements, which I think, could be of
14 interest -- will be of interest, I know, to
15 your members and your colleagues, as those
16 improvements connect up with your capital
17 priorities.

18 Let's see, I'd like to ask any of
19 the panel or all, the statute specifies
20 several parties that are entitled to bring
21 complaints about Amtrak on time performance
22 problems, to the Board's attention.

1 One of those parties is our
2 freight railroads. Do you anticipate the
3 possibility -- are you looking at the
4 possibility that you would be faced with
5 looking at a corridor and saying, "We've got
6 all these late Amtrak trains. It's killing
7 our schedules and our slots. We know we're
8 not the cause of it. We want to bring this to
9 the Board, to sort out and make -- figure out
10 what to do on this."

11 MR. HAMBERGER: I guess I would
12 just repeat what I just said, and that is, you
13 know, that right may be there, but the goal of
14 this whole process is not to cast blame, but
15 to figure out how run a railroad and so, I
16 would hope that long before that occurs or the
17 thought crosses anyone's mind, to come before
18 the Board, that we would have the good sense
19 and common sense, to sit down and try to work
20 through it on a bilateral basis.

21 MR. HEMMER: We'll work first under
22 our contract, and then beyond that, I

1 thoroughly agree with Mr. Hamberger, and in
2 addition to that, my boss says eliminate all
3 discretionary spending, that strikes me as
4 discretionary spending. So, I don't think
5 we're likely to be coming to you.

6 MR. GIBSON: We're not looking for
7 the tactical weapons, you know. We're looking
8 for the solutions.

9 CHAIRMAN NOTTINGHAM: Well, thank
10 you on that. Let's see, I've got, I think,
11 two more questions. This is a big one, but
12 I've got to get into it a little bit,
13 preference.

14 We've heard testimony from Amtrak
15 that it's an absolute term. I believe the
16 statute we're looking at today, the new
17 statute, does at least recognize that there
18 could be emergency circumstances where it
19 would not be absolute preference.

20 Some of your testimonies today
21 indicates it's, in your view, not absolute
22 preference. How are we to sort that out? I

1 mean, there really aren't too many adjectives
2 -- there aren't too many adjectives that come
3 before or after that phrase in the 1971 law,
4 that references preference, and you know, I
5 think we're going to need to flush that out.

6 I think it would be a little
7 challenging for this Board to say, "We'll play
8 that by ear. We'll sort of make it up as we
9 go along."

10 Ideally, it has some meaning.
11 It's had some meaning, ought to have some
12 meaning now and going forward, but that's the
13 one reason we want to have this hearing, is to
14 try to get -- the more we can have all the
15 stake holders on the same page on these issues
16 now or soon, I think the better this process
17 will work.

18 MR. HAMBERGER: Well, let me just
19 take a first crack at that and then yield to
20 my colleagues here. You made a very good
21 point, Mr. Chairman, and that is that the 1971
22 statute does not have any adjectives around

1 that right of preference. The word absolute
2 does not appear in the statute. It says it is
3 a preference, and what we were talking about
4 and what my friend, Mr. Capon, referenced, he
5 would agree, not to hold a freight train for
6 an hour, to give Amtrak one minute.

7 Well, I mean, there has to be some
8 discretion at the dispatcher level to --
9 because an absolute right of preference, for
10 example, if there is a grade crossing
11 accident, and there are three trains held up
12 at either -- going in either direction, and
13 the third -- second train going in one
14 direction is an Amtrak train and flanked by
15 two freight trains.

16 When the go-ahead is finally given
17 by the local emergency response team, the idea
18 is to get that section, get that area of the
19 network moving and you have to then just fleet
20 through, as they are queued up, the trains
21 going in either direction, because if --
22 assuming that there is even physical

1 capability to try to pull the other trains
2 off, to move the Amtrak train to the front of
3 the cue, that would just compound the problems
4 caused by the grade crossing accident.

5 And so, this is not a dispatch
6 lack of giving preference. The Amtrak train
7 is still in the slot where it was, but the
8 entire network was shut down or that portion
9 of the network was shut down by the grade
10 crossing accident. When the go-ahead is
11 given, you just fleet those trains through, to
12 try to get some recovery time and get the
13 network back to fluidity.

