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Written Testimony of Jim Mathews

President & CEO of the National Association of Railroad Passengers

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**Regarding Surface Transportation Board's Public Listening Session Regarding CSX
Transportation, Inc.'s Rail Service Issues**

(Docket No. EP 742 / Docket No. EP 741)

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Chairman Begeman, Commissioner Miller, good morning. It is an honor to be here today on behalf of the members of the National Association of Railroad Passengers, the nation's oldest and largest organization speaking for the nearly 40 million users of passenger trains and rail transit. We have worked since 1967 to expand the quality and quantity of passenger rail in the U.S. Our mission is to work towards a modern, customer-focused national passenger train and multimodal transportation network that provides a travel choice Americans want. Our work is supported by more than 28,000 individual members nationwide. I've led the Rail Passengers Association for the past three years, and have worked in the transportation industry for some 30 years before that, including as Executive Editor at Aviation Week & Space Technology magazine, as Editor-in-Chief of Aviation Daily and as Chair of the Amtrak Customer Advisory Committee. I have a long-held interest in building a connected America that supports economic mobility, giving all communities—large and small, urban and rural—the opportunity to share in the American experience.

We're pleased to take part in this public listening session concerning the recent network delays that have hurt users of CSX Transportation's network. We will provide first-hand accounts of passengers who have suffered harm from CSX-caused delays specifically, as well as offer input on how the current regulatory structures insufficiently protect passenger rights more generally. We are also including full statements from our regional passenger advocacy allies in appendices, demonstrating the national scope of this problem.

Let me begin by thanking the Board for this opportunity, as this public listening session on the delays plaguing CSX's system couldn't be timelier. The state-of-play today is this:

- A. Passengers are stuck with eroding intercity service as host railroads have ignored statutorily mandated obligations to provide preferential dispatching to Amtrak trains;**
- B. A confusing string of conflicting federal court rulings has created a gap in federal oversight, thwarting congressionally mandated protections for passenger rail service;**

- C. Many host railroads have repeatedly demonstrated a desire to treat passengers as simply another form of freight, and a low-priority form at that, and;**
- D. In light of current dispatching practices and recent court rulings, Congress must take action to strengthen enforcement for passenger protections and clarify regulatory oversight.**

A. PASSENGERS ARE STUCK WITH ERODING RAIL SERVICE

It's often said that passenger trains serve as the canary in the coalmine for railroad operations—when host operations degrade, passengers are the first to notice and suffer disproportionately. This is true of the recent CSX service degradations, and while we're deeply sorry that CSX freight customers face these troubles, we welcome allies in the fight to restore service quality.

With that fact in mind, our organization is sounding an alarm—not just about CSX's network, but about host railroads across the National Network.

The numbers tell a convincing story: only 43% of passengers on Amtrak's long-distance trains arrive at their destinations on time. The overwhelming majority of those delays are host-responsible, with 70% resulting from causes such as freight train interference and slow orders.

But the numbers aren't the only way to tell this story:

- There's the story of Kristy Roberson of Beckley, WV, who rode the Cardinal to see her grandson's baseball game. Kristy's grandson asked her to walk on to the field with him as part of introductions, but hours stuck behind a CSX train meant she missed the start of that game, and never got to share that moment with her grandson.
- There's the story of Philip Fraulino from Silver Spring, MD, whose daily commute home has grown longer because of delays to his MARC train that uses CSX tracks.
- There was Jane Dwingell of Burlington, VT, who was delayed 12 hours on the Lake Shore Limited, causing her to miss her connection to the Southwest Chief. This in turn caused her to miss a full day of a professional conference she was attending in San Diego.
- There's the story of Michael Zhakharov of Rockville, MD, who uses the train to access cycling trails in Appalachian region, and is regularly is delayed behind CSX trains when riding the Capitol Limited. Michael has grown used to these delays, but he was traveling with an active-duty Naval officer heading to Newport News, who and missed his connection and thus his reporting time by being delayed overnight in Washington, DC.

