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Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20423

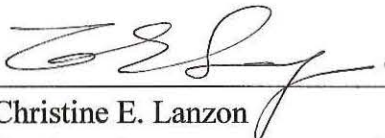
**RE: Docket No. EP 726 On-Time Performance under Section 213 of the
Passenger Rail Investment and Improvement Act of 2008**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket is the "PUBLIC" version of the National Railroad Passenger Corporation's Comments on the Board's Notice of Proposed Rulemaking in On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008. The "HIGHLY CONFIDENTIAL-FILED UNDER SEAL" version is being sent under separate cover.

If you have any questions, please contact me.

Respectfully submitted,


Christine E. Lanzon
Sr. Associate General Counsel

Enclosures

Docket No. EP 726

STB Notice of Proposed Rulemaking

On-Time Performance under Section 213 of the Passenger Rail
Investment and Improvement Act of 2008

**REPLY COMMENTS OF
THE NATIONAL RAILROAD PASSENGER CORPORATION**

March 30, 2016

The National Railroad Passenger Corporation (“Amtrak”) submits these reply comments regarding the Board’s December 16, 2015 Decision in Docket No. EP 726, “On-Time Performance under Section 213 of the Passenger Rail Investment and Improvement Act of 2008” (served December 28, 2015) (*see* Fed. Reg. Vol. 80, No. 248 at 80737 (Dec. 28, 2015) (the “Decision”). For purposes of these comments, the rule proposed by the Board in the Decision as 49 CFR Part 1040 is referred to as the “Proposed Rule,” and Section 213 of the Passenger Rail Investment and Improvement Act of 2008, 49 USC § 24308(f), is referred to as “PRIIA 213.”

A. INTRODUCTION

In its initial comments, Amtrak demonstrated that a PRIIA 213 investigation should be triggered if it is shown that a train failed to meet the 80% on-time performance trigger, where “on-time performance” is measured against the public schedule time at all stations for each train (“All-Stations OTP”), rather than at just the final station of the train (“Endpoint OTP”) as suggested in the Proposed Rule. All-Stations OTP is also the measurement that is strongly urged by numerous other commenters, including members of Congress, state elected officials, Amtrak’s state partners, organizations supporting intercity rail passengers, and individual passengers who rely on Amtrak service to meet their transportation and mobility needs. Like the STB’s proposed definition, All-Stations OTP is measured with reference to the public schedule that defines the performance passengers actually expect to receive. It is also simple and straightforward, easy to calculate, and accords with both the letter and spirit of PRIIA 213, which was enacted so the Board could “identify reasonable measures and make recommendations to improve the service, quality, and on-time performance” of Amtrak trains so that more passengers can reach their destinations on time.

The Association of American Railroads and four of its Class I members – Canadian National (CN), CSX Transportation (CSXT), Norfolk Southern (NS) and Union Pacific (UP) (collectively, the “Freight Commenters”) – filed comments rejecting any standard for triggering a PRIIA 213 investigation based on either Endpoint or All-Stations OTP. They do not want trains to be measured by any standard based on the delivery of passengers to stations as measured against the actual, public schedules on which passengers rely and to which the host railroads already agreed. Instead, they urge that entirely new, alternative benchmarks for performance be substituted for the public Amtrak train schedules.

The proposals for an alternative trigger differ among the Freight Commenters; in some cases they directly contradict one another. For example, NS’s Initial Comments (at 16) claim that “Amtrak rarely adjusts its schedules,” while CSXT’s Initial Comments (at 13) complain about “Amtrak’s ever changing public schedules.” Nonetheless, all of the “alternative” triggers offered by the Freight Commenters have two things in common: (1) they would make initiating a PRIIA investigation complicated, burdensome and expensive, in contravention of the Board’s stated intent to adopt a definition of on-time performance that “would be clear and relatively easy to apply,” see Proposed Rule at 6; and (2) their effect is to create a standard significantly easier for the host railroad to meet simply by defining poor performance to mean acceptable performance.

Beyond those two commonalities, the Freight Commenters’ alternatives differ in the details:

- CN and UP ask the Board to ignore the public schedules that they agreed to, and apply instead certain complex calculations contained in the compensation provisions of their Operating Agreements. The effect would be to have different on-time performance standards on every host railroad, different on-time performance standards for different hosts’ portions of the same train on most Amtrak routes, and the Board venturing into the interpretation of host railroad Operating Agreements.