14 So, that's what I mean by common
15 sense approach and some discretion and not an
16 absolute preference, but a reasonable
17 preference.

18 MR. GIBSON: Well, again, I think
19 it could be validated fairly easily, that if
20 you gave absolute preference at every
21 decision, you frankly, wouldn't need a
22 dispatcher. You could do it all by a set of

1 rules within a computer and it would make all
2 the decisions for you and it would crash the
3 network and then, the next day's Amtrak trains
4 wouldn't move at all, or the three days away.

5 And so, the preference has to be a
6 preference, but not an absolute decision point
7 and it's the network that is paramount and if
8 you want to give, not just the Amtrak train
9 that's delayed at the particular point of the
10 geography, but the north bound Amtrak train
11 that's coming in opposition and the third
12 train out, you know, on your schedule, where
13 you've got six or eight or ten Amtrak's in a
14 corridor, you cannot make such a disastrous
15 move, in that first move, to give that
16 absolute preference because you will
17 negatively impact every other Amtrak train
18 that's in the corridor.

19 So, I don't have a definition for
20 you, other than the best decisions possible to
21 maintain fluidity of the network with every
22 time that there's a conflict with options,

1 that are reasonable, that Amtrak gets that
2 first preference, and that's the way we train
3 our dispatchers and that's the way we believe
4 they behave.

5 Now, there are new dispatchers out
6 there and there is a learning curve and we do
7 see mistakes from time to time, but we've also
8 looked at what does it take to get a train
9 from Washington to Miami and back, from a
10 dispatcher standpoint, and the rough
11 calculation was that over a year, it's about
12 250,000 decision points for it.

13 And so, to rifle shoot and say,
14 "Boy, that was a bad decision," you know, out
15 of 250,000, that's just not the appropriate
16 way to measure that.

17 MR. HEMMER: A couple of additional
18 comments, if I may. The word absolute doesn't
19 appear there, as Mr. Hamberger pointed out,
20 and for 35+ years, Amtrak has been operating
21 over freight railroads and I doubt if any of
22 them would say they have been opine or Amtrak

1 has demanded an absolute preference.

2 On our railroad, as a practical
3 matter, where the dispatching system is
4 capable of it, which is much of the main line,
5 we strongly encourage our dispatchers to use
6 what we call automated mode. I think that's
7 the term. Someone could correct me from my
8 dispatching center, but we basically think we
9 can get the computer to make some better
10 decisions than our dispatchers sometimes
11 might, using judgment.

12 So, we encourage that as much as
13 possible. We assign Amtrak trains priority
14 one, even a director's special is priority
15 two.

16 So, Amtrak does get the highest
17 priority and preference on our railroad, on a
18 systematic basis. Again, I'm not going to
19 tell you a bad decision doesn't get made now
20 and then, but it seems to me that when the
21 time comes, if it ever does, and I hope it
22 doesn't, where you have to look and evaluate

1 the decisions and there will be thousands of
2 decisions, that a dispatcher makes, with
3 respect to an Amtrak train, you need to have
4 pretty clear evidence that the dispatcher is
5 preferencing freight trains.

6 CHAIRMAN NOTTINGHAM: I'd like to
7 ask, do each of you believe that it's
8 realistically achievable for there to be a
9 substantial reduction over the next, I'll say
10 year or two, in those incidents when passenger
11 trains are directed to pull aside and let a
12 freight train pass it, or is it realistically
13 achievable for us to see a substantial -- I
14 think that's the most -- I can say as a former
15 frequent and current occasional rider of
16 Amtrak and commuter rail, that's the most sort
17 of gall -- and that's when you -- any
18 reasonable person is tempted to call their
19 Congressmen or write a letter to somebody.

20 I mean, you're trying to get home.
21 It's been a long day at work and your commuter
22 rail or your Amtrak train is directed to pull

1 aside, to let a freight rail come through, and
2 if that's still happening around the country,
3 do you expect that we can see a substantial
4 reduction of that, just through voluntary
5 industry and Amtrak collaboration?