- There's the story of Thomas Girsch of Quincy, MA, whose six-hour delay behind a parked CSX train on the Lake Shore Limited turned a quick business trip into an all-night ordeal.
- There's the story Richard Lidbom of Greensboro, NC, who experienced a cascading series of delays beginning on the Crescent that cost him and his wife 32 hours of their vacation and a \$500 non-refundable reservation.
- There's the story told by Allen Brougham, not about his own travails, but on behalf of the Amish families he sees on nearly every long-distance train he rides. When he talks to these Amish families, they tell him the train is the only connection they have to their family and to medical services, and he is concerned what the delays mean to them.

Allen writes:

"The Amish do not have a lobbying group. They are not likely to join organizations having a political agenda. Still, they are worthy of respect in the eyes of those interested in the traveling welfare of all of our citizens, something that ought to be noted in any [discussion] of Amtrak."

- There's the story of Tom Farmer of Salisbury, NC, who's given up riding the Carolinian altogether because of regular delays on CSX tracks in Virginia.

That, perhaps, is the largest untold story from these chronic delays: all the novice passengers who give up on train service after being trapped for hours on a siding. We've heard from dozens of our members who had first-time passengers tell them "never again." If the U.S. is to have a healthy, functioning passenger rail network, we *must* enforce the standards and metrics already in place to protect passenger rights.

The examples I've just read are just a small sample of the hundreds of delay stories we heard from passengers that are directly attributable to CSX freight trains. There are thousands more our members have conveyed to us, and directly to the STB, about delays from across the National Network.

B. LACK OF CLEAR REGULATORY OVERSIGHT

Amtrak passenger trains operate mostly on tracks owned by other railroads. We now call those railroads "freight railroads" because in 1970 they asked the U.S. government to relieve them of their passenger-carrying responsibility—a taxpayer-funded rescue of struggling businesses. Thus, Amtrak was born, and to ensure the continued vitality of passenger-rail service, Congress required the host railroads to lease their tracks and facilities to Amtrak and also provided that intercity passenger trains would generally take "preference over freight transportation in using a rail line, junction or crossing." This quid pro quo is the preference clause in the law—49 U.S.C.



§ 24308(C), which is still on the books—originally written so that host railroads had to give passenger trains preference unless they could win a DOT exemption by proving that preference would “materially lessen the quality of transportation provided to freight shippers.” Host railroads have never filed a challenge to that clause.

In 2008, Congress enacted the Passenger Rail Investment and Improvement Act (PRIIA) because lawmakers – hearing from their constituents – knew that one reason Amtrak struggled to achieve reliable on-time performance was that host railroads consistently failed to honor Amtrak’s right to preference. Section 207 of PRIIA directed Amtrak and the Federal Railroad Administration (FRA) to develop, jointly, “on-time performance” (OTP) standards: new, or improving existing, metrics and standards for measuring the performance of intercity passenger rail operations, including on-time performance and train delays incurred on host railroads. Section 213 gave the Surface Transportation Board the authority to investigate whether a freight railroad had honored the preference requirement “if the on-time performance of any intercity passenger train averages less than 80 percent...”

Extensive litigation brought by the Association of American Railroads and individual freight railroads, however, has stalled the OTP standards process and created a gap in the agencies’ authority when it comes to who can get something done to improve passenger rail service. After a long trip from the U.S. District Court to the U.S. Court of Appeals for the D.C. Circuit to the U.S. Supreme Court and back, the U.S. Court of Appeals held that Amtrak did not have the legal authority to set a standard for on-time performance of its passenger trains. When the Surface Transportation Board next conducted a rulemaking process involving a broad range of stakeholders under its PRIIA Section 213 authority, the Association of American Railroads and Union Pacific were happy to participate and even help to draft language on OTP. But when additional public comment – including those from affected passengers – led STB to revise the standard to protect passengers instead of railroads, AAR and UP reversed course and sued to stop those OTP standards from taking effect and prevailed before the U.S. Court of Appeals for 8th Circuit.