- CSX proposes that the Board first apply a variety of exceptions, exclusions, additional tolerances, and other host railroad-favorable terms to the parties’ existing schedules; and then, if a train’s on-time performance is still less than 80%, the Board should proceed to “develop a mechanism” to determine if the underlying schedule to which the exceptions and exclusions were applied is reasonable --thus giving CSX multiple opportunities to avoid a PRIIA 213 investigation while the public still experiences late trains.

- NS urges the Board to develop and apply either a new theoretical schedule, or new tolerances, for every train, designed purposefully to make it appear as if NS has achieved an average of 80% on-time performance over the preceding five years -- thus avoiding an investigation altogether.

The Board's mandate under PRIIA 213 is to determine the causes of delays to Amtrak passengers and to make recommendations to ameliorate those causes. In order to fulfill that mandate, the resources of the parties and the Board should be put to that use, instead of being consumed by convoluted processes and additional proceedings before an investigation has even begun, when a "clear and relatively easy to apply" definition of on-time performance is available. The trigger for an investigation should not be defined so as to institutionalize the poor performance of the past. And the "on-time performance" being investigated must be performance as it is actually experienced by Amtrak's passengers, who expect -- and have the right to expect -- to arrive at their destinations at the time shown in the public schedule. Amtrak and the Board agree on this (although they differ about which stations to use in the measurement). The various proposals of the Freight Commenters, on the other hand, would delay or even prevent the Board from carrying out its statutory duty, and should be rejected.¹ Instead, the Board should adopt the established and simple-to-calculate All-Stations On-Time Performance measure as the trigger for commencing a PRIIA 213 investigation, and permit Amtrak's two pending complaints to proceed.

B. ON-TIME PERFORMANCE SHOULD BE CALCULATED AGAINST THE PUBLIC AMTRAK TRAIN SCHEDULES, WHICH HAVE BEEN AGREED TO BY THE HOST RAILROADS AND ARE THE ONLY SCHEDULES THAT THE PUBLIC SEES AND RELIES ON.

Amtrak and the host railroads negotiate and agree on the schedules for Amtrak trains, and agree on any changes to them. These schedules are widely publicized by Amtrak and constitute its "public schedules." They are one of the key descriptors of the service that Amtrak offers, in that they form the basis for the public's decisions whether to travel via Amtrak, and define for the public when they will leave the origin and arrive at the destination of their journey. The schedules must be expeditious enough to entice the public to travel on Amtrak, and reliable enough to encourage positive word of mouth and repeat business. Once the schedules are agreed to by the host railroads, Amtrak expects them to deliver the trains at the times shown in the schedules. To encourage the host railroads to improve their performance, Amtrak also often negotiates various financial incentive and penalty provisions in its contracts with them. These compensation provisions are indirectly related to the public

¹ The Freight Commenters focus their argument on Amtrak's ability to trigger a PRIIA 213 investigation. However, their proposals would also hinder the ability of other parties to commence an investigation by filing a complaint, as well as the Board's ability to initiate an investigation on its own volition, since all PRIIA 213 investigations are subject to the same 80% on-time performance trigger.

schedules but are not a description of the service the public sees and, for the reasons discussed more fully below, are not an appropriate basis for triggering a PRIIA 213 investigation.

1. An Amtrak train's existing, public schedule is the only performance benchmark supported by the law, prior precedent, and sound policy.

On-time performance has always been measured against the existing public schedules, and there is no reason to believe Congress intended it to be measured in any other way in PRIIA 213. *See, e.g., Adequacy of Intercity Rail Passenger in Serv.*, Ex Parte No. 277 (Sub-No. 3) (March 29, 1976), 351 I.C.C. 883, 910 (“The **public should be able to rely upon train schedules** at intermediate stops as well as the ‘final terminus’ of a route.” (emphasis added); *id.*, Rule 1124.6(b) (“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 ...**”) (emphasis added); 49 U.S.C. sec. 24101(c) (Amtrak trains should arrive “to all station stops within 15 minutes of the **time established in public timetables.**”) (emphasis added).)