6 MR. GIBSON: Well, we had, you
7 know, some relatively famous incidents right
8 here in the D.C. area, of a couple of
9 situations several years ago, where because we
10 had different rules for the speeds of Amtrak
11 and freight trains in specific weather events,
12 we did have a couple of occasions where a
13 train passed a standing VRE train, a standing
14 Amtrak train, and we have since reviewed and
15 modified those rules, so that that's not a
16 possibility under the operating conditions,
17 unless a dispatcher made that decision.

18 We have not had that kind of
19 complaint in my memory, for quite some time,
20 on our railroad, but I think the one that you
21 might see that I don't know would go down, is
22 a passenger train stopped, as a freight train

1 goes in the opposite direction. That's kind
2 of a different deal, in my mind. That goes to
3 what's happening in the network and is that
4 the right decision or not.

5 Often times, it's the way you
6 clear the route, in order for the passenger
7 train to go, and so, the overtake is a
8 situation, I think, you would find somewhat
9 rare.

10 Sitting for a train to pass, in
11 order to clear a route is a situation you
12 might see fairly often.

13 CHAIRMAN NOTTINGHAM: Does somebody
14 else want to speak to that question?

15 MR. HEMMER: The only additional
16 comment I would make is that as I indicated
17 earlier, we have recently gone through a whole
18 scale overview and reformulation of every step
19 in the process of monitoring and training for
20 Amtrak performance on our railroad.

21 Whether that will make a
22 difference on a single dispatching move, I

1 can't tell you, but we certainly know that our
2 people know what their responsibilities are.

3 CHAIRMAN NOTTINGHAM: Thank you.

4 Last question, this one is really for you, Mr.
5 Hamberger, but your colleagues are perfectly
6 welcome to answer, and it's a little off topic
7 today, but I think it's fair to ask it, given
8 the historic and challenging debate that's
9 going on nearby here in town, about the
10 economic stimulus bill.

11 Last time I checked, their numbers
12 were -- for transportation infrastructure
13 stimulus are somewhere in the 60 billion range
14 that's being talked about. We hope and expect
15 that that will be enacted soon and that's
16 going to trigger a reaction, we expect, we
17 hope, that -- the drafters of the Bill, I'm
18 certain, will hope, of state DOT's ordering up
19 raw materials, construction firms ordering up
20 materials.

21 I know that the railroads have
22 been busy, understandably so, ramping down

1 some of your operations and putting some cars
2 into storage and furloughing some employees.

3 But if we see a big spike, which
4 we should, of demand for raw materials,
5 everything that the -- all the feed stock that
6 goes into the construction process, your
7 asphalts, your sand, gravel, steel, most of
8 that material moves by rail, as you know very
9 well.

10 I know as a former state DOT head,
11 you know, when somebody says, "Push the go
12 button," the last thing you want to hear is,
13 "Gosh, everything else was ready. We did the
14 procurement. We did the emergency
15 procurement, but boy, we forgot to tell the
16 railroad that we were going to need all this
17 stuff yesterday."

18 Are you guys working on, doing
19 some scenario planning in that regard, so that
20 that won't be the hold up of these -- what do
21 you want to call it, ready to go projects,
22 that need to move under the Stimulus Bill?

1 MR. HAMBERGER: Well, from your
2 lips to God's ears, as the saying goes, we
3 certainly need, as a country, and certainly
4 our industry needs the business to come back.

5 As I indicated earlier, we were, I
6 believe for the month of January, 17 or 18
7 percent down in car loadings across the board.
8 Automobiles, we have, as you know, about a 63
9 or 64,000 car fleet to move the finished
10 products. Last I checked, 33,000 of those are
11 parked.

12 Of rail owned cars alone, it's
13 about 150,000 cars parked, 3,000 locomotives,
14 10,000 employees on furlough.

15 Our Chairman Jim Young testified,
16 I guess it was last week, I believe it was,
17 before the House T&I committee, that one of
18 the things that his company is doing is
19 keeping furloughed employees on the health
20 care plan and trying to find them a couple of
21 days a month, maybe that they would work the
22 weekends, so that they stay certified and

1 don't go somewhere else to get a job, and when
2 you call them and say, "Come on back," that
3 they're not available.

