UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD

PUBLIC HEARING

IN THE MATTER OF: STB Ex Parte
PASSENGER RAIL INVESTMENT 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
CHAIRMAN NOTTINGHAM: Good morning and welcome to the Surface Transportation Board's first hearing of 2009. Today's hearing will focus on the Board's enhanced role in passenger rail service, as mandated by the Passenger Rail Investment and Improvement Act of 2008.

The Board is determined to successfully implement our new responsibilities and to play a constructive role in the process of delivering improved passenger rail service across our nation.

In order for us to meet these goals, we need to fully understand our new legislative mandate and to carefully consider the views of stakeholders, many of whom have vast experience in the passenger rail policy arena and were closely involved in the process that produced the legislative provisions we will discuss today. I appreciate the
1 witnesses who have joined us today to offer
2 their views and suggestions.
3
4 The new legislation gives the
5 Board the power to investigate, in certain
6 circumstances, failures by Amtrak to meet on
7 time performance standards. Those standards
8 will be established by Amtrak and the Federal
9 Railroad Administration, in consultation with
10 the Board and others.
11
12 Under the statute, if the new
13 standards have not been met for two
14 consecutive calendar quarters, the Board may
15 start an investigation on its own, and must
16 start one upon complaint filed by Amtrak, an
17 inner-city passenger rail operator, a host
18 freight railroad over which Amtrak operates,
19 or an entity for which Amtrak operates inner-
20 city passenger rail service.
21
22 If, as a result of the
23 investigation, the Board determines that
24 delays or failure to achieve the standards is
25 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.

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

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.

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

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

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

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

While I anticipate that much of the discussion today will touch on procedural, legal and regulatory issues, I want to assure
all the stakeholders who care deeply about the health of our nation's passenger rail system,
that this issue is not simply an academic or professional one to me.

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

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

While passenger rail service along the Fredericksburg to D.C. corridor that I'm quite familiar with has improved in recent years, I have many vivid memories of riding on trains that stopped to give preference to freight trains.
Clearly, the statutory requirement dating back to the 1970's that requires freight railroads to give priority to passenger trains has not always been given the attention that will now be required under the new statute that we will explore today.

I look forward to hearing the witnesses' thoughts about how to implement this legislation as effectively as possible.

I am particularly glad to see that we have with us, representatives from Amtrak and the FRA and I'm eager to hear your perspective, was well as the testimony of all the witnesses here today.

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

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

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

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

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

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

I've been a student of Amtrak's operations and history virtually from its establishment. I wrote my doctoral dissertation on Amtrak's economic future back in the early 70's, when Amtrak was first
getting started and I was an intern with the Federal Railroad Administration, researching the newly formed National Railroad Passenger Corporation.

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

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

This hearing is one of the first steps in what will be a continuing dialog on our implementation of our additional statutory responsibilities. I look forward to the discussions we will have today and to the work in which our staff, the FRA, Amtrak and other stakeholders will engage in the coming weeks and months ahead. Thank you very much.
CHAIRMAN NOTTINGHAM: Commissioner Buttrey.

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

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

In studying the legislation so far, it seems to me that Congress certainly had good intentions. I believe they had good intentions, in trying to answer some of the questions or solve some of the issues, but it
appears that they have turned that
responsibility over to the Surface
Transportation Board and being a short-timer
around here, Mr. Chairman, I hope you all have
fun working with that, because it's going to
be a major undertaking, I think, because there
are a lot of -- it seems to me, there are more
questions than answers in that legislation.

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

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

CHAIRMAN NOTTINGHAM: Thank you,
Commissioner Buttrey. It's now my pleasure to
turn to our first panel this morning. We'll
be hearing first from William L. Crosbie,
representing the National Railroad Passenger
MR. CROSBIE: Thank you. Chairman Nottingham, Vice Chair Mulvey and Commissioner Buttrey, thank you for calling this hearing today. I'm delighted to be here on behalf of Amtrak, to offer our comments on the Passenger Rail Investment and Improvement Act of 2008 and the Surface Transportation Board's important role in implementing the Bill.

Amtrak operates a 21,000 miles network. Last year, we carried over 28 million passengers. It was an all time record. Some services average in the 80
percent range, but in one case, OTP averaged as low as 18.6 percent. Our long distance trains posted in fiscal 08, an one time arrival average of 54.6 percent.

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

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

But the new law does more than simply address funding needs. It addresses a number of policy and service quality issues at the heart of Amtrak and state inner-city passenger rail service.
Amtrak has established an internal re-authorization tax force, better known as RTF, with representatives from all the major departments of the company that have a role in meeting the requirements and the deadlines in the Bill.

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

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

I will touch briefly on Title 3, principally to highlight two provisions that are authorized by the legislation. These are involved with issues I will discuss when we
Come to Section 213.

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

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

The law gives us 180 days to complete the metrics and standards. The President signed the Bill on October 16th, so
we must come to an agreement on the metrics by mid-April. If we do not do so, the STB may be petitioned to assist the parties in resolving this disputes.

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

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

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

The U.S. Department of Transportation's Inspector General's March 28th report entitled "Affects of Amtrak's Poor Performance -- Poor On Time Performance" found
that poor on time performance cost Amtrak over $100 million in lost revenue and increased costs.

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

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

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

Section 213 establishes that the STB may initiate an investigation if the on time performance of any inner-city passenger rail train averages less than 80 percent for
any two consecutive calendar quarters or if
the service quality of inner-city passenger
train operations for which the minimum
standards are established under Section 207,
fails to meet those standards for two
consecutive calendar quarters.

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

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

The Board is authorized to
investigate whether delays or failures to
achieve minimum standards are attributable to
a rail carriers' failure to provide
preference, a statutory right that affords
Amtrak preference over freight train --
freight transportation in using a rail line,
junction or crossing.

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

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

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

The Inspector General of the
Department of Transportation, in its September
8, 2008 report entitled "Root Causes of Amtrak Delays", found that actions by the host railroads, including dispatching practices, violate Amtrak's statutory right to preference.

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

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

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

The original Rail Passenger
Service Act of 1971 allowed states to contract with Amtrak for passenger train service. Since 1997, Amtrak has been allowed to set the terms of its service and between ‘97 and 2002, each business unit set its own pricing policy. This led to significant variations and our company is transitioning towards a consistent state contribution basis.

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

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

We also regard the state partners
as critically important, both to the
maintenance of the existing service and the
development of new service. Amtrak is going
to work closely with them and with the DOT, to
ensure that we get to a mechanism to provides,
as the law mandates, equal treatment in the
provision of like services.

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

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

Amtrak has established and
infrastructure advisory group to address this
issue and we are currently working with our
partners to develop a long term plan for
maintaining and improving the NEC.

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

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

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

An STB finding under the process,
authorized by Section 213 can be one of the
number of sufficient conditions that can allow
the Secretary to authorize funding of a
project.

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

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

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

We hope to be a resource to you
and your staff and will make ourselves
available and accessible at all times. Thank you.

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

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

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

By way of introduction, I am Mark Yachmetz, Associate Administrator for railroad development of FRA. The Office of Railroad
Development is leading FRA's activities associated with implementing PRIIA. We also manage a wide range of programs that bear directly on FRA's and STB's shared areas of interest, that have resulted from this legislation.

These include providing analytical support to the development of the Administration's inner-city passenger rail and rail industry investment policies, staff support to the Secretary of Transportation and any secretarial designee as a member of Amtrak's Board of Directors, the making and oversight of grants to Amtrak for operating expenses and capital investment, the making and oversight of grants to states for inner-city passenger rail development, including grants to eliminate rail congestion adversely affecting passenger rail service.

We also make and oversee grants to states for rail line relocations, grants to states for capital improvements for passenger
operations expected to operate faster than 110 miles an hour and we also make loans and loan guarantees for capital improvements to railroads, including commuter rail operations, operating over the general system railways of the United States.

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

Section 207 of the Passenger Rail Investment Improvement Act directs FRA and Amtrak in consultation with the STB and other interested parties to develop new and improved metrics and minimum standards, measuring the performance and service quality of inner-city
passenger train operations.

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

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

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

FRA staff has had extensive
discussions with Amtrak over the past few
months on the concepts and issues to be
addressed, in establishing the metrics and
standards. We've also met with
representatives of the Class 1 railroads that
We anticipate placing a proposal for stakeholder comment on our website no later than the end of this month. After allowing about two weeks for comments to be prepared and received, FRA staff will consider those comments and develop options for the Department of Transportation's decision makers.

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

During this process, FRA staff and Amtrak staff will continue to keep each other informed on the progress of completing this effort, to identify and crystalize any areas of disagreement that then can be presented to our respective decision makers and I should add, during that process, we expect to be
keeping the staff of the STB well informed, so
they can be preparing for your implementation
and your portions of this legislation.

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

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

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

For now, options under
consideration by FRA staff include proposing to address each of these four main categories of metrics in a way that will fulfill Congress's intent that we use readily available data, minimize the staffing requirements for generating, assembling and reporting on the data, and that the metrics be open to changing circumstances, such as the availability of new data sources.

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

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

Perhaps the most intense interest from stakeholders may be devoted to metrics
and standards for on time performance and
train device. Freight railroads and Amtrak
have vital stakes in the outcome of this
topic. OTP has monetary consequences, both
good and bad, for both Amtrak and the host
railroads and the PRIIA as the dimension of
STB involvement and possible fines.

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

Amtrak and the freight railroads
 generate OTP data by different means. What is
the best way to objectively measure this data?
How is the cause of data -- how is the cause
of delay objectively determined and allocated?
OTP is currently reported to the
public as end point OTP, but as most Amtrak
passengers are not traveling between both end points of a route, the public is actually experiencing all stations OTP, the average punctuality or tardiness of a train at every point it serves.

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

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

This is of particular interest, not just to the railroads, but to FRA who must report on the performance against schedule and to the STB that must adjudicate matters related to failures to perform. How can all interested parties be assured that the schedules are reasonable in the first place?
1. In developing schedules, how can an agreement be reached by both Amtrak and the host railroad, that there is high degree of likelihood that on a normal day, the schedule can be achieved? Are the schedules reflective of the circumstances that have been shown in the past, to adversely affect trip time, such as summer track maintain seasons and heat related slower orders, that experience show, will occur with some degree of predictable regularity?

2. In addressing OTP, should conditions and unforeseen circumstances, such as extended weather delays, be considered in a context of schedule changes or in the performance standards?

3. I would note that the ability to model and predict rail operations has improved significantly since 1971 and might offer a science based approach to scheduling adjustments that provide both passenger and the railroads with more realistic expectations.
of their departure and arrival time, than a
time table printed twice a year.

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

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

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

Some aspects of the inner-city
passenger rail service that are specifically
required to be covered by these metrics and
standards, such as the percentage of avoidable
and fully allocated operating costs, covered
by passenger revenues on each route, have been
central element in the Amtrak debate since
even before the corporation was created in
1971.

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

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

I would also like to note that
Amtrak settling three of -- three of the seven
seats on Amtrak Board of Directors are
currently vacant and the Board will be re- 
configured on April 16th, the same date that 
the performance metrics are due and this all 
presents issues of sustainability of the 
effort that we are currently under. 

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

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

You know, today's balmy spring- 
like weather and -- combined with the fact 
that we're just a few days away from pitchers 
and catchers reporting for the spring training 
for the Major League Baseball season, it sort 
of forces me to think of a baseball metaphor 
here.
I sort of feel like the umpire, who is about to call balls and strikes for the season, the new season, but the strike zone has got to be negotiated first between the pitchers' union and the batters' union or organization, and then the umpires are supposed to be consulted and have some input, and all of that would be awfully important to the umpires' ability to call a fair game and to actually keep the game moving along.

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

What's very important to us is the reference to two calendar quarters of data being looked at, six months, and I'd like to get each of your thoughts on the question of,
you know, once the new standards and metrics are developed, or whichever standards and metrics are to be used and relied upon, when does that clock start running for the two consecutive calendar quarters, that would then trigger our role, in conducting an investigation under Section 213? Is that something we should be prepared to launch now, under the theory that the data is pretty solid and we can look back two quarters prior to enactment of the Bill in October, or do we start with October or do we view the language as setting forth a process that will result in new metrics and standards, that would then yield or need to have a two month -- two quarter or six month process of review starting in mid-April? If you could maybe just help reflect on that.

MR. CROSBIE: Sure, I'll start.

Just by way of background, since this is my first time testifying before you, I've been
with Amtrak since `03. I have worked for a freight railroad for over 10 years prior to that.

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

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

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

MR. YACHMETZ: Well, it's actually
an interesting question and I, actually, are similarly appreciative of the situation where the Board is in, in which you all also are lacking staff resources to undertake a lot of this, as we are also grappling with that. We've implemented the Emergency Recovery Act with the resources we have.

It is my understanding that we have to report on a quarterly basis, on the on time performance, based -- against -- once the metrics and standards are set up. So, it would be highly unlikely, I expect, that we would do an -- FRA would do a report before the first of July, which would be the end of the quarter in which the metrics became effective and I think one of the things that the larger group here, of railroads and the STB and the FRA need to think about is, is there some piece of time needs to happen, so that all the players on the field, the freight railroads and the Amtrak folks, have an opportunity to both understand what's required.
of them and how their to report it to us and
to you.

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

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

So, you've got quarters playing
out during that Federal fiscal year and then
in mid-April, April 16th, we have the deadline
for the new standards to be in place.
Hopefully, that will be a hit and then, we'll
have the next quarterly results after that
date would be, you're saying on July 1st and
then there will be the last quarter.
So, you would have -- come April -- by October 1st, we'd have two full quarters of FRA data on on time performance to look at under the new standards?

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

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

MR. CROSBIE: If I could just comment on Mr. Yachmetz's -- the calendar he put forward. It will work towards a cooperative approach to this, and I've said
that in my testimony, but I hope the Board appreciates that for Amtrak, this is vitally important to us.

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

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

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

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

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

My only point earlier is that I do want to move this along and not end up in a long analysis and we had -- at some point, we have to agree to the metrics and put them in place and presumably, if we all find at the end of the day, that something isn't working quite right and we all agree that that really didn't work as we thought it would, I would assume we can change it. Again, I'm not a
lawyer, but I've spent way too much time with
them.

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

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

I guess a lot of this line of
questioning -- and I ask these questions for
a number of reasons. One is, we need to staff-up. We are staffing-up, but it's a meaningful difference to us, if we are anticipating complaints in April or July or October or January.

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

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

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

The data -- I'd like to hear each
of you talk about the data that currently exists on on time performance. Is it -- was it -- is it compatible with the new statutory expectation of on time performance data? Is there something ready for us to use?

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

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

But so, if you take away the pretty successful on time performing Northeast Corridor and look at the rest of the country, at the time of passage of the law in October, there were no routes that were actually complying with the 80 percent or better on time performance.
I understand that's gotten a little better, in the ensuing months. But could each of you speak to that, both of kind of the quality and it is ready for prime time of the data that is currently available, and just how far we are from the goal of 80 percent on time performance?

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

But we believe that data is very solid, even though it is, you know, it today's automated world of GPS's and various other things, it is very solid, in terms of the times and the length of time that they were delayed.
So, the basic information is there. It can always be automated. That just takes money to do, but that is something that we would look to negotiate with each of the freight railroads.

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

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

MR. YACHMETZ: Well, Mr. Crosbie is correct, that the conductor's reports have a long tradition at Amtrak and are the basis for which the numbers that we see on a regular basis, on on time performance and the freight
railroads have an opportunity to -- in some of their newer dispatch systems, to separately monitor the performance of trains and in fact, some of them actually -- you know, Amtrak submits its conductor reports to the freight railroads and some of the freights actually go back and look at records of their dispatch systems and verify that.

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

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

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

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

I know, I used to have the
privilege of traveling a little bit with
former Secretary Mineta, and he was famous for
always -- he had the pad and paper out and his
pen and his watch and he would note every time
we traveled, when that plane pushed off and
when it landed.

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

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

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

In terms of the northeast
corridor, we measure it on 10 minutes, in
comparison to airlines, which is 15 minutes,
which on the case of the northeast corridor,
that's our primary competition.
Off the northeast, take the long
distance routes, it's 30 minutes on the public
time table, is considered on time, and on the
corridor trains, it varies, for those -- the
state corridors. It depends on which one.

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

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

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

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

MR. YACHMETZ: No, I don't. I
mean, this is actually an interesting aspect
of where we're at. This is the traditional
way of doing things and one of the questions
that ultimately -- you know, the process may
have to ask, or you all as the arbitrator of the process, is, is there some other basis to set these up?

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

CHAIRMAN NOTTINGHAM: Very good.

Vice Chairman Mulvey, I know you've been very patient and I'm sure you have questions. Let me turn it over to you now.

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

MR. CROSBIE: Chicago to Quincy is
2 20, right? It's 20 minutes.
3
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
13 That kind of delay, I'm sure, is
14 not occurring as much today, but that was a
15 pretty poor performance.
16
17 Is on time performance though, a
18 significant determinant of long distance
19 travel demand? It strikes me that many Amtrak
20 riders, especially long distance riders, tend
21 to be relatively time insensitive, and that
22 it's not so much how long it takes, it's just
23 getting there on time. It's also getting there
24 when you're expected to get there. But, if you
I know you're going to be delayed and you can inform people who are going to meet you, when you're actually going to arrive, that's really more important than actually meeting a schedule. Is that not true, for the long distance riders?

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

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

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

So, on time performance for the intermediate points becomes much more
important to them. They may be commuting, if you will, on a long distance train, a shorter distance, an hour trip or two hour trip between two intermediate points.

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

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

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

VICE CHAIRMAN MULVEY: Following up
on that DOT IG report, as you may know, I used
to be the Department of Transportation's
Inspector General for rail, as well as transit
and other issues.

