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EP 728

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Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Bill Shuster
Chairman

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The Honorable Dan Elliott
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Deb Miller
Member
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Ann Begeman
Vice Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Dear Chairman Elliott, Vice Chairman Begeman, and Member Miller:

I write to express my concerns regarding the Notice of Proposed Rulemaking (NPRM) to determine a definition of "on-time performance" for purposes of Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (P.L. 110-432), and the Proposed Policy Statement on Preference for Amtrak trains, dated December 28, 2015 (EP-726 and EP-728).

In both these instances, the Surface Transportation Board (STB or Board) has taken it upon itself to ignore current law and determine, inaccurately, Congressional intent.

With respect to the NPRM, Section 213 of PRIIA states: "If the on-time performance of any intercity passenger train averages less than 80 percent for any two consecutive calendar quarters, the STB may initiate an investigation on its own, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate such an investigation to determine whether and to what extent delays or failures to achieve minimum standards are due to causes that could reasonably be addressed by a host rail carrier or Amtrak or other intercity passenger rail operators."

Although Congress clearly defined "on-time performance" as less than 80 percent for any two consecutive calendar years, the STB re-writes current law and proposes to re-define when a train is "on time" based on when it "arrives at its *final destination* within five minutes of its scheduled

arrival time per 100 miles of operation (capped at 30 minutes)." The STB claims this was derived from a previous definition of on-time performance used by the Interstate Commerce Commission (ICC) in 1973, ignoring the fact that the ICC changed the definition in 1976 after a series of public hearings to: "Where safe operation permits, the train shall arrive at its final terminus and *at all intermediate stops* no later than 5 minutes after scheduled arrival time per 100 miles of operation, or 30 minutes after scheduled arrival time, whichever is less."

The STB further ignores the fact that section 24101(c)(4) of title 49, United States Code, states that "Amtrak shall operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables."

Measuring performance only at the endpoints of Amtrak routes makes no sense and would make the law essentially meaningless. The fact is looking at endpoints takes into account performance at only 10% of all Amtrak stations; leaves performance within 24 states unmeasured altogether since those states have intermediate stations but no endpoint stations; and leaves unaddressed the many routes where performance appears to be above 80% when measured only at the last station on the route, but is significantly and chronically less than 80% at stations all along the route.

In the Pacific Northwest the preponderance of stations served along the Cascades corridor are intermediate points and even the region's two largest cities, Portland and Seattle, are intermediate points for certain schedules. In fact, on the Cascades alone, 359,135 of the 742,337, or close to 50% of all passengers, get off at intermediate stations. Those intermediate routes would not be considered under your proposed definition of on-time performance.

With respect to the Policy Statement on Preference, the STB should withdraw it altogether. Current law clearly states that Amtrak passenger trains are to be given preference over freight trains. This was done in return for relieving freight railroads of money-losing passenger service in the 1970s when Amtrak was created.

Unfortunately, in the Policy Statement, the STB seemingly re-writes current law, claiming that "Congress expressed its view that preference for... passenger transportation... [should not] materially lessen the quality of freight transportation provided to shippers."

The law does not state that at all. In fact, it provides only two exceptions to preference: in emergencies and when a freight rail carrier seeks relief and the STB provides it. To date, not one freight rail carrier has petitioned the Board for relief.

Section 24308(c) of title 49, United States Code, states: "Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Board for relief. If the board, after an opportunity for a hearing, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Board shall establish the rights of the carrier and Amtrak on reasonable terms."

I believe the law is clear: Congress's intent was that Amtrak trains be given preference over freight rail transportation. I strongly urge you to reconsider your proposals in the NPRM and the Policy Statement.

Sincerely,



PETER DeFAZIO
Ranking Member