4 In addition, as I mentioned, when
5 we were talking about the cap-x, this is not
6 a bad time, when you have a little bit extra
7 capacity, you get bigger windows to do some
8 expansion and your maintenance work and I
9 believe that's why the cap-x was not cut as
10 historically it might have been.

11 I think perhaps, we did learn a
12 lesson from previous recessions, where we did
13 cut back and as I mentioned, what I'm hearing
14 about -- or these two gentlemen, is that a lot
15 of our customers are cutting their own costs
16 by keeping their inventories low, so that if
17 this stimulus package does work, and I think
18 it's important both for the direct impact that
19 you mentioned, Mr. Chairman, but also for the
20 indirect impact of folks who are sitting on
21 their wallet, deciding that it's now safe to
22 go out and buy a new car or go ahead and put

1 the addition on to their home or whatever,
2 that when that happens, it might be just like
3 very dry tender whooshing into flame and
4 you're exactly right, the call is going to
5 come and we better be able to move all those
6 cars that are, I saw the other day, sitting up
7 there in the docks in Baltimore, because the
8 dealers don't want them and all of the sudden,
9 if they want them, the call is going to come.

10 Now, we're going to do everything
11 we can, but -- and that's why we're making
12 those investments, but we hope to be ready and
13 I'll just turn it over, I saw you nodding your
14 head, Mike.

15 MR. HEMMER: Well, just out of my
16 happenstance, I happen to be at an operating
17 department morning meeting, I think it was
18 last Friday, and watched exactly the kinds of
19 discussion you were asking about. How long
20 would it take trains to be ready and out of
21 storage, to haul rock? The answer was about
22 24 hours. How long would it take to get

1 locomotive re-positioned? The answer was
2 maybe two and a half days.

3 The employees, as Mr. Hamberger
4 explained, we have taken steps to try to keep
5 available to us, so that we can call them back
6 quickly and they'll be glad to come.

7 So, I think we are as ready we can
8 reasonably be.

9 MR. GIBSON: I just say, no
10 disagreements at all, same general steps. The
11 issue, I think, is how long before we start
12 back up? People will vote with their feet.
13 They'll do what's in their best interests and
14 what's in the best interest of their families
15 and if we end up, you know, with a very long
16 recession, then everybody is going to -- in a
17 significant deflation of everything, then
18 you've got to start changing and adjusting to
19 that situation.

20 CHAIRMAN NOTTINGHAM: Thank you. I
21 have no further questions for this panel.
22 Vice Chairman Mulvey?

1 VICE CHAIRMAN MULVEY: Just one
2 very, very brief question. Let me get this
3 correct, Mr. Gibson and Mr. Hemmer. Are the
4 conductor reports good enough for basically
5 judging whether it's 80 percent more or less
6 on time, but the problem really is what the
7 cause is, but the actual overall number is
8 good enough from the conductor reports?

9 MR. GIBSON: The conductor delay
10 reports are not the on time performance. So,
11 they really just deal with delay and root
12 cause analysis.

13 VICE CHAIRMAN MULVEY: So, they
14 don't have anything to do with the on time
15 performance?

16 MR. GIBSON: They're related, but
17 they're not the -- you know, the delays are --
18 should be why you have the performance that
19 you have, but they're not directly the on time
20 performance itself.

21 VICE CHAIRMAN MULVEY: Thank you.

22 CHAIRMAN NOTTINGHAM: Commissioner

1 Buttrey, any questions? Thank you, panel.

2 You'll be dismissed now. We appreciate your
3 patience and your participation today.

4 I will now call forward, our final
5 panel. We have several other interested
6 persons who reserved time to -- this next
7 panel, Oliver Wyman and Jeffrey Elliott, Eric
8 Strohmeier and Edwin Kessler.