If Section 213 can’t stand because the STB can only use the authority and metric in Section 207, and Congress’ grant of authority in Section 207 was found to be unconstitutional, where does that leave fare-paying passengers? The Eighth Circuit judges seemed to suggest the only standards that count are those negotiated in a contract between Amtrak and the host railroads, and recent history has shown that these agreements provide flimsy protection to passengers, who have no other means of recourse.



The confusing string of conflicting federal court rulings has created a gap in federal oversight—who is able to get something done to improve passenger rail service? This gap in agency authority to issue appropriate OTP standards is thwarting Congress' clearly stated intent in PRIIA, enacted almost a decade ago, to remove barriers and improve Amtrak's on-time performance and create better passenger rail service.

Passengers are stuck with eroding service because the freight railroads' litigation has stopped the federal rail agencies from doing their jobs—as directed by Congress—to ensure that the longstanding passenger rail preference is applied to help enable better on-time performance by Amtrak.

C. MANY HOST RAILROADS TREAT PASSENGERS LIKE FREIGHT

Unfortunately, many host railroads have demonstrated repeatedly that when there is insufficient enforcement of their statutory obligation to grant preferential dispatching to Amtrak trains, they will default to treating passengers as simply another form of freight. Without some kind of action, this will happen again—and is already happening.

My organization was dismayed—but not shocked—to read an August 24, 2017, Journal & Courier story that provided hard evidence of Amtrak passengers being illegally delayed in favor of freight. In an email obtained by the Journal & Courier, a CSX supervisor wrote: "Give high priority to (freight trains) Q031/Q032. If we are meeting with Amtrak make the delay on Amtrak first. If Amtrak is running down one of these trains go ahead and get to the point Amtrak is seeing the (end of the freight train) before we get them around."

Based upon the direct experience of our members, we believe this to be a common dispatching practice—and not just with CSX.

In the absence of effective oversight, host railroads have failed to live up to contractual agreements establishing minimum OTP. Between the summer of 2013 and late 2014, we saw a repeated failure by the railroads to live up to those contractual obligations. That period began with DC Appeals invalidating Amtrak's on-time standard, and ended with the Supreme Court restoring it while sending the case back down for further review. By the summer of 2014, freight interference incidents nearly tripled and Amtrak's on-time performance plummeted to 42 percent. The Capitol Limited enjoyed an "on-time" performance of only 1.6%. After the Supreme Court restored the standard, OTP rebounded sharply—within days. That quick recovery suggests that there was no structural basis for the delays and that dispatching and preference were key drivers.



Let's be clear: STB exists because passengers, like captive shippers, have no corrective market power over freight railroads' behavior. Amtrak, like captive shippers, can't simply shop around for another railroad with better OTP.

Many irreplaceable personal moments have been disrupted by freight-interference delays, with crucial medical transports affected, weddings and funerals missed, and rare home visits by deployed service-members cut short or even cancelled altogether. Each of these hundreds of stories—and we supplied more than 1,300 such stories to STB in October of 2014—add up to more than mere temporary inconvenience, and in many cases, impose real dollar costs on vulnerable travelers.

D. CONGRESS MUST TAKE ACTION

The evidence is in, and self-regulation hasn't worked.

Given all of this, we believe Congress needs to step in and expressly delegate regulation of on-time performance to the Federal Railroad Administration, and needs to define that OTP as all-stations OTP.

We're advocating for Congress to strengthen protections for passengers by enshrining metrics and standards into law, and providing clear thresholds that will allow Amtrak to trigger STB investigations into dispatching practices. These investigations should have clearly defined timelines and, in the event of findings of malpractice, meaningful and significant consequences.

Thank you for your attention to this matter of critical importance. Passenger rail is a crucial part of the national transportation network, and will play an increasingly critical role—in the U.S. economy and in our civic life—as the population of our country grows and resettles around metro corridors.