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

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

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

MR. CROSBIE: I think you need to
speak directly with them, but I'll attempt to
answer the question for you.
We have -- within Amtrak, we look at this and analyze it and are very good at predicting the relationship between on time performance and revenue, which is the other side of it, and we can show you that if you get a three point increase in performance, what the equals in revenue.

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

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

VICE CHAIRMAN MULVEY: I'm familiar with Amtrak's analysis and science and to be honest with you, a long time ago, Amtrak had a fairly sophisticated operation, in terms of measuring travel demand and looked at the relationship between revenues, on time performance, rider-ship, frequency of service and the like, and what it would mean for their rider-ship demand.
Unfortunately, Amtrak had been starved for a long time and I think one of the first victims of that starvation is internal analysis and that operation has long since gone away and you say, it's now gone out to an outside vendor.

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

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

VICE CHAIRMAN MULVEY: I notice on your chart, that only 54 percent of the causes
of delays were in that bar chart that you put up, suggesting that 46 percent of the causes of delays were not up there. Are those -- I mean, are there major causes of delay that were left out of that, because only one-fourth of them was freight train interference and more than 75 percent seemed to be causes, other than freight train interference, which is the issue that we're mostly charged with addressing here, or could be charged with addressing here.

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

Once you get beyond that, the top three, it becomes a long list of smaller delays involving third party, for example, where you might have a crossing accident, those types of things, and it's an accumulation of those small delays.
So, we're not leaving some big cause on the table and not talking about it. It's just accumulation of small ones.

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

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

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

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

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

VICE CHAIRMAN MULVEY: Mr. Crosbie?

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

absolutely, Amtrak supports that because we
don't want anything unsafe to happen, a
derailment or anything like that.

But what we do want to see is --

what we refer to, and I'm sure you're familiar
with, is the level of utility, is when is that
slow order coming off, and how long is that
going to take, and if that slow order exists
for some reasonable amount of time, whatever
metrics we come up with, needs to be able to
handle the positive side of that, and also, it
needs to be able to handle the other side,
which is if it's left for three years and not
addressed, that's a problem, and we take
exception to that.

And following on with your example

of, you have that slow order for whatever
reason, is the dispatcher has a choice, in
your example, of, okay, we have a freight
train there. We have a passenger train, and
that speaks to the whole issue of preference,
and we can show you in many cases -- and Mr. Chairman, you referred to your experience, your personal experience, where they chose the freight train. Packages over people, and we take extreme exception to that.

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

MR. YACHMETZ: Right.

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

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

MR. YACHMETZ: Well, actually, Congress has told us what the standard is.
It's 80 percent and so, I don't see us having the ability to say that the cardinal, because it's basically single track and heavily used, that it's -- gets a pass at 60 percent. I think we have to use 80 percent.

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

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

They expect -- you know, they pay
to get on the train. They pay for the ticket and they expect to arrive on time, and that is the implicit contract with us.

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

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

CHAIRMAN NOTTINGHAM: Okay.

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

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

But doesn't Amtrak operate the northeast corridor? It dispatches the trains
in the northeast corridor. But on the
northeast corridor, 95 percent of the trains
that are operating on the northeast corridor
are not Amtrak trains or freight trains, but
in fact, they are commuter trains.

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

MR. CROSBIE: We tend not to get
that kind of granularity. We will get a
complaint, from time to time, with just a
general on on time performance, and usually,
it's associated with an infrastructure
failure, reliability of the infrastructure in
some way, catenary failure or there's been a
track problem or some sort.
But they don't get to, "Oh, we saw the Amtrak train go by and why isn't our training moving," and one of the benefits, of course, of the northeast corridor is, we -- it is a multi-track railroad and when we have incidents like catenary failures, we do piece it back together again and we try to get everybody moving as quickly as we can to their final destination.

VICE CHAIRMAN MULVEY: Thank you.

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

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

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

COMMISSIONER BUTTREY: It's my
understanding that it's not uncommon for a
rail car or grain car, going from some place
in Montana to the west coast, would be easily,
in excess of $3,000.

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

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

Let me get to another question.

What is your definition of preference?

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

The recent Act that was passed
didn't condition that in any way, didn't
modify it in any way. In our view, it reconfirmed the original language in that area.

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

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

MR. CROSBIE: It is the --

COMMISSIONER BUTTREY: What the average load factor is?

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

COMMISSIONER BUTTREY: Right.

MR. CROSBIE: And we'd be happy to provide you all that detail. Many of the trains recently, as I said earlier, are the -- the rider-ship is growing on them and in some cases, we are at full capacity for large
sections of the entire route, particularly our sleeper service is in high demand. On many trips, our sleepers are full and you know, with the coach side of the long distance train, you get a lot of on's and off's with it.

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

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

MR. CROSBIE: It varies by train.

The average --

COMMISSIONER BUTTREY: I'm not asking you per train. I'm asking you on a system wide average, Amtrak system wide average, long distance trains, inner-city
trains, like from Chicago to L.A. or whatever, what's the average load factor?

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

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

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

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

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

COMMISSIONER BUTTREY: That sounds
like that's what happens.

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

MR. CROSBIE: If, on a normal day -

COMMISSIONER BUTTREY: I'm using your definition.

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

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

Where the preference issue comes in to play, is when there has been a delay and they have a choice. That's where it comes in, and the law is very clear on this issue, very clear.
COMMISSIONER BUTTREY: Okay, and you're also saying that that hasn't been happening. Is that what you're saying?

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

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

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

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

So, we have used some of the
mechanisms that have been in place and we plan
to be a lot more aggressive in those areas,
going forward.

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

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

Do you envision the Board, you
know, boring down and drilling down to these
contracts and possibly going in and trying to
change some of these provisions of the
contract, because normally, at the Board, our
experience and our mandate is, is that if
there's a contract that exists, the Board
doesn't get involved. It's the Courts.

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

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

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

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

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

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

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

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

COMMISSIONER BUTTREY: I'm not
aware of a situation where that money-back guarantee was enforced. I'm asking the question, has there -- is that a consideration?

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

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

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

COMMISSIONER BUTTREY: Well, I know on the VRE, for instance, the rail that I ride every day I come to town, because I don't
drive to town, I take the railroad. It's wonderful service, I might add, between Manassas and L'Enfant Plaza down here. I think in the whole time I've been using that service, I think maybe we had maybe a couple of days for a short period of time. But other than that, it's been basically flawless service. They have a program that if you -- if they're over a certain amount of time late getting you from your originating point to your destination point, they give you a voucher for -- they give you a free ticket that you can use to go anywhere on their system, basically, one ride on their -- one free ride on their system. That sounds like an awfully good deal to me and it puts some pressure on the organization to do what they say they're going to do. If they don't do it, then they pay a penalty for that. The penalty is, you don't pay.
MR. CROSBIE: Yes.

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

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

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

COMMISSIONER BUTTREY: Thank you.

That's all I have at the moment, Mr. Chairman.

CHAIRMAN NOTTINGHAM: Thank you, Commissioner Buttrey. I've got a couple more questions and I appreciate this panel's patience. This panel is very important to us, because this panel is uniquely experienced in the history and how we got here and also, your respective organizations were presumably pretty involved in the legislative discussions.
and the legislative history leading up to this new legislation, and we really weren't, and I'm not complaining about that. It's just, as a matter of fact, we don't have the benefit of all of that background and experience.

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

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

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

Before this statute, Amtrak, I guess, had the responsibility to, I'll say blow the whistle on on-time performance problems. In other words, to shed light on it, to say, "Here is the data. There is a
problem," to work initially, presumably in a collaborative way with the freight railroads, if you thought they were the primary cause and then, possibly pursue arbitration that you mentioned.

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

Tell me -- update me on what Amtrak's experience was. Did you bring -- my understanding is, you had several tools at your disposal, maybe the most blunt, but also the formal would have been some type of complaint in Federal Court, and we have a 1971 law about preference that is very important to Amtrak, yet I don't know -- and I've looked
the history of this, I haven't found very many
-- or any cases or any Court determinations,
enforcing the preference and I'm just kind of
wondering if you can amplify on what Amtrak's
experience and kind of, what lengths you went
to, to address this problem, any lessons you
learned that might be instructive to us.

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

I think there was one case in the
past, years ago, involving the Sante Fe
Railroad, I believe it was, many, many years
ago, but it was very complicated area, in
terms of putting together a case that the
Department of Justice would hear, and that
had, beyond that one example that I'm aware of, I don't know of any other myself.

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

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

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

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

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

If I understand your comments,
that -- when those conversations happened in
the past, at a preliminary level, the Justice
Department lawyers didn't give much, in the
way of a supportive, "Yes, this is a great
case to bring or we think we can win this one,
or this is a good use of tax payer dollars to
prosecute this," or what kind of reaction did
you get?

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

The company is now stable,

obviously, aggressively working on this to
improve its performance overall.

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

CHAIRMAN NOTTINGHAM: Well, I
appreciate that background. You can
understand how we might feel, that we're taking on a little bit of a challenging, new role here, if the entire --

MR. CROSBIE: Yes, you are.

CHAIRMAN NOTTINGHAM: -- work

force of the Department of Justice couldn't crack this puzzle over the last 30 years, that a department of over 100,000 personnel, and we have about 140, and plus 15 maybe, if we can get those.

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

It's kind of interesting here, we have a case where for years, the Justice Department was in a position to perhaps do something, to help solve a real problem, and
I didn't.

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

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

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

Other causes would be the whole
gamut of things that your testimony covers,
weather, slow orders, but other cases too,
typically pop up, as I've started looking at
this. Sometimes there is reference in the
schedules.

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

We all like to think that happens
seamlessly, in a fixed period of time, but
when you have 20 percent rider-ship growth,
you're going to have presumably, an uptick in
the amount of time it takes to unload and load
at each station, and very often, schedules are
never adjusted accordingly and my
understanding also is that sometimes Amtrak
isn't actually setting schedules if there are
state managed routes.
I'm thinking about North Carolina as one example, where state authorities determine it's important to stick to an aspirational schedule, rather than a realistic schedule.

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

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

We are open to taking into consideration, gross and rider-ship, but we're also on the other side, and historically, if you looked at this, we've added time in many occasions and maybe for a few months, if that, the on time performance has improved, but it
always went back to its previous level.

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

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

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

MR. YACHMETZ: Well, actually, I think you all are going to have a very complex package to look at, when and if -- hopefully, we never get to that situation, somebody brings a complaint to you, because the schedule and whether somebody is performing
against the schedule will be the easy part of
the analysis.

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

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

In your experience, how much money
does it take to get a freight railroad's attention, to correct a matter? What should the fine be? Should it be different for -- depending on the inconvenience caused to Amtrak or customers? Should we consider the line of questioning Dr. Mulvey had referenced, in a different context? Should we look at the -- how many passengers were inconvenienced, the cost to Amtrak?

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

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

But I could also see situations where it's not something -- it's more a
person-based caused and those are the ones that would be more difficult to price out.

CHAIRMAN NOTTINGHAM: Mr. Crosbie?

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

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

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

But I would defer to other's
experience, as to how much is enough to get their attention with it.

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

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

MR. CROSBIE: Training is obviously very important to us. It's something we focus
heavily on, but I would submit that we have
been doing that very thing for 30+ years and
it has passed other investigations by our own
IG, because of the contracts between Amtrak
and the freight railroad.

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

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

CHAIRMAN NOTTINGHAM: Mr. Yachmetz
was quite specific and I really appreciate
that, Mr. Yachmetz, about aspiring to have
something out on your website by the end of
this month, that would kind of begin sort of
a comment and feedback process, in the way of
-- if I heard you correctly, on time
performance type draft standards, something
that we can start to look at and the stake
holders can start to look at.

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

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

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

MR. CROSBIE: We are moving very
aggressively. We've been meeting with the
FRA. We have proposals on the table, already, of what we see are the metrics.

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

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

CHAIRMAN NOTTINGHAM: At this point, if I could ask you to maybe give me a percentage, rough percentage, 50 percent, 80 percent, 90 percent, and I'm not talking about passenger rail system on time performance. I'm talking about your projection of whether or not collectively, you think you can meet
the April 16th deadline or should we be
dusting off the yellow pages under arbitrators
and starting to line up the formal process
that we would then have to embark on, if you
didn't meet that deadline?
I recognize you've got decision
makers who are not necessarily all in place.
My understanding is, Amtrak has some vacant
Board seats and is about to have their Board
sort of re-constructed by the statute. FRA
has a number of decision makers that are
relevant to their process, that are yet to be
in place.
But are we looking 50/50 or is it
90 percent looking like it's going to happen?
MR. YACHMETZ: I would not want to
hazard a guess because part of it is,
ultimately, the decision makers -- I know the
staff work will have options available,
consistent with the time frame and it is just
then, who makes the decisions on the options
and whether they think more work is needed or
whatever.

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

CHAIRMAN NOTTINGHAM: Mr. Crosbie?

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

So, I don't see, just because we have some change in the Board come April 16th, any issue in this area, in terms of getting a decision made. They are fully prepared to make a decision and move forward, and have made it very clear to staff that this area, as
well as all of the other areas in the Act, we
must hit all the dates.

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

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

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

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

MR. CROSBIE: Agreed.

CHAIRMAN NOTTINGHAM: Vice Chairman Mulvey?

VICE CHAIRMAN MULVEY: Thank you, gentlemen. Thank you, Chairman Nottingham.

A couple of questions. A couple of things have come up in the other rounds of questions. I have a question on the money-back guarantee. Some of our colleagues behind me, got $200 back form Amtrak when that program was in place, I guess about a decade ago. You did have it and it, unfortunately, proved very successful. But it was an idea that Amtrak, in fact, did try.

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

VICE CHAIRMAN MULVEY: Yes, glide-
path to... never mind. Along the same lines, this whole question of what Amtrak has done in the past, with regard to bringing a case before the Department of Justice, it's my understanding from having spoken with some of the Amtrak CEO's in the past, in fact, most of them, I guess, Amtrak has always been reluctant to take that route and basically, preferred to try and work out these issues with the individual railroads that were involved.

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

MR. CROSBBIE: It is, and I think you have to put it in the context of each point in time and where the company was in its history, and as you know, it came through a very difficult period, all joking aside,
around the glide-path in 2000 and 2001, and
the focus was elsewhere and it is a very -- in
order to prepare a case like that requires an
enormous amount of investment of time and it's
very complicated and you know, you may get it
to the door step of the Department of Justice
and that's where it stops.

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

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

Does Amtrak have a quorum or does
it require every member to show in order for
there to be a quorum?

MR. YACHMETZ: Well --

MR. CROSBIE: It is ---

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

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

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

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

MR. YACHMETZ: Yes, I am.

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

MR. YACHMETZ: And I'm hoping that
the Board, as configured on April 16th, takes
care of a lot of those issues too.

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

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

MR. CROSBIE: Okay, as you know, we
issue a time table twice a year and the
schedules that are in there are part of the
negotiations with each one of the behind-the-
scenes, the back office, if you will, with
each of the host railroads.

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

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

So, we do do that, but it is --
but you have to have a standard by which
you're measured to and that is something that
they have agreed to.
MR. YACHMETZ: Yes, I agree, one of the challenges of the whole process, is not just the measurement and performance, but what you're measuring it against. I think that, as I mentioned in my opening remarks, technology is evolving, so that the opportunities to do these evaluations, both in the area of considering more variables, but also, in real-time, offers opportunities in the future that one can have a much flexible schedule.

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

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

VICE CHAIRMAN MULVEY: That's what I was thinking, most people don't have a printed schedule anymore. Most don't have 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
5 MR. CROSBIE: If I could just add
6 that, there's two issues in that. There's the
7 performance standard that you deal with, with
8 the host partner and then there's the
9 performance standard with the customer, and
10 our online systems today, if you go on
11 Amtrak.com or Amtrak-to-go on your Blackberry
12 pda, it will tell you the estimated time on a
13 particular train, when it's going to arrive.
14 It will take its current
15 performance and extrapolate, given the
16 schedule, it will extrapolate. You know,
17 you're going to be 15 minutes off the schedule
18 for that specific train. That exists today.
19
20 VICE CHAIRMAN MULVEY: Well, the
21 airlines had a requirement for a while, that
22 when the airlines published their schedules,
23 that they had -- in the last column of the
24 computerized reservations systems that the
travel agents use, the final column, it had on
time performance for the individual routes,
giving people information as to what their
expectations might be for that flight.

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

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

Along those same lines, frequency
of service is in classical travel demand
theory. Service frequency is an important
determinant of more choice and I was just sort
of wondering whether or not on time
performance has some relationship to
frequency, because it gets to that whole issue
of the preferred time versus the actual time
of the departure and arrival and that if
people's expectations are that it's not going
to make it on time, that it affects their
demand.

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

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

MR. CROSBIE: Yes, but if you look
at it, the top areas go to reliability of
service and so, if that's what people have
their complaints about, that probably is a
good indicator that that drives people's
mobile decisions, not maybe the first time
they take Amtrak, but whether they take Amtrak a second time or a third time.

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

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

I have one other question and that is, you've mentioned the importance of the intra-city rider-ship, that you know, we have these trains that are scheduled take off from Chicago and arrive in Los Angeles or Seattle
or San Francisco, but very often, it's the
classical travel that is within that long distance that
really is the bulk of Amtrak's demand, and
yet, when you're only running one train a day
or sometimes in some cases, tri-weekly
service, you don't really get very much, in
terms of quality of departure and arrival
times in these intermediate stops. This is a
long term problem for rail.