9 It appears that Mr. Kessler was
10 not able to join us today. So, we'll proceed
11 with Mr. Elliott. Would you like to go first,
12 please?

13 MR. ELLIOTT: That sounds fine.
14 Good afternoon and thank you for the
15 opportunity to speak before you here today.

16 I am Jeffrey Elliott, a partner at
17 Oliver Wyman. Oliver Wyman is a leading
18 global strategy and management consulting firm
19 with deep industry and functional knowledge.

20 Oliver Wyman serves as an advisor
21 to a wide range of transportation industry
22 segments, including shippers, manufacturers,

1 service providers, including the railroads,
2 suppliers and importantly, a wide range of
3 financial organizations that provide debt and
4 equity to the industry.

5 I began my career 30 years ago
6 with Conrail, holding a number of executive
7 management positions in marketing and in
8 operations, and left there after 13 years, to
9 become an active consultant in this business.

10 We are here today to discuss how
11 the Surface Transportation Board intends to
12 administer regulations established under the
13 Passenger Rail Investment and Improvement Act
14 of 2008, or PRIIA.

15 Two areas of regulation of special
16 concern to Oliver Wyman, first, those
17 regulations intended to improve service
18 provided by the owners of the underlying
19 railroad, right-of-way, and used by Amtrak and
20 the commuter rail services, and second, the
21 regulations that would provide non-binding
22 mediation to settle damage disputes, with

1 regard to the creation or expansion of
2 passenger rail services over an existing
3 freight railroad rights-of-way.

4 As I'm sure everybody in this room
5 knows, even at today's diminished traffic
6 levels, portions of the U.S. rail freight
7 network are congested with significant bottle-
8 necks. Notwithstanding the current financial
9 crisis and traffic down turn, over the next 25
10 to 30 years, U.S. rail freight traffic is
11 projected to nearly double, requiring
12 unprecedented levels of capital expenditure by
13 the private freight railroads.

14 As John Gibson mentioned, he's at
15 -- the estimate he gave was \$125 billion in
16 his testimony. Virtually all freight rail
17 capital expenditures for maintenance and
18 expansion of the network are financed by the
19 private sector and secured by the projected
20 future financial performance of the individual
21 railroads.

22 Private investors participate in

1 the industry based on their perception of the
2 potential for earning an attractive rate of
3 return.

4 But while freight railroads are
5 one of the most capital intensive industries
6 in the United States, requiring an average
7 investment of 17 to 20 percent of sales each
8 year, to maintain their infrastructure, the
9 industry will offer some of the lowest rates
10 of return to investors over the long term.

11 Inter-city and commuter passenger
12 demand, as also mentioned earlier today, is
13 also on the rise. Depending on what one
14 believes is the long term sustainable price
15 for fuel, some analysts believe that to meet
16 passenger rail demand, forecast will require
17 an investment for approximately \$350 billion
18 by the year 2050.

19 This forecast presumes that much
20 of this capital investment will be used to
21 purchase capacity needed to run passenger
22 trains on the existing freight rail network.

1 The issue facing the freight
2 railroads is that passenger trains consume a
3 disproportionate amount of capacity relative
4 to the freight trains.

5 Based on work done by Oliver
6 Wyman's multi-mobile division, to analyze rail
7 capacity requirements, we estimate that the
8 capacity impact of an inner-city passenger
9 train to be two to five times that of an
10 average freight train, depending upon the rail
11 configuration, the density of the traffic.

12 Therefore, increased demand to
13 dedicate capacity to passenger operations will
14 substantially increase the total rail network
15 capacity that must be built and maintained by
16 the private freight railroads, in order for
17 both services to operate efficiently and to
18 meet the needs of the respective customers and
19 stake holders.

20 Additionally, providing service
21 guarantees for passenger trains, which
22 generally operate on very tight schedules,

1 requires that freight railroads set aside
2 additional capacity to protect themselves
3 against service failures due to unforeseen
4 events. We've heard a lot about that today,
5 such as equipment and track failures,
6 inclement weather, grade crossing incidents,
7 all of which impact their networks almost
8 daily.