The public policy reasons for measuring on-time performance against public schedules are obvious. *First*, the public schedule is the only schedule that the public sees and relies on. The purpose of PRIIA 213 investigations – the reason Congress charged the Board with responsibility to “identify reasonable measures and make recommendations to improve the service, quality and on-time performance” of Amtrak trains, 49 U.S.C. § 24308(f) – is so that passengers can arrive at their destinations within a reasonable time of the expected time of arrival, which are listed on the public schedules.² *Second*, performance measured against public schedules is a straightforward and simple mathematical calculation (*see* Amtrak Initial Comments at 5-6) that meets the Board’s requirement for a definition of “on-time performance” that “would be clear and relatively easy to apply.” Proposed Rule at 6. *Third*, the public schedule is agreed to by both the host railroad and Amtrak, as one part of a larger contractual bargain.

Conversely, the Freight Commenters can point to no relevant text, precedent, or policy to support their argument that Congress intended the trigger for a PRIIA 213 investigation to be measured against anything other than the existing public schedule. NS (Initial Comments at p. 8) cites to *Amtrak & the Texas & Pacific Ry., Use of Tracks & Facilities & Establishment of Just Compensation*, 348 I.C.C. 645 (1976), for the proposition that schedules should be “realistic.” But the *Texas & Pacific Ry.* proceeding has no applicability to the issue of operational on-time performance under PRIIA 213, because that case

² *See, e.g., Amtrak Reform and FY 2008 Budget: Hearing Before the Senate Appropriations Subcomm. on Transp. and Hous. and Urb. Dev.*, 2007 WL 614849 (Feb. 28, 2007) (statement of Sen. Murray) (“As I talked about in my opening statement the on-time performance of many of Amtrak’s trains really is disappointing.”)

was decided under the “just compensation” provisions of 49 U.S.C. § 24308(a).³ In the very same year that the ICC decided *Texas & Pacific Ry.*, it also issued its amended *Adequacy of Service* regulations to “clarify passenger rights and the carrier’s obligations” by measuring performance against “train schedules at intermediate stops as well as the ‘final terminus’ of a route.” The ICC clearly recognized the distinction between private compensation provisions designed to incentivize improved performance, and public train schedules that provide a standard against which operational performance experienced by passengers could be measured. The Board should likewise recognize that only the public Amtrak train schedules can form the basis for investigating and assessing on-time performance under PRIIA 213.⁴

UP speculates (at 7) that the repeal in the Amtrak Improvement Act of 1979 (“1979 Act”) of the statutory provision giving the ICC authority to oversee adequacy of Amtrak service (pursuant to which the ICC’s OTP formula had been adopted) reflected Congressional recognition of the “dramatic” statutory and regulatory changes “starting to take shape” that enabled railroads to increase traffic. The legislative history of the repeal provision (attached as Exhibit A) indicates that it had nothing to do with OTP or changes in the freight rail industry. Rather, Congress’s objective was to give Amtrak greater control over the passenger services and amenities Amtrak provided on trains and to monitor the adequacy of Amtrak service via a new performance evaluation center, which would have made continued ICC regulation “duplicat[ive].” See Senate Report, p. 18; House Report, pp. 29-31. The 1979 Act did contain other performance-related provisions that reflect a very different Congressional intent than UP suggests. Noting that the “lack of full cooperation by the railroad industry has impeded effective systemwide operation of [Amtrak] trains,” the 1979 Act imposed new goals for Amtrak to improve on-time performance, implement schedules that provided a system-wide average speed of at least 55 miles per hour, and reduce scheduled trip times throughout its system. Amtrak Reorganization Act of 1979, Pub. L. No. 96-73, Sections 101, 102 and 106.

³ CSX cites *National Passenger Railroad Corp. v. ICC*, 610 F.2d 865 (D.C. Cir. 1979) (CSX Initial Comments at 6) for the same proposition. But that case is the appeal of the *Texas & Pacific Ry.* ICC compensation decision cited by NS, and is inapplicable for the same reasons. See, e.g., 610 F.2d at 875 (“the Commission created quality of service standards which governed Amtrak’s payment of non-incremental costs.”) (emphasis added). Moreover, in that case the Court of Appeals approved of the ICC’s statement that “a slack schedule would make high on-time performance readily obtainable without any improvement in the railroad’s performance. *Id.* at 876, citing 348 I.C.C. at 669.