But it's strikes me that there
seems to be an opportunity here to begin to
address this, that if we substitute for these
long trains, much more intra-service, say,
between Denver and Salt Lake City or Omaha and
Denver, what-have-you, shorter distance
travels, and get the investment in the
infrastructure, the track infrastructure, that
would benefit both the freight and rail -- the
passenger and freight services, that would
allow simultaneously for more frequent
services, more timely services between these
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
those intermediate points, there is demand there and we're seeing more and more of that. They only have the one option today, the one train, Salt Lake City to Denver. We have to analyze, you know, the business case for that and make sure it works, but you know, inherently, we see that as the future opportunity for Amtrak, as quarter service in the country and it deals with a whole bunch of other issues for other modes, you know, in terms of more highway infrastructure and the benefit there. It's a lot less money for us to put a train on than it is to build a new highway.

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

MR. CROSBIE: Right.

VICE CHAIRMAN MULVEY: And you can't do much about that, if you're running a
train that's scheduled from Chicago to San Francisco. You can't optimize the departure time on intermediate points, unless you're running multiple trains.

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

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

VICE CHAIRMAN MULVEY: Right, I think there used to be an old frequency delay factor, which was, I think, one to the $E^{-KF}$. I think. It basically, very, very similar to decomposition or atomic decay, that the importance of frequencies declines as you get to about -- hourly operations.

MR. CROSBIE: Right.

VICE CHAIRMAN MULVEY: Anyway,
thank you.

CHAIRMAN NOTTINGHAM: Commissioner Buttrey, any further questions?

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

MR. CROSBIE: Thank you.

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

I expect probably the next time we're together at a hearing, I may well be sitting next to you, rather than in front of you, and up on the Hill, down the street. But I hope to see you before then.
Now, we'll call up our next panel, which is a one person panel. Representing state transit agencies, we have the Southern California Regional Rail Authority, also known as Metro Link, with us today, represented by Mr. Keith F. Millhouse and Mr. Millhouse, welcome. Thanks for patiently waiting and whenever you're ready, please do introduce your colleague to us and we look forward to hearing your presentation.

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

CHAIRMAN NOTTINGHAM: Mr. Millhouse, just make sure the mic is pointed
in a way that captures your full voice. I
struggle with that too, but I just -- and if
anyone in the back is having trouble with the
sound at any time today, if you could just
kind of signal, we have staff around the room
who can help us make sure we're on track.

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

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

I am the Chair of the Southern
California Regional Rail Authority for all of
one month now. The Metrolink, as it's
commonly known, is a joint powers authority,
consisting of the transportation commissions
from the counties of Los Angeles, Orange,
Riverside, San Bernardino and Ventura and I'm
pleased to have this opportunity to present
Metrolink's position on several of the issues
that the Board will be addressing, as it
implements the Passenger Rail Investment and
Improvement Act of 2008.

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

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

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

Unlike many other commuter rail
providers in this country, Metrolink is the
host rail provider over a significant portion
of its network and the freight railroads and Amtrak provide service over Metrolink lines under agreements with Metrolink.

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

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

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

First, we urge the Board to focus on the need to take into account, the potential impacts implementation of the Act.
may have on commuter rail operators that share corridors with Amtrak, as the FRA and Amtrak lead the effort to formulate standards and metrics for their inner-city passenger service.

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

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

Now, this is not in any presumed that the inner section of commuter rail service with inner-city operations would compromise either one of them. However, the nature and operational patterns that
characterize commuter rail service and which
distinguish it from inner-city operations will
be an important consideration, in ensuring
that inner-city trains successfully navigate
congested metropolitan areas.

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

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

The enforcement procedures set
forth in the Act allows the Board to start an
investigation and enforcement action on the basis of complaints by Amtrak or to launch an investigation of its own. The procedure does not mandate participation from the host rail carrier and does not provide a mechanism to settle or otherwise resolve any alleged impediment to satisfactory inner-city service.

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

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

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

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

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

Finally, Metrolink is please to recognize the potential for the Board to play a significant and beneficial role through its expanded powers, the mediator of access disputes, between the commuter rail providers
and freight rail carriers under Section 401 of the Act, which provides that after a reasonable period of negotiation, if the commuter rail operator cannot agree to terms for a freight rail carrier to use trackage of and have related services provided by the freight rail carrier, for purposes of commuter rail transportation, either party may submit to the Board for non-binding mediation, using the processes already in place for mediation of freight rail rate disputes.

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

Rather than leaving commuter rail operators to negotiate in isolation for access to a freight rail lines, the Act empowers the Board to bring consistency and a well informed policy perspective to the task of settling disputes and allowing both the freights and local commuter operators room to maneuver.
The continued accessibility and reliability of commuter rail service is a key component of the success of passenger rail generally in the United States. Enhancing opportunities for commuter rail providers to serve their constituent communities will also advance the interest explicitly set forth in the Act, to preserve and expand access to the nation's rail network by inner-city passenger operators.

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

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

What's your, I guess, expectation,
if I could use that word, of the Board's -- you anticipate that -- I'm thinking about the provision of the new legislation that references non-binding mediation, that the Board can oversee and administer.

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

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

Now, because we are the owners/host railroad, we have some additional authority that some other commuter rail
operations do not have. But I think it's important to have the ability, for this Board, to serve as a mediator subsequent to the exhaustion of remedies within any contractual agreements or to address those particular concerns because the interest of moving freight can, at times, be different than the interest of moving people and passengers officially.

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

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

In your -- in Southern California, in the area that you're most familiar with, is there adequate rail capacity to have both an outstanding system of commuter rail, passenger
rail and freight rail, or is there a need for significant additional new capacity investments?

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

Also, operating a commuter rail system that carries a million people a month, capacity is an issue and I would like to see enhanced capacity.

We are doing the best job we can, under the current system. However, expansion of capacity is certainly something that's going to have to occur in light of the tremendous success of our commuter rail operations from a passenger standpoint, and the need to accommodate additional freight growth.
So, additional capacity will be necessary in Southern California and we're hoping that as part of new initiatives and Congress and enhanced lobbying on our behalf, that we'll be able to effectuate that as part of a comprehensive program in the Southern California region.

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

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

We have sat down with the freight railroads. We've worked that out and we seem
to be doing much better in connection with that. But an overall one time performance in excess of 90 percent is very outstanding.

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

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

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

So, I've seen tremendous growth within that system. We've worked with Amtrak
to accommodate them and I think we've got a
very efficient contractual relationship with
Amtrak.

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

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

But we certainly are very
supportive of the Amtrak system. Again, we're
a great feeder for the system. We like to
respect the contractual relationships as they
exist and we'd also like to see the Board be
in a position, when necessary with the freight
railroads, especially in cases of disparate
bargaining power, have the ability to step in,
in terms of ensuring on time performance.

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

Vice Chairman Mulvey, do you have
any questions?

VICE CHAIRMAN MULVEY: Thank you,
Chuck, a couple. First, I want to say that
several years ago, I was out visiting
Metrolink and I visited their maintenance
facility and I was very impressed. You could
practically eat off the floor there. It was
really unbelievable, how modern, how
efficient, how clean the operation was and you
are to be commended for that new facility.
Would you say that commuter
travelers are more time sensitive than -- I
think I heard you say this, than Amtrak riders
and therefore, if that's the case, if the
elasticity of demand is much more responsive
to being on time, that maybe commuter riders
and commuter trains should have a preference
over Amtrak trains?

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

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

But with respect to our commuter
rail operations, it is very time sensitive and
we never run time sensitivity at the expense
of safety, but it is important for us to get
people to their jobs on time, because if they
are habitually late, and this was something that came up with the Riverside line, then they say, "Ghee, I can't get to my job on time. If I don't get to my job on time, I'm not going to have my job." Therefore, I revert back driving in an automobile, which is something we want to discourage in Southern California.

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

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

Do you use the incremental cost method, which is what is typical of the Amtrak
and freight railroad relationship, or do you try and capture some of the allocated costs as well?

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

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

VICE CHAIRMAN MULVEY: Okay, thank you very much.

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

COMMISSIONER BUTTREY: Thank you, Mr. Chairman. I thank the witness. So, some of your trains are dispatched by UP. Some of your trains are dispatched by Amtrak and some of your trains are dispatched by your own
dispatching, is that correct --

MR. MILLHOUSE: Well, we have a --

COMMISSIONER BUTTREY: -- or did I misunderstand you?

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

(Off mic comments.)

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

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

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

MR. MILLHOUSE: For that small segment, yes.
COMMISSIONER BUTTREY: Yes, otherwise, you're dispatching your own.

MR. MILLHOUSE: Correct.

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

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

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

But I would consider our customer
refund policy very generous because we're interested in retaining our riders and what we have found is even after the run-up in gas prices and the subsequent coming down of those, we have retained a significant portion of the people that ride the system.

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

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

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

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

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

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

MR. MILLHOUSE: I believe the Irving station is.

(Off mic comments.)

MR. MILLHOUSE: Around Anaheim.

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

MR. MILLHOUSE: Most of -- technically, we own our right-of-way as the member agencies. The transportation agencies within the various counties own much of it.

We maintain the tracks for Metrolink within there.
So, I guess indirectly, we have control, although technically, it's not ownership in a large part of that area.

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

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

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

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

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

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

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

MR. MILLHOUSE: I'd have to defer
that to the Chief Executive or our contracts
attorney there, because I don't know the micros of that and I'd hate to give you the incorrect answer.

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

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

MR. MILLHOUSE: I understand your questioning and where you're going on that. I think that although that may technically be an occurrence, it is not a likelihood that the pride we take in running the system is reflected in the fact that each of our jurisdictions carries the people we live
And so, we hear directly -- you
know, if you live in Orange County and you
represent Orange County, I represent Ventura
County, and so, I have a personal stake in the
success of the commuter rail system out there
and if it's not being run well, I get stopped
at the grocery store, people come up to me,
they tell me suggestions, they recognize me
riding the train.

So, we have a vested interest in
the --

COMMISSIONER BUTTREY: They know
where you live.

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

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

MR. MILLHOUSE: We have an 11
member Board. We have four representatives from Los Angeles County. Los Angeles County contributes the largest share of funding for the operation, and then there are two members from each of the other counties, with the exception of Ventura. We are the smallest financial contributor in the system.

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

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

The success of the system, is a result of the diversity and the broad views and the regional thinking that we have in the Southern California region.
COMMISSIONER BUTTREY: Do you know what your average load factors are, on your trains?

MR. MILLHOUSE: I don't have the specifics on that. I can tell you that depending on the line -- and it does vary by lines, some of the trains have -- can be standing room only during the rush hours and we have an order, we're expecting approximately 115 new rail cars coming in. They were designed in connection with the Volpe Center and Department of Transportation, to incorporate crash energy management technology, so, they will be some of the most technologically advanced, if not, the most technologically advanced, rail cars in the country and we're expecting the delivery of the first batch of those at the end of this particular year.

COMMISSIONER BUTTREY: Are those double-decker type cars?

MR. MILLHOUSE: Yes, they're kind
of the tri-levels in the sense that, there's a bottom, there's kind of a middle tapering on the ends and then there's an upper level. So, there's a bottom level, an upper level and kind of a mezzanine level on the ends of the cars.

COMMISSIONER BUTTREY: Sort of a sounder type car?

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

So, we're very excited about that. We've seen tremendous growth in our rider-ship over the course of time, where we're now 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
question, and this might help our Court Reporter we have with us.

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

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

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

How do you define late, as far as late train, if you're keeping performance standards? We heard from Amtrak that they have some different definitions, up to now, depending on the type of train, 10 minutes, 20 minutes, if it's a cross country train, I don't know, was it -- it was an hour, the longest that we heard from them. I can't
remember, but 30 minutes is the longest they had used. How do you guys define that in your work?

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

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

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

CHAIRMAN NOTTINGHAM: And as your system has grown and matured, have you found that you've needed to occasionally adjust your schedules to account for the time it takes for more people to get on and off the train at different stations?
MR. MILLHOUSE: There have been schedule adjustments. I don't know if they have been in particular relation to the people that, you know, board and disembark at particular locations.

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

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

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

CHAIRMAN NOTTINGHAM: Thanks. I
have no further questions. Vice Chairman Mulvey?

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

MR. MILLHOUSE: Yes.

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

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

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

MR. MILLHOUSE: I do not have --

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

MR. MILLHOUSE: My personal
experience in riding it, because it take it
from Los Angeles station, down to San Diego,
it's been very punctual. I've been very
impressed by the Amtrak service, as well as
the number of people on the Amtrak trains.

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

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

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

There was a California high speed
rail bond measure that passed, however, they
have not engaged in active discussions with
the Metrolink system in Southern California,
although they believe they're going to use the
Metrolink right-of-way for their high speed
rail system.

So, it will be a bit of a
demand there, in terms of actually bringing
that to fruition.

VICE CHAIRMAN MULVEY: They're
talking Metrolink right-of-way for the high
speed rail between Victorville and Las Vegas?
MR. MILLHOUSE: No, Victorville and
Las Vegas is not --
VICE CHAIRMAN MULVEY: That's a
different --
MR. MILLHOUSE: That's a different
high speed rail that's been talked about.
VICE CHAIRMAN MULVEY: That's an
operation --
MR. MILLHOUSE: Yes, the high speed
rail that was talked about by the high speed
rail authority and for which the voters
authorized a certain number of dollars of bond, I think it's $9 billion, and they'll need $40 billion. They have to get private financing before they can use some of the money.

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

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

Again, the problem with that is, operating in the environment that we're operating in, you have to have complete grade separations and as an example, to go from Los Angeles to San Bernardino on a line we already do, you could grade separate that for a fraction of the cost of building a brand new duplicative high speed rail network, and your operating speeds are roughly the same, because we could increase the operating speeds of the Metrolink trains, such that the difference
between that and a high speed rail train, that
is making the same number of stops, would be
negligible.

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

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

VICE CHAIRMAN MULVEY: I recall the
first mag-lev -- California/Nevada mag-lev
commission and actually rode the I15 corridor to see all the problems it was going to run into.

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

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

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

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

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

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

MR. SOLOW: Thank you, Mr. Chairman. I appreciate the opportunity to speak to you today. I am Chief Executive Officer of the Southern California Regional
Rail Authority, which you obviously know now, because I responded from the cheap seats, which provides commuter rail service in the Los Angeles area. I also serve as the Vice Chair for commuter inner-city rail, and that's the capacity I'm in here today, and I act as Executive Committee, which is the Association's Policy Board. Previously, you've heard from my Board Chairman, Keith Millhouse, who spoke on behalf of Metrolink. I might also add, Mr. Chairman, that I used to be the director of project development and train scheduling for New Jersey Transit, which ran service into New York and if there were any on time performance problems, they came on my desk also. So, I have both east coast and west coast experience.

I appear before you today of behalf of APTA and International Public Transit Trade Agency, with over 1,500 public and private sector members, who serve 90
percent of the American transit riding public.

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

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

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

All of the nation's commuter rail operators are members of APTA and as our constituents, they are the most likely to be
affected as the Passenger Rail Investment and Improvement Act of 2008 is implemented.

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

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

The continuing necessity to accommodate all these demands on a limited network and to ensure access for commuter rail providers who have neither the positional
To be sure many of the actions mandated in Act, specifically, the increased role of the Board, will potentially benefit commuter rail providers. However, in protecting Amtrak’s priority over freight traffic, as set in Section 213 of the Act, APTA urges the Board not to disturb existing access agreements related to commuter rail operations or otherwise impede commuter rail access to facilities.

Commuter railroads provide vital passenger service and have built their systems based on carefully negotiated access agreement with the freight railroads. If the implementation of the Act as the effect of rendering these existing agreements invalid, the resulting impact on
commuter railroads and their paths will be devastating.

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

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

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

A number of our member agencies
across the country are spanning their systems, including such markets are Greater Los Angeles, Denver, Salt Lake City and Tampa. These efforts entail a great deal of negotiation with the freight railroads for access to corridors.

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

There is no question that the nation's rail network is severely congested, particularly in the urban areas where commuter railroads are most needed, and the freight railroads enjoy the opening advantage in negotiations for access.
For these reasons and promulgating mediation practices, we believe the Board should prescribe mandatory good faith participation access negotiations, with potential penalties for the failure to do so. This is vital to ensuring the mediation system is viable and valuable, rather than an opportunity to delay in resolving disputes.

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

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

Furthermore, as commuter rail
providers pursue the expansion and enhancement of their systems, the Board's assistance in bringing the freight rails to the table, to engage in meaningful negotiation may make the difference on whether or not a project which benefits the public, goes forward.

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

I appreciate the opportunity to address the Board this morning and I, of course, would be willing to answer any other questions about Metrolink and I hope that the views of the commuter rail industry will be useful, as the Board makes the vital policy decisions required to implement the Passenger Rail Investment and Improvement Act of 2008.

Thank you very much.

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

MR. CAPON: Mr. Chairman. Thank you very much. I'm President of the National
Association of Railroad Passengers. I've watched Amtrak closely since its existence. I was hired by the Massachusetts Executive Office of Transportation and Construction four months after Amtrak began operating in '71. I have worked for the Association since '75.

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

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

I note with some pride, the similarity between the reference in my 2006 letter to delays caused by "actions that might have been reasonably avoided" and laws' reference to causes that could reasonably be addressed, that is by the private railroads.
To take the extreme example at page 15 of Mr. Hamberger's testimony, we certainly agree with delaying Amtrak one minute, rather than delaying a freight train an hour. But by the same token, we would oppose delaying Amtrak an hour, to avoid a five minute delay to a freight train.

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

The Judge never rendered a decision. The Department of Justice did agree with Amtrak's definition of what constituted on time performance, but one thing -- two things, I think, to remember about the problem with the previous law is, one is that for much of its existence, the Administration has
opposed Amtrak or tried to cut it out of funding, and so, there was little reason to believe that the Department of Justice of this Administration -- of a given Administration, would be at all supportive, and the second is the simply fact of the mechanics of how it works, is laying out in detail, doing all the staff work that Mr. Crosbie referred to, without any assurance of productive use of, but also, of laying out, in effect, before you opponent, before a case is ever taken up, the details of your case.