9 This increases the capacity impact
10 of the inner-city passenger trains and
11 furthermore, hinders the ability of freight
12 railroads to meet the service guarantees they
13 provide to their own customers.

14 Passenger rail access to freight
15 rail networks, it is currently provided
16 through negotiations between the interested
17 parties and is specifically designed to ensure
18 that the owning railroads are fully
19 compensated for the network capacity used by
20 the freight -- by the passenger trains.

21 These negotiations provide a
22 framework for aligning the compensation with

1 the provision of sufficient capacity buffers,
2 to ensure specific service requirements and
3 guarantees are met, thus reducing the need for
4 reliance on complex schedules of incentives
5 and penalties.

6 We hope that the STB will support
7 the strengthening of these processes, that
8 ensure fair and full compensation to the
9 owning freight railroads, for the capacity
10 that is consumed by the passenger services.

11 Compensation shortages are
12 essentially indirect subsidies of passenger
13 services. Making the freight railroads
14 responsible for any unfunded capital required
15 to meet passenger demands, as well as for the
16 capital required to delivery their own
17 services, will ultimately reduce the returns
18 that they achieve on invested capital.

19 Over the long term, such a
20 situation likely will make investments in the
21 freight rail network less attractive to
22 private investors and increase the industry's

1 cost of capital. Thank you.

2 CHAIRMAN NOTTINGHAM: Thank you,
3 Mr. Elliott. We'll hear from Mr. Strohmeier.

4 MR. STROHMEYER: Thank you, Mr.
5 Chairman. CNJ only has basically one area of
6 concern with regards to this legislation, it
7 was Section 401, which is the mediation
8 section. We understand that this particular
9 section is a non-binding confidential process
10 that will allow commuter rail networks to
11 access the national freight network.

12 Our concern comes down to just one
13 basic simple question. When Congress wrote
14 the law and wrote the statute, we're not sure
15 that they took into account all of the stake
16 holders might have an interest in being at
17 that table.

18 We're not advocating, as Union
19 Pacific suggested, that light rail and heavy
20 rail freight trains co-mix on the same tracks,
21 but what we are concerned about is that when
22 a commuter rail agency seeks access to the

1 national rail network in the mode that they
2 wish to access the national rail network with
3 is light rail, it does pose restrictions on
4 the property, one of which is, operating
5 windows need to be established, protocols for
6 train separations, all of which could
7 potentially impact a shipper.

8 One of the things that we noticed
9 in this legislation is that there's no room at
10 the table for a potentially impacted shipper
11 if the introduction to commuter rail service
12 physically alters the conditions on the rail
13 line, and that is the reason why we just
14 wanted to come down here today, to bring this
15 one point to the Board's attention.

16 When you sit down and figure out a
17 way of trying to mediating, and since this is
18 non-binding and Congress is going to probably
19 look to see, is this mediation session
20 actually functioning, is it doing what we hope
21 it will do, which is allow freight carriers
22 and passenger rail operators to resolve their

1 differences and expand the use of commuter
2 rail service on the national freight network.

3 How does the Board facilitate
4 getting this access, when you don't have a
5 club or a stick, and our concern here is that
6 one of the things that we're concerned over
7 is, one can look at a bigger regional picture,
8 a pro quo.

9 As the Board is aware, I've
10 testified before previously, about the issue
11 of concerns of loss of the system around the
12 fringe. When I look at the potential
13 opportunities here, where the carriers
14 themselves are going to look to find a
15 reasonable way to say to Congress, "Look, the
16 mediation session works," those 10 miles of
17 track that sort of radiate out, that went to
18 a little industrial park, that may have no
19 shippers or potentially had some shippers or
20 may have a few shippers, all the sudden
21 becomes the concept for a future light rail
22 line and what isn't permitted in the process

1 is that the Class One carriers are looking at
2 it and saying, "Well, we don't need that
3 line."

