



ASSOCIATION FOR INNOVATIVE PASSENGER RAIL OPERATIONS
The Future of Passenger Rail

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STB SL OTP Proceeding NOR 42175

Non-Party Reply from Ray B. Chambers, President of the Association for Innovative Passenger Rail Operations.

Comments on behalf of AIPRO -

The Surface Transportation Board has determined that this case is a matter of broad public interest in that it provides a first impression in the interpretation of statutory terms. AIPRO notes that the Board is allowing non-parties to the investigation to submit replies to Amtrak's opening statement and the railroad parties' reply to statements. **(Non-party replies permitted in the STB Decision – August 19, 2024, NOR 42175).** I am pleased to present these comments on behalf of AIPRO.

First, to be clear, AIPRO core membership is composed rail labor unions, rail passenger operators and associated companies dedicated to advancing innovative passenger rail operations in the United States. Our mission includes improvement in the efficiency and sustainability of passenger rail operations. We promote policy reforms that expand competition for operations across intercity corridors. We advocate that the creation of new intercity passenger corridors or their expansion be accomplished through commercial negotiation with strong arbitration provisions. This is essentially the model deployed in the commuter arena. We are expressing an opinion in this case because we believe in this emerging competitive environment statutory preferences, while remaining in the statutes, should be de-emphasized in favor of full-on commercial negotiation, and essentially become a default position to the Competitive Model. We note the law is clearly agnostic as to the operator of intercity corridors and thus the Competitive Model for intercity corridors is also an open option under the statutes.

America is now positioned to enjoy the full benefits of a competitive market for intercity passenger rail service. Our AIPRO operations footprint alone exceeds that of Amtrak or any other passenger operator. In 2023 the AIPRO companies carried about 65.5 million passengers, mostly in commuter service. Internationally AIPRO members carry 2.6 billion passengers a year **(See the Appendix—AIPRO and Its Mission)**

The future of American passenger rail may be at an inflection point. There can be a significant advance if we choose to seize the moment. In the worst case our American intercity passenger network can be allowed to deteriorate further and end up in the dustbin of history. Or—policy

makers can lead us into a new world class passenger **and** freight service. Rail freight is already world-class but needs to be strengthened and not undercut to achieve a viable passenger network. Intercity rail passenger rail, once the world-standard, is in a sad condition compared to national networks around the world. A concentrated effort can make American intercity passenger rail the gold standard—Again! In our view this should be the objective of public policy shapers including the incoming Administration, Surface Transportation Board, the US Department of Transportation/ Federal Railroad Administration, and the Congress. Public and private stakeholders including alternative passenger operators and host railroads should join this effort.

We believe there are issues in the Sunset case that go to the heart of our mission to achieve viable passenger service. The Sunset case hinges on Amtrak's statutory preference. We believe that to bring about the full benefits of the competitive model no single passenger operator should tilt the scales with statutory preferences denied to other participants. Statutory preferences granted Amtrak were proper a half century ago when much of the freight rail system was in bankruptcy due to overregulation and there were no viable passenger operators in the United States. But, over the last decades a momentous change has taken place. Deregulated freight railroads have become healthy and robust independent passenger operators have entered the market. Continuing absolute preferences for a single government owned railroad operator creates an angry environment that often leads to delay and stalemate. These preferences put both AIPRO alternative operators and Host Railroads at a disadvantage.

We believe commercial negotiations between rail carriers and rail passenger agencies are more effective than Amtrak's "access cram down" model. If we understand the Union Pacific filing correctly, in Sunset the STB is being asked to enforce an Amtrak proposed schedule to which Union Pacific has never agreed. We are certain collaborative negotiations can foster better relationships and understanding between parties, paving the way for long-term improvements. By focusing on mutually beneficial agreements, rail carriers and passenger agencies can achieve higher performance standards without resorting to heavy-handed tactics. This cooperative approach can lead to more consistent and reliable rail services across the network.

There is an alternative to the statutory preference model. In both the commuter arena and on several state supported routes states/authorities have obtained higher on-time performance standards through the kind of negotiation AIPRO advocates. AIPRO advocates for a Competitive Direct Access Model that achieves passenger growth through commercial principles and arbitration. This is the real alternative to the Traditional Amtrak Model which depends on statutory preferences. Thus, I submit, it is time to de-emphasize the "cram down model" and move to a commercial system for passenger rail access with differences settled through arbitration. The Sunset Case may provide an opportunity to re-evaluate the issues through the lens of the Direct Access Model.

We do not address the specific disagreements between Amtrak and Union Pacific but simply suggest there is a better way to achieve the best result. In general, we have concluded the Union Pacific position in the Sunset case is consistent with Association goals. It is time to develop alternatives that move beyond a model that skews the system by providing one operator with statutory advantages. In summary:

1. Good passenger service should not come at the expense of the United States' world-class freight system. Both should be the policy objective.
2. Statutory preference for a single passenger operator undermines the competitive environment. Further there should be a level playing field where passenger operators and agencies reach agreement on access, schedules, metrics, and standards that work for all parties. We propose the Direct Access Model.
3. Dispatching decisions should be fair, balance the needs of all users, and subject to negotiated agreements. Rail carriers should not be expected to resolve every individual dispatching decision in favor of Amtrak. Nor should random dispatch decisions be permitted against passenger trains to simply advance the freight interest of the dispatching railroad. Disagreements in this arena can lead to gridlock on many routes. AIPRO believes these issues can be addressed through binding agreement and effective arbitration. This in fact has been the case in commuter operations.
4. Passenger agencies should cooperate with hosts to set realistic schedules that work for all parties and are reviewed periodically. Many passenger rail operators in America today have such agreements in place and provide consistent, reliable service, and that marketplace is vibrant.
5. Passenger agencies should focus on cooperative, partnership solutions rather than regulatory intervention and costly litigation.
6. There should be priority for significant public investments in infrastructure necessary to achieve desired passenger on-time performance goals and objectives.

Therefore, AIPRO endorses the UP petition in the Sunset case. It is time to consider alternatives that move beyond the forced access model.

APPENDIX – ABOUT AIPRO AND ITS MISSION

About AIPRO. We are an alliance of independent operators, labor organizations and associates dedicated to advancing innovative passenger rail operations in the United States. We share the goal of a transparent and competitive marketplace. The Board is composed of four passenger rail operators -Transdev, Keolis, Herzog, RATPdev: two unions BRS-BMWE and associate members-- McGrath Rail, Direx Consulting, and Safe Track.

Today the AIPRO companies play a key role in the American passenger rail space. In 2019 Amtrak carried about thirty million passengers while the AIPRO companies carried eighty million passengers, mostly in the commuter arena. All passenger rail took a terrible hit in the pandemic. In 2020 Amtrak carried 16.8 million passengers, a 47.4% decrease. AIPRO passenger decreases were similar. However, ridership is coming back. In 2023 Amtrak carried twenty-eight million passengers. In 2023 AIPRO companies carried about 65.5 million passengers by rail in the US (Transdev 2.1 million; Herzog 17 million; Keolis 30 million; RATPDev 15.4 million).

Globally and in America our members fiercely compete against each other. They run everything on the rails from streetcars to commuter trains to intercity and high-speed trains. Internationally Transdev carries over 608 million passengers a year. Keolis carries about 470 million passengers. RATPDev passenger count totals a whopping 1.5 billion annually. Together our members are transporting about 2.6 billion passengers by rail each year. This is the equivalent of carrying every American citizen 7.8 times a year,

AIPRO members have incredible experience, and we are anxious to contribute to the creation of an American high performance passenger rail network in the coming decade.

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