I would comment on slow orders and underline Mr. Crosbie's reference to slow orders that stay in place for years. On this Coast Starlight route and the California Zephyr route, that was the case. It may be apocryphal, but there's a story that the -- going around, that the top management at Union Pacific wasn't even aware of how bad the California Zephyr route was until one of their executives was in an office car on the rear of
the California Zephyr and ultimately, there was an agreement between Amtrak and Union Pacific that covered a couple of years that it would take, to get the railroad back into shape, which had been allowed to slide down hill for over many years.

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

There is one important reference that Mr. Hamberger made on page 12 of his statement, which is to the tendency of law enforcement officials to require trains involved in accidents to wait until investigations are completed, and I think there are probably many examples that the railroads can cite, where the rule of common
sense is simply not observed and the train is -- delay of the -- the railroad is shut down for longer than is reasonable.

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

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

I believe that the Canadian railroads have been able to work some more uniform nationwide standards on this, but it certainly is a cause of delay that is not the fault of either the host carriers or Amtrak, that is worth looking at.
I wanted to comment on load factor, which has been brought up a couple of times. On Amtrak, as a general rule, load factor is higher on the long distance trains than it is on the short distance trains and it's generally lower on Amtrak than it is on airlines, largely because of the number of intermediate stops, the exact load factor is going to vary among a zillion different intermediate stops, that the train, unlike the plane, makes.

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

We completely agree that consistent 15 minutes late is a much bigger deal on a short trip, especially a commuter trip, than on a long trip, but I would discourage looking at anything more than 30 minutes late as a definition of on time for
the long distance trains. As Mr. Crosbie implied, there are a lot of newer passengers on those trains that are less forgiving than the hardcore, some of whom might regard every extra hour on the train as a delight.

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

We don't think that Congress intended longer schedules to be the solution for on time performance in drafting this law and we do think that the railroads rights are well protected, as to what must happen before a new service is added and I believe the surf-
board already has the potential to deal with
issues of disagreement on that score.

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

Amtrak has also been helpful in
certain cases, in providing engineering
expertise that identifies the ability of
trains to run faster on existing -- safely on
existing track and is a kind of bell-weather
on municipal speed limits, that at different
times in the railroads history, have posed a serious problem.

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

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

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

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

Our experience as a Board may be in part because we do have so many
transactions where we deal with the railroads
and the railroads need us to deal with them
cooperatively on so many transactions.

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

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

MR. SOLOW: Right.

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

MR. SOLOW: Right.

CHAIRMAN NOTTINGHAM: We hopefully,
have success.

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

CHAIRMAN NOTTINGHAM: Okay. We've
heard some different things today about best practices or expectations in the area of on time performance. Could you offer anything in your experience, both on the east coast and the west coast and nationally now, on behalf of APTA, about what we -- what types of time periods we should be looking at, to define a late train?

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

MR. SOLOW: Right.

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

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

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

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

We use five minutes and 59 seconds. That's pretty common in the commuter rail area, but a lot of the Amtrak trains on these common corridors, they have longer corridors than the commuter corridors are, so, the interferences they may go through off of a host freight railroad and when the arrive on the commuter railroad property, may be impacted by a number of things, which in my instance, my dispatcher has no control over.
It's whenever it arrives at that point that it goes on our property.

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

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

What occurred, it occurred about five years before the growth of the Asian markets, and so, we sort of crept up, with very heavy freight traffic the last two or three years. We've had a struggle, although I can say that the freight railroads have been
very cooperative in attempting to keep our
trains on time.

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

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

So, what we have found is we have
to be very receptive and have to be very long
range planning, in terms of work windows and
those types of things. They have a service to
provide. They have a maintenance to provide
and we have to accommodate to that, but we
still have to ensure that the bread and butter
of our operation, which is the peak direction,
peak period service, is kept on time and in
Southern California, we've been able to do
that.

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

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

CHAIRMAN NOTTINGHAM: That's a
natural lead-in to my next question, which, if
I understand your testimony correctly, one of
APTA's concerns is that as we look into and
investigate a problem, Amtrak corridor or
route that has some serious on time
performance problems, we may hear from the
freight railroad in question, about the
challenging environment that they're operating
in, that they may well be operating and owning
a line that accommodates Amtrak trains,
commuter rail trains and freight trains, and
something is going to have to give, potentially.

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

But help me understand how we'll --
our -- as I look at the statute
preliminarily, and the hearing is helpful to
get more of a fuller appreciation of it, we're
going to be looking to the freight railroads,
potentially, to fix the problem and we're
going to be talking with them about possible
fines.

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

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

MR. SOLOW: Well, I would look at
it from two different areas, train scheduling
as an art. It depends on -- the circumstances
on the ground. Many of our commuter railroad
properties paid substantial capital investment
dollars, to have `X' number of trains today,
based on on time performance regime that the
freight railroad had agreed upon.

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

The converse of that is that if we
bought and paid for capacity and the freight
railroads' traffic is increasing, that
increase of traffic, if we had paid to buy `X'
number of trains a day invested, that
increase, that capital investment needed to
keep the commuter rail trains on time, we
believe, would be beyond the dime of the
freight railroads because it was their traffic
they increased, you know, on the line they
own, but it's their traffic they increased.

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

CHAIRMAN NOTTINGHAM: Thank you.

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

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

MR. CAPON: Thank you.

CHAIRMAN NOTTINGHAM: Let me ask you, what do you think it will take, when we get down to the nitty gritty of having to figure out what our menu of fines should be, what do you think it will take to get a
railroad's attention and get a railroad to actually change conduct, if we do find that there's a freight rail out there that's causing a serious pattern of delays of passenger rail of Amtrak?

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

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

CHAIRMAN NOTTINGHAM: Thanks, I'm just anticipating that no matter what we do, we'll come under some criticism and that comes with the job, but we can handle it. But some
will argue that whatever fine we come up with is not enough and some will argue it's too much, and if it's not changing -- if it's not resulting in behavior change, maybe it needs to be increased.

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

CHAIRMAN NOTTINGHAM: Thank you.

Let me yield to my colleague, Vice Chairman Mulvey.

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

MR. SOLOW: I would say that we --
and I can only talk about my particular experience. We share costs with freight railroads on an allocated cost basis, not unavoidable basis, as Amtrak does.

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

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

So, I would say that possibly, that's true, but then how do we account for the fact that we, in essence, bought and paid for the asset, that the freight carrier is using, to a large extent, 18 hours a day?
So, there are -- I'm sure there are circumstances on both sides that would have to be taken into effect.

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

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

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

VICE CHAIRMAN MULVEY: No, that's
MR. SOLOW: I would love to ask my freight partners to pay for some of the capacity increases in our lines. They haven't bellied up to the bar yet, but I'm sure, with your assistance, we can make sure that that occurs.

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

So, whether the agreements we have with the freight railroads right now are fair or they were fair in 1990, but they're not fair now, those might obviously be issues that we can discuss with them, but I think public agencies in general, when they are asking the freight railroads to provide more service, should be paying for their fair share of that increased service, keeping in mind that the freight railroad operator who doesn't have a
peak period driven schedule, can use the
capacity at other times of the day.

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

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

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

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

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

MR. SOLOW: Okay, I think they
have, right? Yes, Kathy Waters of Merck & Public Transit Association, I believe we have been supportive of both, both on the freight side and on the high speed rail side.

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

MR. SOLOW: I think they definitely are on a going forward basis. One of the problems with public financing of commuter rail improvements is, the dollars don't come as quickly as you'd like. They don't come basically, with the color of money you'd like
all the time, and I think to the extent that we can work with our freight partners to increase capacity in general --

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

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

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

So, if you put the two of those together, I think to the extent that we could work with the freight railroads on a cash flow basis, because we always don't get money when we like to get them, or we pass bonds in
California, but can't float the bonds, to the extent that we could work with them to take a corridor approach, as opposed to a commuter rail versus freight approach, the fact is, we want to move the goods.

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

I, for one, have always taken the approach that we have to get both the freight railroads together, which they don't always talk on the same wave length, that come out of the port, and the public agencies together, and come up with an approach for the basin, irrespective of who owns the lines.

And so, I do think a public/private partnership, in some way, is ripe for the LA basin.

VICE CHAIRMAN MULVEY: A protocol
question, in the situation where an Amtrak train and a commuter train both arrive at the same time, at the same place, what is the protocol for who gets priority?

Let's assume, for example, that the Amtrak train is running late, for some reason or another, regardless of who caused the delay, but that train happens to arrive at the same time as a commuter train. Is there a protocol that's in place as to who gets preference at that point?

MR. SOLOW: I can only use the example of my operation. My operation is a peak -- in the peak period direction, the -- on a first-come-first-basis.

So, if an Amtrak train, in the peak direction, is coming there first, that gets priority over a commuter train, and so, the idea is that particularly in the shorter corridors, where Amtrak operates, they have as many commuters on their train as they do longer distance Amtrak inner-city passengers,
and the whole intent is to move the flow, irrespective of who the operator is, as quickly as possible.

VICE CHAIRMAN MULVEY: That would be especially true in Los Angeles --

MR. SOLOW: Right.

VICE CHAIRMAN MULVEY: -- where you have the San Diegan and --

MR. SOLOW: Right.

VICE CHAIRMAN MULVEY: -- all the Amtrak trains, as opposed to say, Chicago, where there are more long distance trains.

MR. SOLOW: Right.

VICE CHAIRMAN MULVEY: Ross, doesn't Amtrak operate primarily over the Class I main lines?

MR. CAPON: Outside the northeast corridor one-third fo Chicago, Detroit and their own terminals in Chicago or LA.

VICE CHAIRMAN MULVEY: You mentioned the slow orders and slow orders sometimes go on for a long time. We have some
problems with some of the embargos that are
out there.

We're seeing embargos that have
been put in place for several years. Now,
there are special circumstances for those, but
that's not the purpose of an embargo.

The slow order is generally put in
place because of either a weather related
problem or a track related problem that needs
to be solved. But since these are the freight
railroads main lines, isn't in their own
interest for their freight operations to get
slow orders taken care of as soon as possible,
or do you feel that Amtrak sometimes is
suffering longer than it needs to, because of
slow orders?

MR. CAPON: Well, I think it is in
-- it is in the interest of the railroads to
keep their main lines in good shape and I
can't explain -- I mean, I guess if the Union
Pacific looks at its entire system, the line
from Sacramento to Portland, where a lot of
the problems that exist is not the top tier, in terms of volume, but the line -- the old southern Pacific route east from Sacramento towards Salt Lake City and Denver, which is where the California Zephyr problem got terrible, I mean, that's a main line.

And so, I don't know how to explain it, other than to say that it became the subject of an agreement and presumably, has been or is almost fixed by now and hopefully, that kind of condition will not be allowed to develop in the future.

VICE CHAIRMAN MULVEY: Up until recently, the freight railroads-- as a group, have had a fairly aggressive program in place, to upgrade and maintain and expand the capacity especially of their main lines, albeit the recent decline in traffic seems to have caused some of them to back off from those expansion plans.

But do you think things have gotten better as the freight railroads have
increased their infrastructure investment
spending in the last few years?

MR. CAPON: Well, certainly, if you
go back to 1980, it's world's better and I
think it's gotten better. Of course, some of
the track improvement may have been masked
from the passenger's point of view, by the
congestion.

I did want to mention that our
association and APTA are both members of the
one rail coalition, which was recently formed
and is referred to on page four of footnote
three of Mr. Hamberger's testimony, where we
and the freight interests are all supporting
everything good for both passenger and
freight, including the tax credit that you
referred to.

VICE CHAIRMAN MULVEY: One last
question, and that is, the legislation, I
believe, was to deal with the problem of
freight trains delaying passenger trains and
the freight operators not living up to their
responsibilities under the law, to give Amtrak trains priority.

But, because both the freight railroads, as well as Amtrak and states, can come before us, do you think that freight railroads also should be able to come before the Board and ask for relief, if an Amtrak train is delaying freight trains and should there be in place, penalties against Amtrak, if indeed, they're delaying freight trains, that are 120 cars long with high value goods coming out of the Ports of LA and Long Beach?

Do you think that can be the case or should we really be focusing on the need to make people in time, rather than freight on time?

MR. CAPON: Well, I think that the freight operators -- I think the word common sense, which we hear on Capitol Hill all the time, as frustrated legislators look at the financial mess. I'd like to think that common sense would prevail here, and as I referred to
in my spoken testimony, if you have a situation that's developed, where skiers at Glenwood Springs are on a daily basis, adding five minutes to the dwell time, Amtrak and the freight railroad are negotiating on a regular basis with schedules, and I would think that that sort of thing would not rise to anybody's need to come here. If it does, then maybe they need a brain transplant.

As far as whether -- and the other issue is Amtrak -- reliability of Amtrak's equipment, if that becomes a really big deal, that -- a major problem, in terms of the operation of the freight railroads, as opposed to one or two anecdotes or whatever, I believe that the law does give the railroads the right -- the private railroads the right to come here -- was -- there was a period during the gestation of this law, when one of the Hill staff told me that the railroads need to focus on the equal opportunity aspect of the new law.
The direct question about whether it should be possible to levy fines against Amtrak for habitual problems, with respect to their equipment or their refusal to negotiate schedules that reflect passenger dwell times, I have to think about that. It's a new concept, I guess, that tells you where I've been sitting.

It's not an unreasonable question. I just don't want to -- as with the Chairman's question, pull an answer out of thin air.

VICE CHAIRMAN MULVEY: Thank you very much. I'm glad to hear that you are a believer in common sense and having been in Washington as long as you and I have, that we still believe common sense can prevail--is very optimistic. Thank you.

CHAIRMAN NOTTINGHAM: Commissioner Buttrey?

COMMISSIONER BUTTREY: Thank you, Mr. Chairman. Mr. Capon, you cause me to completely lose my train of thought there,
when you mentioned Glenwood Springs. I started thinking about things that I probably shouldn't be thinking about, skiing and that sort of thing.

Just a comment, I've heard two terms sort of being tossed about here this morning and one of them has to do with fines, which to me, means something that's punitive, and then I've heard the term damages, which to me, means something like compensation.

I'm advised that the word fines does not appear anywhere in the legislation. The term damages, however, does, and the terms damages sort of indicates to me, maybe I'm being too legalistic here, but damages in the ordinary classical sense, would be something that would have to be proved. Evidence would have to be adduced, etcetera, etcetera. There has to be documentary evidence and that sort to thing presented, to be able to prove damages.

And you know, you could be very
unhappy about something and very disturbed
about something and maybe even offended by
something, that's one thing. But being able
to prove that you've been damaged is something
else again, other than just being offended or
you're angry or something like that.

So, I think maybe one of the
things we need to do is to get our terminology
aligned, if you will, with the legislation,
and for my money, anyway, not talk about
fines, punitive kinds of things, but talk
about damages and compensation kinds of
things. That's just one man's opinion.

But I just raise that as an issue,
in terms of how we cast our dialog here and
then maybe even in the future.

So, I just wanted to see if I can
get some clarification on that and is that
something -- is that idea or that comment
something that you would agree or are you
really thinking about fines?

MR. CAPON: Well, I'm, first of
all, thinking about Congressional intent and results and I'm always a supporter of Chairwoman Brown's comments, "It always helps to read the law, as well."

I think that the reason damages come to mind is that may be implicit in that DOT Inspector General's report, that tried to set out, what was it, $100 million or so, that they thought Amtrak was losing, because of the lateness in trains, so, to the extent that the law refers to damages, as opposed to fines, that's a cause to be careful in the use of words, but not to lose sight of the concern that led to this law and the idea that it should be implemented in a way that is consistent with the law and aims at getting the right results.

I think part of that, as I alluded to earlier, is I know that the private railroads have a strong interest in not having to come here and deal with a complaint and it looks like they are reflecting that in their
COMMISSIONER BUTTREY: This may be a little bit off point, but I'm just -- my curiosity has peaked a little bit, and I don't keep up with the political agendas of either the American Public Transportation Association or the National Association of Railroad Passengers. If you can please excuse me for that admission, but I just don't.

I'm just curious of either one of your two groups are aligned with any of the groups that are supporting what is generally and maybe inaccurately called re-regulation or that sort of thing on Capitol Hill and just, my curious has peaked, about if you have a public position or you've taken a public position or aligned yourself with those who are involved in the removal of the anti-trust exemption for the railroads?

MR. SOLOW: I can tell you almost certainly, the American Public Transit Association has taken no position on that.
COMMISSIONER BUTTREY: Okay.

MR. CAPON: We have not taken a position either. I have said on occasion, to those who have asked, that I do not equate every attempt to change the law with re-regulation, but we certainly would not be in favor of anything that demonstratively harmed the ability of the private railroads to field a good track system.

COMMISSIONER BUTTREY: Thank you very much.

CHAIRMAN NOTTINGHAM: Just a parting comment from me, if I could. I hope we can count on both your associations to keep in touch with us. Your members, it seems to me -- we -- the statute envisions that we may well play a role in reporting to the Department of Transportation about specific choke points or specific infrastructure problems that are causing endemic delays.

It seems to me that for example,

Mr. Capon, your members may be singularly well
qualified to help us -- point us to where
those hot spots and those choke points are.

MR. CAPON: And I go to Porter,
Indiana.

CHAIRMAN NOTTINGHAM: Right, and I
remember when I was regularly riding Amtrak
between Fredericksburg, Virginia and
Washington, D.C., I felt like I had a pretty
good list of what they were. You know, the
Quantico Creek Bridge, which has since been
fixed and on and on and on.