4 So, here you are, we'll give you
5 that, and our concern with that approach is
6 quite simple. If you take that approach and
7 some time after the fact, let's say you go
8 through the mediation process and the Board
9 has spent nearly half a year or a year, trying
10 to get the parties to work out an agreement,
11 and then at the last second, an industrial
12 park operator along the proposed route, when
13 the idea to convert this into a commuter rail
14 line or a light rail line, comes to effect and
15 says, "Wait a second, you know, I don't want
16 to lose rail service out to that point," and
17 the Board says, "Well, you acted as a mediator
18 to solve a regional problem."

19 This is part of a comprehensive
20 package, much like the Union Pacific did in
21 Salt Lake City. I need not remind the Board
22 of the contentious situation that occurred

1 with Utah Shipper's Rail Coalition, when that
2 issue of access and -- their access to the
3 system came up, it became a pretty contentious
4 bone of -- point with the shippers, that hey,
5 is a five hour operating window enough?

6 And so, when you talk about access
7 and we talk about the mediation process, I'd
8 like the Board to take into consideration,
9 there are shippers out there, they may not be
10 active, they may not be big, but I do want the
11 Board to be aware, they are out there and they
12 are as much a stake holder as the commuter
13 rail authority and the freight carriers, and
14 that's all I had to say.

15 CHAIRMAN NOTTINGHAM: Thank you,
16 Mr. Strohmeier. Commissioner Buttrey, do you
17 have any questions for this panel? Vice
18 Chairman Mulvey, do you have any questions?

19 VICE CHAIRMAN MULVEY: Just
20 quickly. Mr. Elliott, were you saying that
21 you think then that giving Amtrak absolute or
22 nearly so priority is a bad idea?

1 MR. ELLIOTT: Just as we heard from
2 the last panel here, I think that in order to
3 run an efficient freight network, that it's
4 important to look at the network as a whole
5 and as was discussed by the railroads here, if
6 you give them absolute priority on the
7 network, under all circumstances, it will not
8 only create problems immediate around the area
9 where you're having issues, but it will also
10 give them -- will create downstream effects
11 what will affect trains far into many, many
12 days after the one train is affected.

13 So, you have to make rational
14 decisions and reasonable decisions about what
15 is the right decision to make the network
16 fluid.

17 VICE CHAIRMAN MULVEY: But do you
18 think that if this legislation went forward
19 and there was more priority given to passenger
20 trains, either commuters or Amtrak--and there
21 was a negative effect on freight rail sector--
22 do you believe these would be a major impact

1 on capital markets. Do you envision that
2 perhaps the public sector could begin
3 substituting for the private sector, for
4 supplying capital? The railroads say that
5 public sector ought to pony up the monies to
6 get public benefits and much of the investment
7 needed in rail is going to generate public
8 benefits, do you see a greater role for the
9 public sector in the long term?

10 MR. ELLIOTT: Well, I think that
11 that's essentially the issue here, which is
12 that if, in fact, the passenger network and
13 the commuter network are consuming more
14 capacity than they originally paid for, then
15 essentially, the private freight rail network
16 is subsidizing them.

17 And so, one way or another,
18 somebody has to pay for that. The investors
19 are going to be reluctant to do that, because
20 they're not getting the returns that they
21 require from their investment, and so, the
22 public sector is going to have to step in.

1 VICE CHAIRMAN MULVEY: So, you want
2 it with a quasi public rail sector, I suppose?

3 MR. ELLIOTT: I don't advocate that
4 at all.

5 VICE CHAIRMAN MULVEY: I'm not
6 saying you advocate it, but I'm just saying --

7 MR. ELLIOTT: I'm saying that
8 that's -- that could be an unintended
9 consequence, which --

10 VICE CHAIRMAN MULVEY: Which you
11 listed as one of your points, the unintended
12 consequences of the Act. Yes, one question for
13 Mr. Strohmeier.

14 The railroads are privately owned
15 operations and they own their rights-of-way.
16 They own their own property for better or
17 worse. It does mean that unlike other
18 providers of transportation services, they
19 have to maintain their infrastructure. This
20 is the cost for them.

21 If the traffic is not sufficient
22 to justify maintaining it, they want to

1 abandon it. For a long time, under the old
2 ICC, railroads had a hard time getting rid of
3 redundant capacity.