⁴ Amtrak discusses why the compensation provisions of the Operating Agreements are not an appropriate benchmark for a PRIIA investigation trigger in Section C.2. below.

2. Any inquiry into schedules should occur in the course of a PRIIA 213 investigation, not as part of the trigger to that investigation.

The Board should reject making review of schedules a condition for triggering a PRIIA 213 investigation.

First, Congress used the term “scheduling” in PRIIA 213 in a very specific context: *i.e.*, “scheduling” should be reviewed, if at all, as part of the investigation that had already been commenced:

As part of its investigation, the Board has the authority to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays. (Emphasis added)⁵

The scheduling review is not limited to Amtrak’s schedules but includes a review of the extent to which the host railroads’ own train schedules are a factor in or cause of delays to Amtrak trains. Significantly, there is no corresponding language in the part of PRIIA 213 that discusses triggering an investigation. Congress was clear about the conditions that must be met to initiate an investigation – (1) less than 80% on-time performance *or* failure to meet the PRIIA 207 metrics, and either (2) a decision by the Board to investigate or (3) the filing of a complaint by one of the named entities – and no additional conditions should be read into the law.

Second, prudential reasons and common sense dictate that any review of schedules take place only as part of a commenced investigation. The Freight Commenters differ in the details of their suggested “schedule review,” but they all would be so time-consuming, cumbersome and contentious as to obstruct the Board, Amtrak, or other party from ever commencing an investigation (*see* discussion in Section C.3. below). The AAR, for example, while professing to want to “safeguard the Board’s resources” (at 6), suggests that scheduling issues be reviewed twice – once as part of the trigger, and then “*de novo*” as part of the investigation “assuming the investigation proceeds.” *Id.* at 13. CSX suggests that the burden could be put on Amtrak to demonstrate that the schedule that CSX agreed to for each segment of a train is “reasonable and fact-based.” CSX Initial Comments at 13. The Board should reject these attempts to convert plain statutory language to apply a simple 80% on-time performance trigger into a substantial pre-investigation investigation.

⁵ This “scheduling” review is not limited to Amtrak’s schedules, but includes a review of the extent to which the host railroads’ own schedules are a factor in poor performance.

3. The Freight Commenters' other critiques of the Amtrak train schedules are unfounded and do not justify ignoring those schedules in initiating a PRIIA 213 investigation.

Unable to provide any textual basis or precedent for the argument that the Board should measure performance by some standard other than the existing public schedules, the Freight Commenters argue that those schedules should nevertheless be ignored because they are flawed, outdated, or otherwise objectionable. Those claims do not withstand scrutiny. While, as discussed above, the issue of the "reasonableness" of schedules is a matter for the investigation itself, rather than for defining the trigger, Amtrak briefly addresses those claims to correct the record.

a. The public Amtrak train schedules are not unreasonable.

Even though the public Amtrak schedules have been agreed to by the host railroads themselves, the Freight Commenters assert that the schedules they negotiated and voluntarily agreed to are unreasonable or "divorced from reality," NS Initial Comment at 11, and that they therefore cannot be used as a benchmark of performance. In support CSX selectively cites a portion of 49 U.S.C. 24101(c)(6) ("The statute is clear on this subject: Amtrak must implement schedules that 'can be achieved with a degree of reliability.'") What that full provision actually says is that Amtrak should "*implement schedules based on a systemwide average speed of at least 60 miles an hour that can be achieved with a degree of reliability and passenger comfort.*" The italicized language, which was omitted by CSX, makes it clear that speed, as well as reliability, are important to Congress.⁶

NS takes a different tack, arguing that an 80% on-time performance measure (either Endpoint or All Stations) based on public schedules is *ipso facto* unreasonable based on nothing but the fact that NS's performance often falls below this standard. NS claims, for example, that because trains that make up the *Capitol Limited* service averaged only 53% on-time performance against public schedules over the period 2007 through 2015, it must necessarily be the case that the schedules are "incapable" of arriving at the schedule destination an average of 80% of the time over two consecutive quarters. NS Initial Comments at 12-13.