So, riders know where the problems
are typically and we look forward to learning
from them and hearing from them.

MR. CAPON: Thank you.

CHAIRMAN NOTTINGHAM: Thank you.

We will -- Vice Chairman Mulvey, any other
questions for this panel?

VICE CHAIRMAN MULVEY: No other
questions, thank you.

CHAIRMAN NOTTINGHAM: Thank you
very much. We appreciate you being here.
We'll now invite Panel IV to come forward.

Representing the Freight Railroad Industry, we have from the Union Pacific Railroad Company, Mr. J. Michael Hemmer, from the CSX Transportation Company, Mr. John M. Gibson and from the Association of American Railroads, Mr. Edward R. Hamberger.

Sure, Mr. Hamberger would like to start. Let the panel work that out amongst themselves and we will hear from Mr. Hamberger when ever he's ready to begin.

MR. HAMBERGER: Okay, I know we can work this out. We're going to use common sense.

CHAIRMAN NOTTINGHAM: Welcome,

thank you for your patience today and it sounds like we'll first hear from Mr. Hamberger.

MR. HAMBERGER: Thank you, Mr. Chairman, Vice Chairman Mulvey, Commissioner Buttrey, thank you for the opportunity to be here this morning, or this afternoon, as the
case may be, to speak to the STB's role, under
the Passenger Rail Investment and Improvement
Act.

While I am speaking today only on
behalf of the freight members of the AAR, I
want to emphasis that Amtrak is a full member
and a member of the Board, of the AAR and that
we have several commuter rail members and
well, and I was very pleased to hear Mr. Capon
mention, the one rail coalition.

I'd like to submit for the record,
the principles and the membership of that
coalition. It is not always intuitively
obvious that freight rail and passenger rail
advocates believe it the same thing, but we
do.

We believe that there needs to be
enough capacity to move America's freight and
America's passengers and we're committed to
working together to achieve that.

It is not only in the one rail
coalition. I was also interested to hear the -
- Mr. Millhouse mention the Korean passenger car. We're pleased to have that car actually proven under an FRA test out at the technology center, the transportation technology center that the AAR runs in Pueblo, Colorado. Secretary Mineta was there and the then Chairman was on his way to sign the contract decree. So, he was very pleased to see that the car actually met the standards when the test was run.

Finally, of course, we are working very closely with APTA, with Amtrak and Cathy Waters, is a member of a committee we have established to implement the positive train control requirements that this same Bill levied on the industry.

Let me say that I will address two areas here today. One is the on time performance for Amtrak and the second is the non-binding mediation process and Mr. Hemmer and Mr. Gibson will go into greater detail on each of those respectively.
Since Amtrak trains operate and are dispatched over the freight railroad rights-of-way, it goes without saying that the railroads are concerned with how standards to measure Amtrak's performance are developed and how they are interpreted and enforced by the STB.

Because failure to meet those standards can now trigger financial penalties, damages against freight railroads, that concern is obviously heightened.

We believe that as a fundamental matter, when it comes to assessing performance, the most logical, manageable and transparent method to measure performance is against Amtrak's published time tables. These are the schedules that Amtrak passengers see and rely upon. They are the schedules that members of Congress ask about and I believe that as such, they are the only useful gauge for measuring Amtrak's on time performance.

In fact, I believe, it is my
understanding that it is the scheduled --
published schedule that Amtrak uses to measure
itself on its own on time performance on the
northeast corridor. So, it seems that is an
accepted way to go and should be what the FRA
comes up with.

Okay, we now have the yard stick,
the published schedule, but how do we
determine whether or not that is a good yard
stick?

I was very pleased to hear Mr.
Crosbie say that he is open to having a -- re-
addressing the schedules that Amtrak has
published for its trains and he positive that,
of course, conditioned that on whether or not,
not only does a schedule get longer, but can
it get shorter, and the answer to that is, of
course, yes.

One example on UP is the Gasconade
Bridge in Missouri, which used to be a single
track bridge, is now a double track bridge and
that has a beneficial effect, not only for the
freight trains, but also, for the Amtrak trains going across Missouri.

So, as things like that happen, as slow orders go on or come off, then of course, the schedule should be adjusted.

When Amtrak was created in '71, freight railroads had significant excess capacity and since that time, as Mr. Yachmetz and Commissioner Mulvey have observed, much has changed. Much of that excess has been consumed by an increase in traffic growth and many of our segments are now constrained and with the forecast in freight to double by the year 2035, we can expect that to get much more of an issue, and as you have just heard from your previous two panels, there is an increased demand for commuter rail traffic, which also has an impact on Amtrak getting it over the line.

So, schedules against which performance will be measured must be based on rational data driven models, that
realistically incorporate the constraints and operational realities of today's U.S. rail system.

Now, let me very clear, freight railroads recognize the obligation to give Amtrak trains priority. However, schedules must account for the realities of the rail network. Both freight railroads and Amtrak, on its northeast corridor operation, use network models to establish schedules that can be readily adapted for these purposes.

We believe that these models should be used to establish realistic and achievable expectations, both for Amtrak passengers and for policy makers.

Once a schedule or performance standard is established, the next obvious step should be to determine the cause of any failure to meet that standard and an understanding of why those delays occurred.

We believe that there are basically three broad categories of reasons...
for delay. One is those delays caused by or otherwise attributable to Amtrak. Examples might include Amtrak equipment failures or as you observed, Mr. Chairman, longer than expected station stops.

The second bucket would be those delays attributable to freight railroads, for example, freight equipment failures that block tracks or dispatching decisions that fail to give Amtrak reasonable preference, and I use the word reasonable because I do disagree with Mr. Crosbie's assertion, that this preference is absolute, and I was pleased to hear Mr. Capon agree that there is some flexibility that even he would agree with, and we're talking about being reasonable.

We must give dispatchers some flexibility to exercise reasonable judgment, to keep the network fluid, because by doing so, we help not only freight trains, but also, the passenger fleet as well, and I guess I'll just throw in there, Mr. Chairman, you've
asked a couple of times, what does it take to
get the attention of freight railroads?

I will tell you, based on the

scrutiny given to my budget, about $100 does
it. So, I think that should be a pretty good
fine, if that's where we are. But I mention
that really a little bit flippantly, but I
mention it because I'm a little concerned that
there seems to be an assumption and a

presumption that there will be fines imposed
under this statute.

As I read the statute, it makes it

very clear that the only time a penalty will
be assessed or damages will be assessed, is
when an Amtrak on time performance falls below
80 percent for two quarters in a row, because

of lack of giving preference.

I do not believe that our

railroads will -- we are committed to giving
preference and if you can set up a system
where we take a look at adequately allocate
the causes for delay, I do not believe that
you will ever find that an Amtrak train falls below 80 percent because of lack of getting preference.

The third bucket, of course, is for those delays for which it is unknown or the cause is not attributable to either Amtrak or the freight railroad. They may include grade crossing accidents, acts of nature, such as hurricane or blizzards and directives from law enforcement officials.

In addition, as Commissioner Mulvey has indicated, it is important to note that there are usually consequential effects of an initial delay. When something goes wrong somewhere on the rail network, such as a grade crossing accident, it often has the cascading effects, leading to delays of other trains elsewhere, including Amtrak trains.

Measurements should ensure that all delays are properly reported under the initial or root cause, and this leads to our recommendation, again, echoing a
recommendation from our friends at the National Association of Railroad Passengers, that the reports of train delays must be objective. They must be from both the conductor, as well as whatever other sources are available.

I believe Mr. Mulvey mentioned -- or actually, it was Mr. Yachmetz mentioned, perhaps PTC will be able to, when it's implemented, give data, GSP out there, reports from dispatch centers. A bottom line, I guess, is that we do not share the high level of confidence in the conductor delay reports that Mr. Crosbie voiced earlier today.

Our bottom line in this area is that a performance measurement system must one, decide on the yard stick. We believe it should be the published schedule, that that schedule must be reasonable and should be achieved through a network model.

Three, that we must accurately, transparently and objectively identify the
causes of any failure to meet that standard and apportion responsibility for such failure to the party at fault.

Now, this will enable all of the stake holders to better address problems and improve service, and after all, that is the ultimate goal of this exercise, is to improve service and not to cast blame.

Turning to the second issue, I would like to address, of course, it's your authority to conduct non-binding mediation between freight railroads and commuter authorities, with respect to railroad usage.

It is important that all parties recognize that this process is not designed to mandate access and that it is non-binding. It is mediation.

We are hopeful that the non-binding process will facilitate communications between the parties and in that regard, we believe the Board should establish principles to be addressed in these proceedings, which
would recognize one, that any arrangement with
commuter authorities must be voluntary. Two,
that the freight railroad should be fully
compensated. Three, that the commuter
authorities must provide for the additional
capacity necessary for their operations.
Four, that the freight railroads would be
protected from liability associated with the
passenger operations and five, that all other
operating issues must be addressed.

Essentially, the need for the
preservation and expansion of freight railroad
ability to provide the freight transportation
services our nation needs, should be a
critical component of any such mediation, and
I'd like to emphasis here, I read the -- in
several of the -- I'm closing, if I may, Mr.
Chairman.

I read in the written testimony,
some concern, whether or not the freight
railroads would come to the table, in good
faith.
We supported this legislation when it went through the House and Senate. You commented on the freight railroad track record of, in fact, coming to the table in good faith. Mr. Chairman, I thank you for that, and let me just emphasis that we will, in deed, come and participate in these mediation proceedings because we do believe that it is the way to bridge the gap and achieve -- hopefully, achieve consensus with the commuter rail operators.

Thank you for the opportunity to be here and I apologize for running a little bit over.

CHAIRMAN NOTTINGHAM: Thank you, Mr. Hamberger. Mr. Hemmer or Mr. Gibson, who would like to go next?

MR. GIBSON: Yes, John Gibson.

CHAIRMAN NOTTINGHAM: Please proceed.

MR. GIBSON: Thank you. How do we get this up? Okay, all right, the -- my name
is John Gibson. Thank you very much for the opportunity to speak today.

I work for CSX Transportation in the Transportation Department and I oversee, among other things, all of our passenger service and all of our contracts for passengers, including about 57 trains a day, of Amtrak train starts, and about 160 commuter trains a day, on the Monday through Friday services.

CSX employs about 34,000 people. We operate in 23 states, District of Columbia and in Canada and we serve two-thirds of the U.S. population in more than 70 ports. So, we're very familiar with passenger operations and the day to day issues that can arise from them.

I would like to essentially skip over a couple of the first slides that talk to the U.S. rail system in the 1970's. I think it's well documented. We made a deal and so did Amtrak, to help get Amtrak created and we
1. I did that with everybody's eyes open, I think.

2. Today's rail system is very different. I think that's been discussed quite a bit in the previous presenters and don't want to cover what's going on there very much, except for the bottom point there, on that slide, which talks to recent studies where even though we're the most capital intensive industry in the U.S., our investment will fall about $135 billion short of the investment needed to carry existing freight share into the future, and if we want to add capacity to handle additional passenger trains, with reliability, the estimate is that that requires another $225 billion of investment that currently, is not available in any programs, but hope is in the air. We have a lot of reasons to think that it is possible to start to address these capacity issues.

3. We have found, working in concert with Amtrak and with our commuter agencies, that there are three ways, key elements, to
improve reliability and performance of passenger trains, even on the existing capacity strained networks.

The first of those is effective investment, making the dollars count and putting them in the right places.

Second is management focus and that focus is not just the two Presidents or the two Chairmans coming together and agreeing on something. This has to go all the way down to the individual train masters, the individual ticket clerks, and then reliable schedules.

We have an example of this. CSX's auto-train is a train that is very popular and I believe, one of the more profitable of Amtrak's services. It carries automobiles and passengers. It doesn't run quite as fast as other Amtrak trains, and over time, we saw miserable performance on this train.

We, with Amtrak, at first, with Amtrak's insistence, and then as we got into
it, it's become a very collaborative and a
very productive approach to the problem. But
you can see, we were averaging very low
percentages, under 20 percent, in both the
north bound and the south bound trains.

On the effective investment, CSX
has, over the last three to five years, spent
more than $100 million hardening the
infrastructure of the I95 spine that this
train runs on. We have had also, about $100
million of public investment, including the
bridge you mentioned, Mr. Chairman, the
Quantico Creek, and we have also modeled the
entire network, all the way to Miami, working
with Virginia and North Carolina and that
modeling suggests that there are more than 100
projects, capital projects, that would be
required to get an 80 percent on time
performance with a 90 percent confidence, in
the current schedules, that investment is not
available to anybody at the moment, but again,
we continue to be hopeful.
Management focus, accurate reporting of delays, we've worked hard with Amtrak to improve that reporting. We have joint performance reviews. We have those daily -- daily, calls not every day, but a couple of times a week at one level, but on the ground with folks, we meet monthly or quarterly, and we have senior level meetings quarterly as well.

There is freight train root cause analysis. That is not strictly a delay report, but it's the delay report, plus other available information, which includes information from the dispatchers and other things.

We've coordinated that capital projects, particular curfew type maintenance, the ones that cause disruption to Amtrak trains and that coordination has gotten better and longer range in its planning. It's been more effective and schedules have been made when appropriate.
This effort in the management focus side has become the performance improvement plan. It's a process that has been expanded to other routes, including CSX's and other railroads, including most of the freight railroads who have Amtrak now.

Reliable schedules, we can work to create reliable schedules with tools that were not available in the 1970's. These tools are available in terms of simulation modeling. There are statistical analyses that are available. The auto-train example suggested that a 40 to 50 minute increase in each of the train schedules would, in fact, allow an 80 percent on time performance that was less than five percent of the total schedule of time.

All modes of transportation, service providers, use an approach similar to this. We do not go out on the freight side, on the freight forwarding side, on the steam ship companies, on the cruise companies, on the airlines, and make promises to our
customers that cannot be met. We do not plan for failure. We plan to be successful. And so, that is the basis upon which we believe scheduling should be done. The results speak for themselves. We've been over 80 percent since the change in the schedules and you have to pull all three levers. We have to be able to get the investments in and we have to be able to have the management focus and that management focus can't be one sided. It has to be both parties working together collaboratively. The dips that you see in those lines were heavy maintenance periods that the schedules were not adjusted for. If they had been, then we would have an even higher on time performance. We also did the same thing with MBTA and we have done it with several of our commuter agencies. This is just the most recent example. We applied the same process, used the same approach with them, came up with
a better way of making our investments in the infrastructure, hardened that infrastructure to make it more reliable.

We also adjusted schedules, again, by a very small amount, to reflect the reality of the current congestion.

The change was dramatic, in terms of the customer reactions in the MBTA and the operator of that service, the MBCR, has been out in public, talking about this process as the way approach the scheduling. We currently use the same approach with VRE.

In summary, you know, the delays that we see are driven by transportation demand, changes in regulations, changes in our operation and capacity.

Then we need improvements to Amtrak customers, that can be achieved by pulling all three of these levers, including the realistic schedules. Longer term, significant public investment and capacity is required to provide what I think the traveling
public probably really wants. They want that
high on time performance and they want shorter
schedules. They want better velocity.

The freight railroads are vital to
the nation's economy and we're environmentally
friendly. The sound public policy to protect
both freight and passenger interest and
partnership and cooperation are critical, as
we attempt to solve these problems. We
believe in problem solving, not cause finding
as the objective. Thank you.

CHAIRMAN NOTTINGHAM: Thank you,
Mr. Gibson. We'll now hear from Mr. J.
Michael Hemmer from the Union Pacific
Railroad.

MR. HEMMER: Thank you. I have to
pull up the slide, on order to create
confusion about who I am.

Chairman Nottingham, Vice Chairman
Mulvey, Commissioner Buttrey, I am not Jerry
Wilmoth. I am Mike Hemmer, Senior Vice
President, General Counsel of Union Pacific.
Unfortunately, Mr. Wilmoth was unable to testify today. He is -- he had a
death in his immediate family and that was transportation back and forth across the
country several times. It was just too difficult.

So, I will attempt to capture some of the points he wanted to make and to answer questions as best I can.

You may not think of Union Pacific as a major commuter carrier, being out in the west, but in fact, we have had a long record of successful commuter relationship, some of which are quite substantial.

I won't take you through every one of these, but we are the largest commuter train operator in Chicago, for Metra. It's kind of an unusual arrangement. We actually run their trains with our employees. We had -- that makes us the seventh largest commuter operation in the nation and we have consistently had a 98 percent on time record.
for Metra.

As my first slide indicates, we have other arrangements, particularly in California and I might also mention that we operate Amtrak's capital corridor service between San Jose, Sacramento and Auburn, which Mr. Crosbie alluded to, that service is running consistently, as we are graded 95 percent on time or better.

We have as well, been working with a large number of additional communities that are interested in adopting new service. We have worked with, successfully, with the Utah Transit Authority, to establish their new heavy rail system. They also have a light rail operation.

We use parallel lines with Union Pacific and UTA on separate tracks, between Salt Lake City and Ogden. That's the model we will use at Salt Lake City, but they are also on our tracks north of Ogden. This is just one of a number of projects that have been
Union Pacific recognizes that commuter rails are very important to public interest. As you proceed to implement your responsibilities, as mediators, we urge you though to keep in mind that there are public benefits from both commuter rail and freight rail, that need to be taken into consideration and both of them need to be protected.

We think that balance can be struck and we think the arrangements we have made with commuter authorities thus far, have done that.

Freight rail, we would argue, provides at least as many benefits as commuter rail. In some respects, they're the same benefits. In both instances, we are taking vehicles off of the roads. We're reducing traffic. We are cutting emissions. We are curtailing highway congestion, but freight rails does more than that.