4 You talk about shippers that might
5 want service in advance, but don't we need to
6 have a reasonable number of shippers who are,
7 in effect, current effective demanders, in
8 order to justify keeping railroads operating
9 or maintaining rights-of-way, which no longer
10 have much or any traffic on them?

11 MR. STROHMEYER: The answer to the
12 question would be yes, there should be some
13 reasonable demand, but I do remind the Board
14 of its decision that it made in preventing and
15 adverse abandonment in South Indiana, where
16 the Board said that even though the
17 Archdiocese of Norte Dame flat out said, "We
18 don't want anymore service," which was the
19 only reasonable prospect of service, that you
20 might want the service in the future.

21 Of course, you denied the adverse
22 abandonment, based on the prospect of a future

1 need.

2 VICE CHAIRMAN MULVEY: Be careful
3 of the you there.

4 MR. STROHMEYER: I do know it was
5 split decision. The point that I try to make
6 though, however, if we take that same scenario
7 and the Board had asked in a footnote once,
8 why did CNJ basically shadow a well known case
9 in the Kentuckyville industrial track, and our
10 big concern there was the principle whose been
11 advocating the preservation rail service on
12 that line.

13 We're deeply concerned in the
14 future, that he's establishing a series of bad
15 precedent. I'd like to just briefly bring to
16 the Board's attention that there is, on that
17 line alone, a reasonable prospect of 3,600 car
18 loads of material that could take 28,000
19 trucks off the Baltimore beltway today and
20 that's a very real possibility, but not for
21 the fact that the Class One, Norfolk Southern,
22 is desperately seeking public assistance for

1 their I81 project.

2 They're not advocating or pursuing
3 that well established opportunity and that has
4 nothing to do with the other controversial
5 players on board that line.

6 CNJ has done extensive market
7 research on that entire line, have identified
8 clayton clay and a couple of other
9 commodities, which could easily be moved by
10 rail, if somebody was actively pursuing it,
11 and more importantly in that particular case,
12 the light rail line is already built to heavy
13 freight standards.

14 So, it isn't a place where the
15 light rail line was being placed into service
16 and therefore, you would have to re-design
17 your system to accommodate a heavier train.

18 So, when I look at some of these
19 issues and you say that there should be a
20 reasonable demand, there are also other
21 circumstances, in which a carrier, quite
22 frankly, just simply says, "I'm not

1 necessarily interested in pursuing this
2 traffic for another reason."

3 So, I do happen to like the
4 Board's South Bend decision, notwithstanding
5 your decent. I do think it was a prudent
6 decision because it does preserve the ability
7 for the national rail network to not contract.
8 So, I can get myself in hot water with that.

9 VICE CHAIRMAN MULVEY: I also am
10 very concerned about the system contracting,
11 but we look at the circumstances of individual
12 cases. That's all I have. Thank you very
13 much, Mr. Chairman.

14 CHAIRMAN NOTTINGHAM: Thank you,
15 Mr. Strohmeier and Mr. Elliott. Mr.
16 Strohmeier, as always, you come to the Board
17 with a deep knowledge of our proceedings and
18 our precedents. You've managed to identify one
19 of only two percent decisions out of 340+
20 we've made since I've been Chairman that
21 actually had a split decision. So, the other
22 98 percent have been unanimous. So, kudos to

1 you for actually knowing our proceedings as
2 well as you do.

3 We appreciate all of the witnesses
4 and their patience today and with that, we
5 will adjourn this hearing.

6 I will note that we will keep the
7 record open for 30 days. We very much want to
8 hear from stake holders, if anybody knows of
9 a stake holder who wasn't able to be here,
10 please let him know the record will be open
11 and we look forward to implementing this new
12 statute the best we can. Thank you.

13 (Whereupon, the above-entitled
14 matter concluded at 3:07 p.m.)

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CERTIFICATE

This is to certify that the foregoing transcript in the
matter of: Passenger Rail Investment and
 Improvement Act of 2008

Before: Surface Transportation Board

Date: Wednesday, February 11, 2009

Place: Washington, DC

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.



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