Jim Mathews

President & CEO

National Association of Railroad Passengers



APPENDICES

Appendix A: Statement from Friends of the Cardinal to the National Association of Railroad Passengers

Jim Mathews, President and CEO
National Association of Railroad Passengers
1200 G. Street, NW, Suite 240
Washington, DC 20005

Sept. 7, 2017

Dear President Mathews:

1. Many of us in the Kanawha Valley are less than pleased that after almost a year of decent On-Time Performance by Amtrak Trains # 50 and 51, The Cardinal, the last two months has seen a serious deterioration back to the "old ways" of trains late anywhere from 1 and 1/2 hours to 2 and 1/2 hours. A group of us in the Charleston area take an Amtrak Display to various public gatherings throughout the year. The most consistent remark we receive when we discuss the advantages of train travel at these various railroad shows/travel shows/community fairs is "But the Train is always so late. I want and need a Train that will be there when it says it will be there, not two hours later." Over the past year, we had noticed an increase in On Time Performance and were able to point that out. But over the last 2 months or so, especially # 50, The Cardinal is back to its "Bad Old Ways" of 1 to 2 hours late each day it runs.

2. In 2010-2011 the Boy Scouts announced they were establishing a new permanent Jamboree and High Adventure site in Fayette County, WV, near the community of Mt. Hope. As part of the announcement, in order to ease community fears about a possible source of continual traffic congestion, included in the original announcement, made by then-Gov. Joe Manchin, was a statement that the chosen site was adjacent to the Amtrak stop of Prince, WV. And again, as the community met in various meetings in the beginning, when concerns about the extra congestion "The Summit" would bring, in addition to presentation on the various "highway changes" in the offing, there was also mention that it was hoped many of the Scouts would use Amtrak's train #50/51, The Cardinal, to travel to and from the site.

Since that time, there had been minimal use of The Cardinal by the Scouts, and several summers of major traffic tie-ups. During the recently passed summer, there was an intentional push to have Scouts use The Cardinal when traveling to and from The Summit for the 2017



Jamboree, which featured an address by President Trump. As a result of these efforts close to 300 Scouts from the Indianapolis IN area, roughly four coach-cars' worth, did use the Cardinal for their travel to the Jamboree. Unfortunately, on the train back to their home, somewhere west of Huntington WV, and west of Cincinnati, the train was stuck behind a CSX freight that was broken down due to, we understand, "engine trouble." Consequently, the Scouts arrived home in Indianapolis on August 29 about six hours late (in the ensuing wait, the Amtrak crew "timed out" and had to be replaced further delaying the train).

In 2019, The Summit will be hosting The World Jamboree. Scouts from all over the world will be coming to Fayette County WV. And the community of Fayette County WV is wondering, "will we be stuck in gridlock all summer, or will we be able to use the train to haul many of these Scouts to our site?" But the question now raised by many is, will the Scouts opt for using the train, if they know they will have to use a train that must operate over CSX tracks? The Community hopes they will, but if current conditions prevail, they wonder. And if these Scouts from all over the world do come and use The Cardinal, will they too be treated to "freight congestion" on CSX in Indiana?

3. Finally, there is a recognition that America has a transportation problem today. It is not only a highway problem, it is not only an air service problem, nor is it a passenger rail problem. It is a transportation problem involving all modes. And West Virginia is no different, it too has a transportation problem, especially if one is traveling any distance about 100 miles or more.

According to what we have read in the transportation policy literature of late, the agreed upon solution to this transportation problem mandates an "Intermodal Approach." The passenger takes a bus, then transfers to a train, or a plane, and upon arrival at a distant location takes a Commuter Train, or some type of rail transit to get to their ultimate destination in the city center.