We also save customers billions of
dollars by providing efficient transportation.

Importantly, by having goods on rails, we avoid the public having to fund very expensive infrastructure projects in additional highways, bridges and so forth, and we are quite essential to the nation's economy.

So, our request to you is that as you proceed with implementation, that you recognize that both -- that the nation has very strong interest in both the commuter rail service and in the freight rail service.

When public transportation authorities request access to our property, we try to achieve the balance that will meet these objectives. Mr. Hamberger has already gone through a set of basic principles, of which we agree, but I'd like to emphasis a few more for your consideration.

First is safety. Mr. Solow and I had the -- unfortunately, spent part of the evening together on September 12th at Chatsworth and we watched the really superb
efforts of the emergency crews to help the
people who were victims of that accident.
That really brings home what's at
stake when passenger and freight rail mix, and
some of that -- some of those risks will be
addressed by positive train control in the
coming years, but there will still always be
some risk associated with that inter-mix and
the arrangements that we make with commuter
rail authorities need to take that into
account, and have so far.
I will mention in passing though,
that the suggestion, which I hope you'll
explore with CNJ, that light rail vehicles
that do not meet FRA safety standards should
be allowed to mix with freight, if that's what
they are implicating. That is a very
dangerous idea.
Second, we suggest that reliable
service for both freight and passengers ought
to be taken into consideration. At Union
Pacific, we are actively involved in
developing a program where we do the span of variability in our freight services. It matters to our customers enormously, they tell us that all the time.

So, it's not as though we don't care whether our freight trains arrive on time. We care, just like passengers do.

Third, we urge you to ensure that capacity remains available, both for today's freight operations and the operations which we hope will return to a higher level here in coming months, but also, to preserve the ability to add additional capacity in the future.

In short, please don't strangle freight railroads in the interest of commuter rail.

Nothing I heard from any of the commuter agencies and representatives that have appeared before you today, inconsistent, I think, with the -- with those concepts.

We urge you to ensure that
railroads are fairly compensated. We sometimes encounter -- when we're dealing with people like Mr. Solow or Metra in Chicago, they understand the costs of commuter rail and the demands that it places on both them and on us.

Sometimes when we're dealing smaller communities or those that are new to the process, they come in with some unrealistic expectations. I could imagine some of them coming to you and saying, "Hey, Union Pacific isn't bargaining in good faith," when the answer is, they don't have anything like enough money to run a commuter rail operation.

Finally, we'd ask you to keep in mind that we should not be exposed to liability that would not exist in the absence of commuter operations. When we add an additional box car load of grain, it doesn't significantly increase our liability posture. When we add human beings, it very definitely
I'd like to pause for just a moment, to talk a little bit more about capacity because I want to mention on nuance, and that is that when we -- when any railroad adds capacity, it will add the least expensive capacity that will do the job first, and that means that the next mile of additional capacity is going to be more expensive.

So, I've shown you a picture of a bridge here. Working with a commuter agency, we were able to double track the railroads on both -- the railroad on both sides of that bridge, but that left a bottle-neck.

Then as freight transportation demands increased, it became our responsibility to spend the much greater amount of money to add a second track on the bridge, which we did.

As we work with commuter agencies now, we've been very successful in getting them to understand this principle, that they
work with us and basically help us stay
relatively neutral, with respect to the next
incremental capacity cost.

So, in short, we are glad that you
will be available mediator for us. We support
this process. We look forward to working with
you and we simply ask that you keep in mind,
all of the benefits of transportation to the
nation's interest, as you discharge your
responsibilities. Thank you.

CHAIRMAN NOTTINGHAM: Thank you,
Mr. Hemmer. Vice Chairman Mulvey, would you
like to start with questions this round?

VICE CHAIRMAN MULVEY: Sure. Thank
you, and I noticed you recited in your
testimony, the number 436. Four-thirty-six is
becoming as well known a number as 1776 or
666.

MR. HEMMER: I'm hoping you notice
it a lot more in weeks ahead.

VICE CHAIRMAN MULVEY: I might add,
by the way, that the American Waterways
Operators have taken up your mantle and are now pointing out that they get 600 ton mates per gallon, so, you never can tell what the results are going to be of these strategies.

Let me ask you about something which we have raised before. Mr. Gibson points out the results of the Cambridge systematic study, which shows that there's going to be a shortfall, about $135 billion from what it going to be needed just to keep the railroads at existing capacity levels and what the railroads can spend to make investments in the infrastructure.

It does strike me though, if we're talking about also accommodating more commuter rail, there does seem to be a need to have some redundant capacity, some excess capacity, which of course, was a problem for the railroads for a long time because the railroads with excess capacity wound up bidding rates down to the long-run margin costs and caused some of the problems.
But clearly, there does need to be more capacity and the railroads do not have the where-with-all to make the needed investments.

So, let me raise this question again, about whether or not something like a railroad trust fund's time is now, whereby both the commuters, Amtrak and the railroads would all contribute, similar to the way an aviation trust fund or a highway trust fund is structured, taking into account some of the problems that they've had and in correcting for those. We would create a pot of money which is contributed by users, not by the taxpayers, which I know that you don't want to put a burden on the taxpayers in your slide, paid for by users, which would go to invest in the railroad infrastructure, investment that's clearly needed.

We've been seeing right now, for example -- I don't want to go too far on this question, but right now, as traffic has
fallen, the railroads have, in fact, backed away or put on hold, a lot of the infrastructure spending projects that they had planned.

So, wouldn't this really start to create a source of money, a pot of money that the railroads could find useful? Ed, do you want to take that or you could all --

MR. HAMBERGER: I'd be delighted to take it. I thought where you were going to go was that we also needed a Cambridge systematic study on the amount of capacity needed to accommodate the demand for the increased passenger traffic and I was going to tell you that we're in the process of doing that study and we hope later this spring, to be able to come forward with some more specifics about the amount of money needed to accommodate a growth in passenger and what the benefits of that would be, or put it another way, if we don't achieve that capacity, what the cost would be, in terms of congestion and CO2.
emissions and energy use.

But to get to your issue, Mr. Vice Chairman, this has been kicking around for some time and we have consistently opposed the creation of a railroad trust fund for a couple of reasons.

One, as you have heard many times in this room, we -- our customers already believe that they are paying -- certainly don't want to pay anymore for the services which we provide, and so, if there is going to be a tax or a levy of some sort, on our customers and they don't want to pay more, than that would either drive them to a competing mode or it would drive us to lower the rate that we charge, so that the amount of money they're paying is the same, that is, the rate plus the tax equals what the rate is now, in which case, we're basically paying the tax.

We believe secondly, that the trust fund decision making authority might not be as efficient as letting the railroads,
which have the network models and know what
their customers tell them what they're going
to need and can go out and make those
investment decisions without going through a
Government process, is much more efficient and
avoids what may now not be a problem, but
avoids earmarking, etcetera and so, actually
lets the money go directly where it's needed
in a much quicker basis.

Instead, we have supported two,
which we think are just as positive ways of
addressing capacity. One is public/private
partnerships and I don't know what's going to
happen in the current stimulus or
revitalization plan that's now in conference,
but there is some money in the Senate side,
that is allocated for the Secretary of
Transportation to use on projects of national
significance.

We would expect that to be a
public/private partnership, like the create
program, which I think all of you have toured
in Chicago. There are others around the
country, and then also, just giving, under the
STP program, more flexibility to states and
MPO's to spend their money for public/private
partnerships. Again, if the Secretary of
Transportation of Maryland decides that the
appropriate priority is to double track or
triple track the train up to Germantown, maybe
they should be allowed to have that
flexibility and that would be done, again, in
conjunction with CSX.

    CSX would pay for the private
sector benefits and the public would pay for
the public sector benefits. We think that is
a better way to go, but share your concern,
that there needs to be more focus and more
acknowledgment of the need for investment in
rail capacity, both for passenger and for
freight.

VICE CHAIRMAN MULVEY: I thought
you also going to raise the investment tax
credit, but I'm sure that's another --
MR. HAMBERGER: I did say there were two, you're exactly right. The investment tax credit, thank you, which does have bipartisan support on both the House and Senate, was not included in the stimulus package because the financing ways and means committees decided that a broader accelerated depreciation would be more helpful, but we hope that they'll come back and visit the ITC and now that you've reminded me, I would like to just point out that while our members have announced in general, some cut back in their plan cap-X, it is unbalanced. My numbers look at it at about a 10 percent cut, from '08 to '09.

We have gone back and taken a look at what our numbers did in previous recessions, some of which were not as dire as the one we're in now, and we saw cap-x cuts of 30 to 40 percent.

So, I do believe -- and I think Michael Ward announced here in Washington a
couple of months ago, that he's not cutting it all. He's keeping right on the three year plan they have.

I do believe that all of our members are expecting that there will be a bounce back, that this economy is too strong to keep on going down forever. It will come back and when it does, what we're hearing is that our customers, actually are keeping pretty low inventories and when demand does pick up, they're going to pick up the phone call their railroads and want service, and right now, we have about 150,000 cars in storage, 3,000 locomotives, over 10,000 employees on furlough, but we are trying to keep cap-x up, so that we'll have the capacity to meet the customer demands when it comes.

VICE CHAIRMAN MULVEY: Thank you.

I certainly agree with your concerns about having a trust fund situation, with all the earmarks and all the other political problems that attended the other trust funds.
Hopefully, we can correct for that.

With regard to the elasticity of demand, I do recall mentioning this before a group many years ago and someone in the audience from one of the railroads, who I will not mention, raised their hand and said, "A one percent waybill tax would cause us to lose half of our traffic," and at the time that that was being said, the same railroad was putting in a five percent across the board rate increase.

So, if their representative in the audience was right, they must have lost all of their traffic. I didn't quite follow that.

Let me ask another question about recording the causes of delays, and Amtrak conductors recording it. Do you think that freight railroad conductors ought to be required to record the causes of delays and that they need to be able to respond when we have these delays? For example, if they see a train in front of them and say, "Oh, the
freight train must have caused it," but in fact, it was something in front of the freight that caused the delay.

MR. HAMBERGER: We have -- we're probably one the folks that Bill Crosbie mentioned when he said there might be an exception, about the validity of the conductor delay reports.

Two basic issues there, I think. One is, the conductor has a lot of responsibilities. He's got to run his train. He's got to keep everybody safe. He's got to be safe. He's got to be aware of all the rules and those are paramount.

Then at some point, he's got to record what he thought the delays were at the time that he saw them, and it -- with all due respect to a 35+ year process, there's a lot of technology that's occurred in between, that hasn't been taken advantage of.

This is a process where the person with all these responsibilities is reporting
what he sees outside the windshield, and so, it's helpful. It's not that it's wrong. It's not that it should be thrown out, but it does give us a granularity of at least what they're observing, looking out the windshield.

But they are not able to see the network, and so, when you use it, it has to be among the tools that you use, to find root cause for delay issues, and you need to be able to look at other sources of data that are available.

I think you should be able to get away from a hand written document that's faxed and then transposed and all of that and make use of technology as well. But it's not Amtrak's fault that they haven't had money for those kinds of issues in the past.

So, we're not saying it's useless, but statistically, relevant in a true statistical sense, we have trouble with that. That is the source document, the only source document.
VICE CHAIRMAN MULVEY: Once again, you've provided a very, very good statement for the hearing, but there's a question, on page 20 of your statement, it says that the freight railroads believe it would be helpful if the STB provided, through regulations or policy statement, operating issues that the STB would suggest the parties address in any mediation.

Could you please suggest where some of these operating issues would be and what level of detail you're looking for there?

MR. HAMBERGER: I think what I was referring to there, several years ago, Bill Millar and I sat down and tried to come up with our members participation, some sort of a roadmap, if you will, as to how a community should go about in sitting down with the freight railroads and trying to determine how to proceed, to set up commuter rail, and we have a whole list.

I know I've got that in my file
folder somewhere. We never did sign it and
ink it, but I think at the time, we had pretty
much agreement what that list includes. If I
might, I'd like to make sure that Bill agrees
that we make that available to you and then
make that -- it's very detailed kinds of
operating procedures.

VICE CHAIRMAN MULVEY: Thank you.
I've had experience dealing with the commuter
rail/freight railroad operations discussions
with the Northstar program and the estimates,
as to what that was going to cost, for what
the freight railroad suggested and what the
commuter suggested were, to say the least,
widely different.

MR. HAMBERGER: Right.

VICE CHAIRMAN MULVEY: And it would
be good to have some sort of protocols or some
sort of issues decided that what this actually
costs, because you don't want to have gold
plating on the one hand, and on the other
hand, you don't want to have an
unrealistically low expectations of what these costs are. The Northstar project did get more agreement between the freight railroad and the agency over time, but it took a long time to narrow the estimates between the freight railroads and the commuter authority.

MR. HAMBERGER: I can't remember if we actually agreed on this, but I know one of the things we were talking about was a recommendation that together, they would agree on one consultant. So, you would not have the battle of the consultants, and the consultant would be working both for the commuter agency and the freight railroad and therefore, would be perhaps, cognizant of both.

VICE CHAIRMAN MULVEY: That was exactly right, there were two very, very different estimates, two very different consultants.

One last question, and that is, you mentioned the CNJ's testifying next, with regard to the modern or European or Japanese,
designing lighter rail cars, operating off of freight railroad rights of way, and it struck me that one of the problems we've had in this country, with regard to high speed rail, is that some of the FRA regulations require that we run a high speed tanks. They are so heavy to meet FRA crashworthiness standards, that you could never possibly run trains at the same kinds of speeds as the Shinkansen, or the TGV, or the trains in Germany.

Now, part of that is because they have dedicated rights of way and we do have a mix with freight trains, but do you think that things like PTC, for example, which would allow better separation, might be a vehicle for allowing high speed -- lighter density trains -- I'm sorry, lighter trains, constructionwise, to operate on the same rights of way as freight rail?

MR. HEMMER: I agree with you, that PTC will make a difference, but it won't solve
the problem and I'll give you a specific example.

As a result of that, if someone wants to operate substantially lighter equipment or high speed equipment, our view is they ought to be on a separate right of way, and that's consistent with the one rail policy statement.

South of Denver, Colorado, there is a segment of track where UP owns, I think, one track and BSNF owns two, but don't hold me to that, and the closest parallel to that is a light rail line.

I believe it was about a year ago, when UP coal train derailed, spilling coal and coal cars all over all five tracks and we missed a -- one of those light rail vehicles by about 90 seconds. If that had been -- if that had occurred 90 seconds later, we'd be having a very different discussion right now.

Then on the same track, I think it
was about a month and a half ago, a BNSF train spilled liquid sulfur all over all five tracks.

So, while the railroads are getting better at preventing derailments, we achieved double digit improvement virtually every year. Derailments will occur and if they occur with light rail vehicles or high speed vehicles close at hand, there is a risk.

Vice Chairman Mulvey: Thank you.

That's all I have.

Chairman Nottingham: Commissioner Buttrey, do you have any questions for this panel?

Commissioner Buttrey: Well, I'm -- since Mr. Hemmer brought the subject up, I'm sorely tempted to delve into this limitation of liability issue, which has been a great interest of mine over the last few years.

But it is not germane enough to what we're talking about, I think, for me to do that, although I would love to do it.
MR. HEMMER: A beer later?

COMMISSIONER BUTTREY: Pardon me?

MR. HEMMER: I said, I was offering a beer later?

COMMISSIONER BUTTREY: Can't do that either. But anyway, I'm -- I had some questions here that I wanted to ask, but I'm not going to do it because I just don't think they are germane enough to our discussions to get into it and we just have to save that for another time.

But in view of that, I'm not going to ask any questions of this panel. Thank you.

CHAIRMAN NOTTINGHAM: Thank you, Commissioner Buttrey. I have a few questions. Mr. Gibson, it appears to me that your railroad, the CSX, may well have the most interaction with passenger rail of Amtrak and commuter rails. Is that fair to say? Do you guys keep track of that?

MR. GIBSON: We don't. We've
occasionally looked across the fence. I'd say
the BN is probably either equal with us or
slightly ahead of us, in terms of that kind of
ting and the UP with some of the commuter
operations, is becoming that we too.

CHAIRMAN NOTTINGHAM: I'll throw
this question to anybody on the panel. Are
the railroads -- are the freight railroads
conducting additional training and briefing of
employees in preparation for this new
legislation?

We may well be spending more
quality time and have more people spending
more quality time, looking at things like
conductor delay reports and we heard about
Amtrak's conductor delay reports. I assume
the freight railroads have employees who file
reports about what might be the cause of
delays on incidents on the track and if all
kinds of new people are going to be
scrutinizing those, potentially, are you
talking with your employees about the
importance of that data and how to make sure it's documented in a way that's understandable to all concerned?

MR. GIBSON: Not because of this legislation, because we care about trying to solve problems. Over the last two years, we've stepped up our check rides. We've increased the amount of scrutiny we give to trains and their reporting on a spot basis.

But in terms of things like dispatchers and all of that, it has -- as several people have put it, I think it's in their DNA. They don't go out trying to delay Amtrak trains or any passenger trains.

They do try to preserve the fluidity of the network and we have -- for instance, modeled some of our single track sections in North Carolina and South Carolina, and if absolute preference were given to Amtrak trains in those corridors, you would, within a matter of a few days, essentially shut down the corridor and slow down all
Amtrak trains and all freight trains.

So, the training on preference is inbreed. You've got to protect the fluidity of the network and where ever there is an option, you let the passenger train go first and the passenger train must go first and must have the most clear route available.

But sometimes, it has to sit in a fleet and go, as that fleet can go, to get by a problem or that kind of thing.

In terms of the data itself, we're looking at what can be done technology wise to get better. We are in the process of upgrading our dispatch system and there will be things that could be coming out of that, but it's not timed because of this legislation at all.

CHAIRMAN NOTTINGHAM: All right.

MR. HEMMER: At Union Pacific, again, we are doing training. We are doing an enormous amount of training and we have completely rebuilt the processes that we use,
by which we monitor our performance for Amtrak.

The reason for that is that Amtrak has brought an arbitration proceeding against us, which I am -- have my fingers crossed, we'll successfully resolve in discussions later on this afternoon, but that remains to be seen.

With respect to the data, frankly, we're one of the railroads that I think was mentioned, that has not spent a lot of time monitoring the conductor reports and I don't have statistically valid data to report to you, because we haven't done that. We'll have to do that going forward, I think, because of this statute.

We did take a quick look at a month's worth of performance on a route where there are slow orders, the coast of star light route, from Sacramento north. We've made a commitment to Amtrak to resolve those slow orders, to a specified level by a specified
We took a look at one month of conductor reports and frankly, the conductor reports identifying slow order related delay bounded around like a ping-pong ball. One day, there were no slow order delays. The next day, there were very longs. So, that underscores for us, how much judgment is going into the data and the need to take the steps that all three of us have talked about, about getting better data sources that are more reliable and less created after the fact and based on judgment.

CHAIRMAN NOTTINGHAM: Are the freight railroads able to monitor on a real-time basis, how Amtrak is tabulating its -- and developing its own conductor delay reports? In other words, if a couple of months were to go by and there was a pattern of one or two Amtrak conductors punching off duty and submitting reports saying, "Late
again, caused by a freight railroad," and
months would go, when and how would the
freight railroads learn about that pattern or
that problem?

MR. GIBSON: We'd look at conductor
delay reports daily, but with 60 trains and
not very many people, we don't look at every
one, every day, and we're not trying to use
the data that way, and that is a concern I
have, frankly, is that we will start to use
the data from a litigation standpoint instead
of from a problem solving standpoint.

We think that the data should be
used to try and root out the causes of poor
performance and address those issues, and
sometimes those issues are documented very
well, by the conductors in what they see and
what they write down, and even with those
kinds of issues of being something that they
put down, maybe at the end of the run, with
not absolutely clear memory.

But it, from our standpoint, is a
tool to try and get better performance and to see it become a litigation tool, I think, is – I mean, we'll have to -- if that's the path we end up down, that, to me, would be a sad day and it would also probably change our approach.

CHAIRMAN NOTTINGHAM: It seems to me, based on the testimony we've heard from this panel and others, that along many corridors that serve both freight rail and passenger rail, we're talking about schedules and slots.

If a passenger train, for whatever reason, arrives in the hands or enters the property and the track of a second freight railroad, sort of the hand off type scenario, and it's already late, it's an hour or maybe two hours late and it's missed its slot, and perhaps it encounters -- at that point, it encounters a slow moving coal train and the conductor then documents -- the Amtrak conductor documents running late because I'm
behind a freight train that's not letting me pass, how -- what other data sets -- and if we're ever asked to go and to look into situations like that, what we will be needing to ask our investigators to look for, to find a full balance of information, to get a real sense of the different causes of lateness and what else might explain it?

MR. GIBSON: Well, I think Mark Yachmetz said he didn't envy that task because the more you know about it, the more difficult that task appears.

I think it will require at a minimum, a review of what was the schedule that was in place and then what was the operational situation at the time, and so, I think you're going to find, in a lot of cases, there are multiple and inter-related issues.

But as the freight railroads have become more scheduled, Amtrak trains out of slot regardless of cause, are much less likely to recover lost time these days than they
would have been in prior transportation regimes of a decade or more ago, because we are so much more scheduled.

I think some of what I've seen in the testimony that was written for today, you also get a little of that frustration from some of the commuter operators as well. If the Amtrak train wanders into the commuter slots, you know, if it's going to be given absolute preference, then it will decimate the flow of the commuters that day, in that direction.

And so, the only legitimate dispatcher decision, in my mind on that kind of a situation, is that it goes with the flow of the rest of the traffic and it has to, depending on the geographic characteristics, the operational situation that they're involved in and the choices that are available.

It can't be coming out of this side and against that train and that's why the
windshield view of the conductor is -- has limits, in terms of what information it can provide to answer that question.

CHAIRMAN NOTTINGHAM: What other information sources would you suggest that we be looking for?

MR. GIBSON: Dispatcher retrievals, you know, of -- and then schedule retrievals, you know, what was suppose to be there, what was actually there, I think are going to be the likely additional sources.

Some of the newer generation dispatching systems have replay capability. We do not, at this point. We are gravitating in that direction and will have it at some point with our cads investments.

But you can accommodate a lot of that through steam lines of prior -- that days' operation or that territories operation.

CHAIRMAN NOTTINGHAM: Mr. Gibson, you mentioned that there are some single track sections in South Carolina and North Carolina,
that are particularly challenging to you.

Now, if Amtrak trains are running
along those corridors, those challenging
corridors and they're on schedule, they're
where they're suppose to be, are you
suggesting that you still have the -- the
railroad still has a problem granting
preference?

MR. GIBSON: I don't call it
granting preference. I call it making good
dispatching decisions. The schedules are a
part of that question.

I don't think you would find -- I
would suggest you find very few instances of
an available dispatching decision that was
better that may have caused delay, because of
the single track nature of the territory they
were running through.

There are lots of analogies. I'll
just make one up, which is dangerous, but I-95
between the Baltimore beltway and the
Washington beltway is, I sort of remember,
about 35 miles, speed limit is like 70 or so,
and so, there is a pure run time, so to speak,
theoretical pure run time that you can
calculate to.

But I don't think anybody
schedules that way, particular at five in the
afternoon and even if you have preference, you
were an emergency vehicle with your lights
flashing and your horns going, you wouldn't
make that theoretical speed because of the
congestion that's there.

You might come a lot closer than
the average vehicles that's there, but you
wouldn't make it, if that was what you had to
measure to.

So, I think that's the crux of a
lot of what we're going to be trying to work
together on, to try and fix it going forward.

CHAIRMAN NOTTINGHAM: Does that
loop back to the scheduling predicament, that
that's -- so, ideally, that situation be
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."
And I know prior to this legislation, I believe you could petition the Secretary of Transportation. Has anybody looked at that issue in the new legislation?

MR. HEMMER: I believe that, if I heard Amtrak's spokesman correctly, the suggestion was that we were obligated to do that. I don't think that's what the statute - - I don't interpret the statute that way, because it all depends on what the standard is, against which you are being tested, and that is yet to be determined by the FRA, Amtrak, all other stake holders.

So, I think until we know what that standard is, I think -- I can't say whether we would need to come to you, but I do think we have the ability to come to you. I think that's pretty clear.

CHAIRMAN NOTTINGHAM: I'm advised by counsel, just a moment ago, that the new statute did not change the pre-existing law, which did allow and does then, go forward,
allow freight railroads to bring the attention
the Secretary of Transportation, the
situation, which I just commend to your
attention, that may be wise to get out ahead
of some of these situations.

MR. HEMMER: True, but if I may
make one point, from now and for the next few
years, we're in the same situation as the
commuter agencies who have appeared before
you. We had a contract. We're in a
proceeding under that contract right now.

That contract, in our view,
establishes our respective rights and
obligations and opportunities on both sides
and we believe that that contract governs our
relationship with Amtrak until it expires.

Now, if the statute strongly
encourages us, if a new set of standards are
developed to work with Amtrak, to revise the
contract and embed them, and I assume we would
try to do that, but until we do, we think the
contract is governing.
MR. HAMBERGER: I guess I would just like to echo Mr. Crosbie's comments that the goal is to sit down and work this out and not try to look for what are our rights to go to Court or go to a regulatory agency to work this out.

And so, as I read the new statute, it gives you the authority to go back and take a look at the causes of delay, including the schedule, that is specifically mentioned.

And so, my view of the world is that if you're going to sit here and at some point, after a train has experience two quarters worth of under 80 percent on time performance and decide that in your judgment, that the schedule may have had a role to play in that, why don't we get that done right up front and take a look, as the FRA is establishing these yard sticks, against which we're going to be measured, and take a look at, with a model, what is a reliable, consistent, achievable schedule and get that
in at the front, rather than rely on some sort of litigation later, to go back and take a look at it.

So, that's where I'm hoping and I think has in mind, the idea of trying to sit down and work through this.

CHAIRMAN NOTTINGHAM: And we certainly encourage that friendly and more collaborative resolution process that would hopefully, happen before we ever get involved.

Unfortunately, no one asked us, but it's our role in this, is sort of, all that's broken down, unfortunately, or has -- or is somehow, not worked, and we're asked to enter and step into it, into the breach, so to speak, and figure out what to do.

I would just suggest to the parties, both this panel and others, it would certainly help us understand in the future, the challenges and the circumstances that parties might be wrestling with, if we're notified or copied on letters, because if we
walk into a situation and we find -- we hear that it's not realistically achievable to give Amtrak the preference that's in the statute, we're going to be probably be looking for, well, how did this happen? How did agreements get made, contracts get entered into?

Was there any -- has there been any discussion of this? Have you been made aware of this, because then ultimately, we, in another part of the statute, have the option to make recommendations to the Department of Transportation about infrastructure improvements, which I think, could be of interest -- will be of interest, I know, to your members and your colleagues, as those improvements connect up with your capital priorities.

Let's see, I'd like to ask any of the panel or all, the statute specifies several parties that are entitled to bring complaints about Amtrak on time performance problems, to the Board's attention.
One of those parties is our freight railroads. Do you anticipate the possibility -- are you looking at the possibility that you would be faced with looking at a corridor and saying, "We've got all these late Amtrak trains. It's killing our schedules and our slots. We know we're not the cause of it. We want to bring this to the Board, to sort out and make -- figure out what to do on this."

MR. HAMBERGER: I guess I would just repeat what I just said, and that is, you know, that right may be there, but the goal of this whole process is not to cast blame, but to figure out how run a railroad and so, I would hope that long before that occurs or the thought crosses anyone's mind, to come before the Board, that we would have the good sense and common sense, to sit down and try to work through it on a bilateral basis.

MR. HEMMER: We'll work first under our contract, and then beyond that, I
thoroughly agree with Mr. Hamberger, and in
addition to that, my boss says eliminate all
discretionary spending, that strikes me as
discretionary spending. So, I don't think
we're likely to be coming to you.

MR. GIBSON: We're not looking for
the tactical weapons, you know. We're looking
for the solutions.

CHAIRMAN NOTTINGHAM: Well, thank
you on that. Let's see, I've got, I think,
two more questions. This is a big one, but
I've got to get into it a little bit,
preference.

We've heard testimony from Amtrak
that it's an absolute term. I believe the
statute we're looking at today, the new
statute, does at least recognize that there
could be emergency circumstances where it
would not be absolute preference.

Some of your testimonies today
indicates it's, in your view, not absolute
preference. How are we to sort that out? I
mean, there really aren't too many adjectives -- there aren't too many adjectives that come before or after that phrase in the 1971 law, that references preference, and you know, I think we're going to need to flush that out. I think it would be a little challenging for this Board to say, "We'll play that by ear. We'll sort of make it up as we go along."

Ideally, it has some meaning. It's had some meaning, ought to have some meaning now and going forward, but that's the one reason we want to have this hearing, is to try to get -- the more we can have all the stake holders on the same page on these issues now or soon, I think the better this process will work.

MR. HAMBERGER: Well, let me just take a first crack at that and then yield to my colleagues here. You made a very good point, Mr. Chairman, and that is that the 1971 statute does not have any adjectives around
that right of preference. The word absolute
does not appear in the statute. It says it is
a preference, and what we were talking about
and what my friend, Mr. Capon, referenced, he
would agree, not to hold a freight train for
an hour, to give Amtrak one minute.

Well, I mean, there has to be some
discretion at the dispatcher level to --
because an absolute right of preference, for
example, if there is a grade crossing
accident, and there are three trains held up
at either -- going in either direction, and
the third -- second train going in one
direction is an Amtrak train and flanked by
two freight trains.

When the go-ahead is finally given
by the local emergency response team, the idea
is to get that section, get that area of the
network moving and you have to then just fleet
through, as they are queued up, the trains
going in either direction, because if --
assuming that there is even physical
capability to try to pull the other trains off, to move the Amtrak train to the front of the cue, that would just compound the problems caused by the grade crossing accident.

And so, this is not a dispatch lack of giving preference. The Amtrak train is still in the slot where it was, but the entire network was shut down or that portion of the network was shut down by the grade crossing accident. When the go-ahead is given, you just fleet those trains through, to try to get some recovery time and get the network back to fluidity.

So, that's what I mean by common sense approach and some discretion and not an absolute preference, but a reasonable preference.

MR. GIBSON: Well, again, I think it could be validated fairly easily, that if you gave absolute preference at every decision, you frankly, wouldn't need a dispatcher. You could do it all by a set of
rules within a computer and it would make all
the decisions for you and it would crash the
network and then, the next day's Amtrak trains
wouldn't move at all, or the three days away.

And so, the preference has to be a
preference, but not an absolute decision point
and it's the network that is paramount and if
you want to give, not just the Amtrak train
that's delayed at the particular point of the
geography, but the north bound Amtrak train
that's coming in opposition and the third
train out, you know, on your schedule, where
you've got six or eight or ten Amtrak's in a
corridor, you cannot make such a disastrous
move, in that first move, to give that
absolute preference because you will
negatively impact every other Amtrak train
that's in the corridor.

So, I don't have a definition for
you, other than the best decisions possible to
maintain fluidity of the network with every
time that there's a conflict with options,
that are reasonable, that Amtrak gets that
first preference, and that's the way we train
our dispatchers and that's the way we believe
they behave.

Now, there are new dispatchers out
there and there is a learning curve and we do
see mistakes from time to time, but we've also
looked at what does it take to get a train
from Washington to Miami and back, from a
dispatcher standpoint, and the rough
calculation was that over a year, it's about
250,000 decision points for it.

And so, to rifle shoot and say,
"Boy, that was a bad decision," you know, out
of 250,000, that's just not the appropriate
way to measure that.

MR. HEMMER: A couple of additional
comments, if I may. The word absolute doesn't
appear there, as Mr. Hamberger pointed out,
and for 35+ years, Amtrak has been operating
over freight railroads and I doubt if any of
them would say they have been opine or Amtrak
has demanded an absolute preference.

On our railroad, as a practical matter, where the dispatching system is capable of it, which is much of the main line, we strongly encourage our dispatchers to use what we call automated mode. I think that's the term. Someone could correct me from my dispatching center, but we basically think we can get the computer to make some better decisions than our dispatchers sometimes might, using judgment.

So, we encourage that as much as possible. We assign Amtrak trains priority one, even a director's special is priority two.

So, Amtrak does get the highest priority and preference on our railroad, on a systematic basis. Again, I'm not going to tell you a bad decision doesn't get made now and then, but it seems to me that when the time comes, if it ever does, and I hope it doesn't, where you have to look and evaluate
the decisions and there will be thousands of
decisions, that a dispatcher makes, with
respect to an Amtrak train, you need to have
pretty clear evidence that the dispatcher is
preferencing freight trains.

CHAIRMAN NOTTINGHAM: I'd like to
ask, do each of you believe that it's
realistically achievable for there to be a
substantial reduction over the next, I'll say
year or two, in those incidents when passenger
trains are directed to pull aside and let a
freight train pass it, or is it realistically
achievable for us to see a substantial -- I
think that's the most -- I can say as a former
frequent and current occasional rider of
Amtrak and commuter rail, that's the most sort
of gall -- and that's when you -- any
reasonable person is tempted to call their
Congressmen or write a letter to somebody.

I mean, you're trying to get home.

It's been a long day at work and your commuter
rail or your Amtrak train is directed to pull
aside, to let a freight rail come through, and
if that's still happening around the country,
do you expect that we can see a substantial
reduction of that, just through voluntary
industry and Amtrak collaboration?

MR. GIBSON: Well, we had, you
know, some relatively famous incidents right
here in the D.C. area, of a couple of
situations several years ago, where because we
had different rules for the speeds of Amtrak
and freight trains in specific weather events,
we did have a couple of occasions where a
train passed a standing VRE train, a standing
Amtrak train, and we have since reviewed and
modified those rules, so that that's not a
possibility under the operating conditions,
unless a dispatcher made that decision.

We have not had that kind of
complaint in my memory, for quite some time,
on our railroad, but I think the one that you
might see that I don't know would go down, is
a passenger train stopped, as a freight train
goes in the opposite direction. That's kind of a different deal, in my mind. That goes to what's happening in the network and is that the right decision or not.

Often times, it's the way you clear the route, in order for the passenger train to go, and so, the overtake is a situation, I think, you would find somewhat rare.

Sitting for a train to pass, in order to clear a route is a situation you might see fairly often.

CHAIRMAN NOTTINGHAM: Does somebody else want to speak to that question?

MR. HEMMER: The only additional comment I would make is that as I indicated earlier, we have recently gone through a whole scale overview and reformulation of every step in the process of monitoring and training for Amtrak performance on our railroad.

Whether that will make a difference on a single dispatching move, I
can't tell you, but we certainly know that our
to know what their responsibilities are.

CHAIRMAN NOTTINGHAM: Thank you.

Last question, this one is really for you, Mr.
Hamberger, but your colleagues are perfectly
welcome to answer, and it's a little off topic
today, but I think it's fair to ask it, given
the historic and challenging debate that's
going on nearby here in town, about the
economic stimulus bill.

Last time I checked, their numbers
were -- for transportation infrastructure
stimulus are somewhere in the 60 billion range
that's being talked about. We hope and expect
that that will be enacted soon and that's
going to trigger a reaction, we expect, we
hope, that -- the drafters of the Bill, I'm
certain, will hope, of state DOT's ordering up
raw materials, construction firms ordering up
materials.