In this spirit, Amtrak has recently instituted Thruway service between its station in Charleston WV, served by the Cardinal, and a bus operated by Barren's bus company on I-79. The bus connects Charleston, and the Cardinal, with people living in and near the communities of Sutton/ Gassaway (no air service), Weston/Buckhannon WV (no air service plus one Private College with almost 1,400 undergraduate students), Clarksburg WV (one flight a day in and out on the Essential Air Service program), Fairmont WV (no air service, plus one Public University with a student population of about 4,200), and Morgantown WV, (the fastest-growing town in WV with only one flight a day in and out under the EAS program, plus a major Public University with an enrollment in the Fall of 2016 of 28,488 total, 22,350 undergraduate). This bus is not an Amtrak-only operation, it is open to the general riding public. As such it must follow a strict



timetable, but a timetable that does have some flexibility built in knowing that the particular train, The Cardinal, has a reputation for being late. Yet, September 1, 2017 Amtrak had its first passenger who came into Charleston on #50 with a through ticket on the bus. Unfortunately, because of Freight Railroad interference in Indiana, # 50 was 1 hour and 18 minutes late, and the Bus had already left the station. Fortunately, it was not too far down the road, and the station agent was able to contact it, and it turned around and came back and picked up the passenger.

While many of us in the community applaud this effort on the part of Amtrak and Barren's Bus Company, we question how long this will last if # 50 continues to be over an hour late due to "freight interference" in Indiana? Here in WV an effort is being made to solve part of West Virginia's transportation problem. But will it be at all successful? We hope so, but we do wonder.

Amtrak is a National System; what affects its performance negatively in one area, say Indiana or Ohio, affects all subsequent stations down the road. West Virginia has a transportation problem, and local officials, plus Amtrak are trying to address this problem. But with service such as occurred on #50 on September 1, it is going to be very hard to solve this transportation problem.

Our group respectfully requests that your Board consider these facts in making any decision regarding how to approach the current problems with CSX Operations.

J. Charles Riecks
Co-Chair, Friends of the Cardinal



APPENDIX B: Statement from the Western Pennsylvanians for Passenger Rail to the National Association of Railroad Passengers

Jim Mathews, President and CEO
National Association of Railroad Passengers
1200 G. Street, NW, Suite 240
Washington, DC 20005

Sept. 7, 2017

Dear President Mathews:

I serve as a member of the Board of Western Pennsylvanians for Passenger Rail (WPPR) and as its treasurer. I am submitting this statement on behalf of WPPR. Please feel free to include this statement along with your testimony before the Surface Transportation Board on 9/12/2017.

Amtrak's Capitol Limited is one of two passenger trains that serve western Pennsylvania, stopping in Pittsburgh and Connellsville, and it operates on CSX tracks between Pittsburgh and Washington, DC. Over the past decade there have been periods when the on-time performance of this train, especially east of Pittsburgh, has been so poor – sometimes arriving at its destination five hours late or more – that at these times the train ceased to constitute a realistic travel option for passengers. Almost all of these delays have been due to the internal management of the CSX line, such as freight interference and track work. This experience has underscored the need to monitor and regulate the on-time performance of CSX so that the Capitol Limited, a very important mode of passenger transportation for western Pennsylvania, is available to travelers.

The following anecdote from my own experience illustrates the impact of poor on-time performance on a passenger's decision to take the train or not. As you can see, it is not from the last year, but it illustrates the point.

A few years ago, I was traveling to Washington, DC. I agreed with my cousin and his wife that I would meet them for dinner at a location on the Red Line (thus a one-seat Metro ride from Union Station) within the District of Columbia. The Capitol Limited was scheduled to arrive in Washington at 1:05 p.m. Because that train had been consistently running so late in the previous months, I did not feel confident that it would arrive in time for me to make that 6:30 p.m. appointment, more than five hours after its scheduled arrival at Union Station. So I took a bus to DC.



Sincerely yours,

Michael C. Alexander
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APPENDIX C: Statement from the Indiana Passenger Rail Alliance to Indiana's Congressional Delegation



Dear Congressman:

On behalf of the Indiana Passenger Rail Alliance (IPRA), I would like to bring a troubling situation to your attention, and request that your office exert whatever influence it might have to assist in a timely resolution of the problem.