I know that the railroads have
been busy, understandably so, ramping down
some of your operations and putting some cars into storage and furloughing some employees.

But if we see a big spike, which we should, of demand for raw materials, everything that the -- all the feed stock that goes into the construction process, your asphalts, your sand, gravel, steel, most of that material moves by rail, as you know very well.

I know as a former state DOT head, you know, when somebody says, "Push the go button," the last thing you want to hear is, "Gosh, everything else was ready. We did the procurement. We did the emergency procurement, but boy, we forgot to tell the railroad that we were going to need all this stuff yesterday."

Are you guys working on, doing some scenario planning in that regard, so that that won't be the hold up of these -- what do you want to call it, ready to go projects, that need to move under the Stimulus Bill?
MR. HAMBERGER: Well, from your lips to God's ears, as the saying goes, we certainly need, as a country, and certainly our industry needs the business to come back. As I indicated earlier, we were, I believe for the month of January, 17 or 18 percent down in car loadings across the board. Automobiles, we have, as you know, about a 63 or 64,000 car fleet to move the finished products. Last I checked, 33,000 of those are parked. Of rail owned cars alone, it's about 150,000 cars parked, 3,000 locomotives, 10,000 employees on furlough. Our Chairman Jim Young testified, I guess it was last week, I believe it was, before the House T&I committee, that one of the things that his company is doing is keeping furloughed employees on the health care plan and trying to find them a couple of days a month, maybe that they would work the weekends, so that they stay certified and
don't go somewhere else to get a job, and when
you call them and say, "Come on back," that
they're not available.

In addition, as I mentioned, when
we were talking about the cap-x, this is not
a bad time, when you have a little bit extra
capacity, you get bigger windows to do some
expansion and your maintenance work and I
believe that's why the cap-x was not cut as
historically it might have been.

I think perhaps, we did learn a
lesson from previous recessions, where we did
cut back and as I mentioned, what I'm hearing
about -- or these two gentlemen, is that a lot
of our customers are cutting their own costs
by keeping their inventories low, so that if
this stimulus package does work, and I think
it's important both for the direct impact that
you mentioned, Mr. Chairman, but also for the
indirect impact of folks who are sitting on
their wallet, deciding that it's now safe to
go out and buy a new car or go ahead and put
the addition on to their home or whatever,
that when that happens, it might be just like
very dry tender whooshing into flame and
you're exactly right, the call is going to
come and we better be able to move all those
cars that are, I saw the other day, sitting up
there in the docks in Baltimore, because the
dealers don't want them and all of the sudden,
if they want them, the call is going to come.

Now, we're going to do everything
we can, but -- and that's why we're making
those investments, but we hope to be ready and
I'll just turn it over, I saw you nodding your
head, Mike.

MR. HEMMER: Well, just out of my
happenstance, I happen to be at an operating
department morning meeting, I think it was
last Friday, and watched exactly the kinds of
discussion you were asking about. How long
would it take trains to be ready and out of
storage, to haul rock? The answer was about

24 hours. How long would it take to get
locomotive re-positioned? The answer was maybe two and a half days.

The employees, as Mr. Hamberger explained, we have taken steps to try to keep available to us, so that we can call them back quickly and they'll be glad to come.

So, I think we are as ready we can reasonably be.

MR. GIBSON: I just say, no disagreements at all, same general steps. The issue, I think, is how long before we start back up? People will vote with their feet. They'll do what's in their best interests and what's in the best interest of their families and if we end up, you know, with a very long recession, then everybody is going to -- in a significant deflation of everything, then you've got to start changing and adjusting to that situation.

CHAIRMAN NOTTINGHAM: Thank you. I have no further questions for this panel.

Vice Chairman Mulvey?
VICE CHAIRMAN MULVEY: Just one very, very brief question. Let me get this correct, Mr. Gibson and Mr. Hemmer. Are the conductor reports good enough for basically judging whether it's 80 percent more or less on time, but the problem really is what the cause is, but the actual overall number is good enough from the conductor reports?

MR. GIBSON: The conductor delay reports are not the on time performance. So, they really just deal with delay and root cause analysis.

VICE CHAIRMAN MULVEY: So, they don't have anything to do with the on time performance?

MR. GIBSON: They're related, but they're not the -- you know, the delays are -- should be why you have the performance that you have, but they're not directly the on time performance itself.

VICE CHAIRMAN MULVEY: Thank you.

CHAIRMAN NOTTINGHAM: Commissioner
Buttrey, any questions? Thank you, panel.

You'll be dismissed now. We appreciate your patience and your participation today.

I will now call forward, our final panel. We have several other interested persons who reserved time to -- this next panel, Oliver Wyman and Jeffrey Elliott, Eric Strohmeyer and Edwin Kessler.

It appears that Mr. Kessler was not able to join us today. So, we'll proceed with Mr. Elliott. Would you like to go first, please?

MR. ELLIOTT: That sounds fine.

Good afternoon and thank you for the opportunity to speak before you here today.

I am Jeffrey Elliott, a partner at Oliver Wyman. Oliver Wyman is a leading global strategy and management consulting firm with deep industry and functional knowledge.

Oliver Wyman serves as an advisor to a wide range of transportation industry segments, including shippers, manufacturers,
service providers, including the railroads, suppliers and importantly, a wide range of financial organizations that provide debt and equity to the industry.

I began my career 30 years ago with Conrail, holding a number of executive management positions in marketing and in operations, and left there after 13 years, to become an active consultant in this business.

We are here today to discuss how the Surface Transportation Board intends to administer regulations established under the Passenger Rail Investment and Improvement Act of 2008, or PRIIA.

Two areas of regulation of special concern to Oliver Wyman, first, those regulations intended to improve service provided by the owners of the underlying railroad, right-of-way, and used by Amtrak and the commuter rail services, and second, the regulations that would provide non-binding mediation to settle damage disputes, with
regard to the creation or expansion of passenger rail services over an existing freight railroad rights-of-way.

As I'm sure everybody in this room knows, even at today's diminished traffic levels, portions of the U.S. rail freight network are congested with significant bottlenecks. Notwithstanding the current financial crisis and traffic down turn, over the next 25 to 30 years, U.S. rail freight traffic is projected to nearly double, requiring unprecedented levels of capital expenditure by the private freight railroads.

As John Gibson mentioned, he's at -- the estimate he gave was $125 billion in his testimony. Virtually all freight rail capital expenditures for maintenance and expansion of the network are financed by the private sector and secured by the projected future financial performance of the individual railroads.

Private investors participate in
the industry based on their perception of the potential for earning an attractive rate of return.

But while freight railroads are one of the most capital intensive industries in the United States, requiring an average investment of 17 to 20 percent of sales each year, to maintain their infrastructure, the industry will offer some of the lowest rates of return to investors over the long term.

Inter-city and commuter passenger demand, as also mentioned earlier today, is also on the rise. Depending on what one believes is the long term sustainable price for fuel, some analysts believe that to meet passenger rail demand, forecast will require an investment for approximately $350 billion by the year 2050.

This forecast presumes that much of this capital investment will be used to purchase capacity needed to run passenger trains on the existing freight rail network.
The issue facing the freight railroads is that passenger trains consume a disproportionate amount of capacity relative to the freight trains.

Based on work done by Oliver Wyman's multi-mobile division, to analyze rail capacity requirements, we estimate that the capacity impact of an inner-city passenger train to be two to five times that of an average freight train, depending upon the rail configuration, the density of the traffic.

Therefore, increased demand to dedicate capacity to passenger operations will substantially increase the total rail network capacity that must be built and maintained by the private freight railroads, in order for both services to operate efficiently and to meet the needs of the respective customers and stakeholders.

Additionally, providing service guarantees for passenger trains, which generally operate on very tight schedules,
requires that freight railroads set aside
additional capacity to protect themselves
against service failures due to unforeseen
events. We've heard a lot about that today,
such as equipment and track failures,
inclenment weather, grade crossing incidents,
all of which impact their networks almost
daily.

This increases the capacity impact
of the inner-city passenger trains and
furthermore, hinders the ability of freight
railroads to meet the service guarantees they
provide to their own customers.

Passenger rail access to freight
rail networks, it is currently provided
through negotiations between the interested
parties and is specifically designed to ensure
that the owning railroads are fully
compensated for the network capacity used by
the freight -- by the passenger trains.

These negotiations provide a
framework for aligning the compensation with
the provision of sufficient capacity buffers, to ensure specific service requirements and guarantees are met, thus reducing the need for reliance on complex schedules of incentives and penalties.

We hope that the STB will support the strengthening of these processes, that ensure fair and full compensation to the owning freight railroads, for the capacity that is consumed by the passenger services.

Compensation shortages are essentially indirect subsidies of passenger services. Making the freight railroads responsible for any unfunded capital required to meet passenger demands, as well as for the capital required to delivery their own services, will ultimately reduce the returns that they achieve on invested capital.

Over the long term, such a situation likely will make investments in the freight rail network less attractive to private investors and increase the industry's
cost of capital. Thank you.

CHAIRMAN NOTTINGHAM: Thank you,

Mr. Elliott. We'll hear from Mr. Strohmeyer.

MR. STROHMeyer: Thank you, Mr. Chairman. CNJ only has basically one area of concern with regards to this legislation, it was Section 401, which is the mediation section. We understand that this particular section is a non-binding confidential process that will allow commuter rail networks to access the national freight network.

Our concern comes down to just one basic simple question. When Congress wrote the law and wrote the statute, we're not sure that they took into account all of the stake holders might have an interest in being at that table.

We're not advocating, as Union Pacific suggested, that light rail and heavy rail freight trains co-mix on the same tracks, but what we are concerned about is that when a commuter rail agency seeks access to the
national rail network in the mode that they wish to access the national rail network with is light rail, it does pose restrictions on the property, one of which is, operating windows need to be established, protocols for train separations, all of which could potentially impact a shipper.

One of the things that we noticed in this legislation is that there's no room at the table for a potentially impacted shipper if the introduction to commuter rail service physically alters the conditions on the rail line, and that is the reason why we just wanted to come down here today, to bring this one point to the Board's attention.

When you sit down and figure out a way of trying to mediating, and since this is non-binding and Congress is going to probably look to see, is this mediation session actually functioning, is it doing what we hope it will do, which is allow freight carriers and passenger rail operators to resolve their
differences and expand the use of commuter rail service on the national freight network.

How does the Board facilitate getting this access, when you don't have a club or a stick, and our concern here is that one of the things that we're concerned over is, one can look at a bigger regional picture, a pro quo.

As the Board is aware, I've testified before previously, about the issue of concerns of loss of the system around the fringe. When I look at the potential opportunities here, where the carriers themselves are going to look to find a reasonable way to say to Congress, "Look, the mediation session works," those 10 miles of track that sort of radiate out, that went to a little industrial park, that may have no shippers or potentially had some shippers or may have a few shippers, all the sudden becomes the concept for a future light rail line and what isn't permitted in the process
is that the Class One carriers are looking at
it and saying, "Well, we don't need that
line."

So, here you are, we'll give you
that, and our concern with that approach is
quite simple. If you take that approach and
some time after the fact, let's say you go
through the mediation process and the Board
has spent nearly half a year or a year, trying
to get the parties to work out an agreement,
and then at the last second, an industrial
park operator along the proposed route, when
the idea to convert this into a commuter rail
line or a light rail line, comes to effect and
says, "Wait a second, you know, I don't want
to lose rail service out to that point," and
the Board says, "Well, you acted as a mediator
to solve a regional problem."

This is part of a comprehensive
package, much like the Union Pacific did in
Salt Lake City. I need not remind the Board
of the contentious situation that occurred
with Utah Shipper's Rail Coalition, when that issue of access and -- their access to the system came up, it became a pretty contentious bone of -- point with the shippers, that hey, is a five hour operating window enough?

And so, when you talk about access and we talk about the mediation process, I'd like the Board to take into consideration, there are shippers out there, they may not be active, they may not be big, but I do want the Board to be aware, they are out there and they are as much a stake holder as the commuter rail authority and the freight carriers, and that's all I had to say.

CHAIRMAN NOTTINGHAM: Thank you, Mr. Strohmeyer. Commissioner Buttrey, do you have any questions for this panel? Vice Chairman Mulvey, do you have any questions?

VICE CHAIRMAN MULVEY: Just quickly. Mr. Elliott, were you saying that you think then that giving Amtrak absolute or nearly so priority is a bad idea?
MR. ELLIOTT: Just as we heard from the last panel here, I think that in order to run an efficient freight network, that it's important to look at the network as a whole and as was discussed by the railroads here, if you give them absolute priority on the network, under all circumstances, it will not only create problems immediate around the area where you're having issues, but it will also give them -- will create downstream effects what will affect trains far into many, many days after the one train is affected.

So, you have to make rational decisions and reasonable decisions about what is the right decision to make the network fluid.

VICE CHAIRMAN MULVEY: But do you think that if this legislation went forward and there was more priority given to passenger trains, either commuters or Amtrak--and there was a negative effect on freight rail sector--do you believe these would be a major impact
on capital markets. Do you envision that perhaps the public sector could begin substituting for the private sector, for supplying capital? The railroads say that public sector ought to pony up the monies to get public benefits and much of the investment needed in rail is going to generate public benefits, do you see a greater role for the public sector in the long term?

MR. ELLIOTT: Well, I think that that's essentially the issue here, which is that if, in fact, the passenger network and the commuter network are consuming more capacity than they originally paid for, then essentially, the private freight rail network is subsidizing them.

And so, one way or another, somebody has to pay for that. The investors are going to be reluctant to do that, because they're not getting the returns that they require from their investment, and so, the public sector is going to have to step in.
VICE CHAIRMAN MULVEY: So, you want it with a quasi public rail sector, I suppose?

MR. ELLIOTT: I don't advocate that at all.

VICE CHAIRMAN MULVEY: I'm not saying you advocate it, but I'm just saying --

MR. ELLIOTT: I'm saying that that's -- that could be an unintended consequence, which --

VICE CHAIRMAN MULVEY: Which you listed as one of your points, the unintended consequences of the Act. Yes, one question for Mr. Strohmeyer.

The railroads are privately owned operations and they own their rights-of-way. They own their own property for better or worse. It does mean that unlike other providers of transportation services, they have to maintain their infrastructure. This is the cost for them.

If the traffic is not sufficient to justify maintaining it, they want to
abandon it. For a long time, under the old
ICC, railroads had a hard time getting rid of
redundant capacity.

You talk about shippers that might
want service in advance, but don't we need to
have a reasonable number of shippers who are,
in effect, current effective demanders, in
order to justify keeping railroads operating
or maintaining rights-of-way, which no longer
have much or any traffic on them?

MR. STROHMEYER: The answer to the
question would be yes, there should be some
reasonable demand, but I do remind the Board
of its decision that it made in preventing and
adverse abandonment in South Indiana, where
the Board said that even though the
Archdiocese of Notre Dame flat out said, "We
don't want anymore service," which was the
only reasonable prospect of service, that you
might want the service in the future.

Of course, you denied the adverse
abandonment, based on the prospect of a future
VICE CHAIRMAN MULVEY: Be careful of the you there.

MR. STROHMEYER: I do know it was a split decision. The point that I try to make though, however, if we take that same scenario and the Board had asked in a footnote once, why did CNJ basically shadow a well known case in the Kentuckyville industrial track, and our big concern there was the principle whose been advocating the preservation rail service on that line.

We're deeply concerned in the future, that he's establishing a series of bad precedent. I'd like to just briefly bring to the Board's attention that there is, on that line alone, a reasonable prospect of 3,600 car loads of material that could take 28,000 trucks off the Baltimore beltway today and that's a very real possibility, but not for the fact that the Class One, Norfolk Southern, is desperately seeking public assistance for
their I81 project.

They're not advocating or pursuing that well established opportunity and that has nothing to do with the other controversial players on board that line.

CNJ has done extensive market research on that entire line, have identified clayton clay and a couple of other commodities, which could easily be moved by rail, if somebody was actively pursuing it, and more importantly in that particular case, the light rail line is already built to heavy freight standards.

So, it isn't a place where the light rail line was being placed into service and therefore, you would have to re-design your system to accommodate a heavier train.

So, when I look at some of these issues and you say that there should be a reasonable demand, there are also other circumstances, in which a carrier, quite frankly, just simply says, "I'm not
necessarily interested in pursuing this
traffic for another reason."

So, I do happen to like the
Board's South Bend decision, not withstanding
your decent. I do think it was a prudent
decision because it does preserve the ability
for the national rail network to not contract.
So, I can get myself in hot water with that.

VICE CHAIRMAN MULVEY: I also am
very concerned about the system contracting,
but we look at the circumstances of individual
cases. That's all I have. Thank you very
much, Mr. Chairman.

CHAIRMAN NOTTINGHAM: Thank you,
Mr. Strohmeyer and Mr. Elliott. Mr.
Strohmeyer, as always, you come to the Board
with a deep knowledge of our proceedings and
our precedents. You've managed to identify one
of only two percent decisions out of 340+
we've made since I've been Chairman that
actually had a split decision. So, the other
98 percent have been unanimous. So, kudos to
you for actually knowing our proceedings as
well as you do.

We appreciate all of the witnesses
and their patience today and with that, we
will adjourn this hearing.

I will note that we will keep the
record open for 30 days. We very much want to
hear from stake holders, if anybody knows of
a stake holder who wasn't able to be here,
please let him know the record will be open
and we look forward to implementing this new
statute the best we can. Thank you.

(Whereupon, the above-entitled
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

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Place: Washington, DC

represents the full and complete proceedings of the aforementioned matter, as reported and reduced to typewriting.

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