The CSX railroad provides both freight and passenger (in the form of Amtrak) service to and through Indiana. The railroad is currently experiencing serious operational difficulties that are playing havoc with the schedules of Amtrak service in our state (the "Hoosier State" & "Cardinal"), as well as severely disrupting freight service to numerous shippers. The difficulties appear to stem from recent changes in top management at CSX. The situation has deteriorated to the point where the Service Transportation Board (STB) has initiated an investigation in an attempt to learn the truth of the matter, and determine when CSX service will return to an acceptable level.

While not being privy to the details of the ongoing changes at CSX, IPRA is aware that the railroad is aggressively rebuffing attempts by shippers, Amtrak and the STB to clarify the situation.

It is a given that private sector organizations have, and will, play a leading role in our economy. However, the impact of the difficulties being experienced by CSX on both rail freight customers and passengers has become severe. It is reasonable at this point to expect CSX management to be genuinely accountable to the public, and the state of Indiana, regarding its' ability to provide vital transportation services.



We would, therefore, request that your office exert all possible efforts to assist in the resolution of this ongoing problem.

Sincerely,

Steven L. Coxhead President

September 18, 2017

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APPENDIX D: Statement from the Empire State Passenger's Association to the Surface Transportation Board

October 9, 2017

Surface Transportation Board

395 E Street, SW

Washington, DC 20423

RE: Docket No. EP 742

Dear Board Members:

Thank you for the opportunity to provide comments and observations regarding recent service concerns with CSX Transportation. The Empire State Passengers Association (ESPA) is a citizens-advocacy, non-profit organization with over 1400 members who wish to improve both passenger rail and public transportation across all of New York State.

Recently delays have been very common across the 290-mile Empire Service passenger rail corridor between Hoffman's, NY (west of Schenectady) and Niagara Falls, NY. While passenger trains were previously able to travel from Albany to Buffalo in a reliable time under 5 hours, trains are now scheduled to take between 5 hours, 20 minutes and 5 hours, 35 minutes. In addition to these lengthened schedules, trains are often 1-2 hours late, frequently due to CSX issues, something which was very rare in the past.

During the month of August 2017, only 5% of westbound passenger trains arriving at Buffalo were on-time and the average delay was 65 minutes late. For trains operating east across this route, only 34% operated on-time into Albany and the average delay was 30 minutes late. Yes, for the westbound passenger trains, some of these trains did depart Albany late, so some of the



delays were not entirely CSX's fault, but these on-time and amount of lateness statistics are not desirable and are worse than they were years ago and with schedules that have already been lengthened, which has caused passenger rail to be less time competitive with driving an automobile.

Excessively long freight trains, sometimes 2 or 3 miles in length, also present a recent issue, as in the past, freight trains would typically operate at about a mile in length, sometimes a little more. The 2-mile plus freight trains are often operating slow (less than 45 mph) and are more prone to breakdowns and are often under-powered. I do not have the exact date, but a recent 2.5-mile long freight train was not able to make it up the grade near Batavia, NY and stalled out, which resulted in over 90 minute delays to two Amtrak trains. Yes, a long train operated with minimal power could not get over a route labeled, the "Water Level Route". Of course, any train, either freight or passenger, can experience a breakdown, but operating very long freight trains will result in more coupler breaks; take a longer time to walk a train if having to locate a car that set off a defect detector or simply stalling out on a grade.

It should also be noted that on the "Water Level Route", Conrail maintained the track at FRA Class 5 status and Conrail operated some of their intermodal freight trains at 70mph. Soon after CSX took over this route in the late 1990s, they downgraded the track to Class 4 status, so

the maximum freights could operate was 60mph. As CSX slows the speed of many of their freights, it degrades the average speed of passenger trains by causing more freight interference with a larger discrepancy in speeds between the passenger trains and freight trains.

We at ESPA, would hope that the STB takes the recent service issues at CSX seriously and assists both freight and passenger customers with better service, at least the service levels that existed in the recent past. With passenger trains taking longer and longer to travel between Albany and Buffalo, with frequent additional delays, Amtrak passengers are not being accommodated with a proper level of service across the state of New York.

Sincerely Yours,

Gary J. Prophet
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