This argument beggars belief. It assumes that a consistent failure to achieve on-time performance can have only one cause: insufficient scheduled time. This is obviously not true. "[W]here trains are late repeatedly, *either* operational efficiency is lacking, *or* the timetable needs revisions."

⁶ In addition, the ICC's 1976 *Adequacy of Service* regulations recognized that reliability was not the only goal of passenger schedules. Regulation 6, 49 C.F.R. 1124.7(c), mandated: "Schedules shall be designed so as to provide expeditious service..."

Adequacy of Intercity Passenger Rail Serv., 344 I.C.C. 758, 776 (emphasis added). Answering the question of why the public schedules are not being met is the purpose of a PRIIA 213 investigation, in which the Board determine “whether and to what extent delays ... are due to causes that could reasonably be addressed by a rail carrier ... or reasonably addressed by Amtrak.” 49 USC § 24308(f). Whether NS is “incapable” of meeting the 80% benchmark, or has simply been unwilling to do what is necessary in order to meet it, is a question to be answered in the PRIIA 213 investigation, and the Board should reject any proposal that defines the trigger in a way that pre-determines the outcome.

The NS proposal would also institutionalize historically poor performance by creating an infinitely expandable benchmark that is as forgiving as the host railroad needs it to be in order to block an investigation from starting. Perversely, the worse a host railroad has performed in the past, the more “padding” it would receive in the measurement of its performance. Congress enacted PRIIA 213 so that the Board could have a role in improving Amtrak on-time performance, not to establish poor performance the new norm.

Finally, the fact that a host railroad has not recently met the 80% on-time performance standard does not establish that it is “incapable” of doing so. Indeed, NS has shown itself “capable” of delivering Amtrak passengers to their destinations 80% of the time or more when it makes the effort to do so. As the attached chart shows, when PRIIA 213 was first introduced and the possibility of being investigated for poor performance was apparent, NS managed to improve its on-time performance statistics substantially. Other host railroads have done the same. See historical performance charts attached hereto as Exhibit B.

b. The way the public schedules are constructed is not unreasonable.

The Freight Commenters contend that the public schedules to which they agreed must nonetheless be unreasonable because of how they are constructed them. See NS Initial Comments at 11, in which NS claims that Amtrak schedules are based simply on a “mathematical formula”. Amtrak train schedules are built *starting with* a factual, mathematical baseline, known as Pure Running Time, or PRT. PRT is the time it takes a train to travel the line segment with no impediment, and is calculated based on Train Performance Calculator (TPC) simulations, field tests/studies, time-distance analysis, or a combination of these as agreed by Amtrak and the host

railroad.⁷ The fundamental information on the speeds on each line segment is provided by the host railroads. Added to the PRT are station dwell time for passenger boarding and debarking, recovery time to account for a certain amount of delay, and sometimes additional “miscellaneous time.” The amount of these other schedule components within each station-to-station segment, as well as additional details such as specific departure times from the train’s origin point and other points along the route, are developed with host railroads through an iterative process of negotiation and detailed analysis. During this process the parties analyze and take into account details such as other traffic on the route, locations where Amtrak trains will be scheduled to meet and pass each other, completed or planned infrastructure changes, market and passenger needs, and of course what schedule can be achieved assuming the host railroads meet their legal obligations. At the end of this process, the schedule is not implemented or changed until each host railroad affected by the change has approved it.

The Freight Commenters also complain that the public schedules they agreed to are not constructed in the same way as schedules are construed in other industries (*see, e.g.,* NS Initial Comments at 18-20), but they do not demonstrate why that fact results in unreasonable operational schedules for passenger trains operating on freight railroad tracks. Methods used to build airline or bus schedules are irrelevant to Amtrak train schedules. Among other things, whereas the highways on which buses operate are an uncontrolled environment, railroad operations are controlled by a dispatcher who decides which trains will go first.

c. Amtrak Train Schedules Are Modified On A Temporary Basis When Conditions Require

NS argues that Amtrak train schedules do not “take into account maintenance needs, infrastructure projects, and other variables that directly impact train performance.” NS Initial Comments at p.15. This is not true. Amtrak, through a dedicated position at its national operations center, regularly considers and agrees to requests from host railroads for temporary modifications to public schedules in order to account for just such variables. For example, at NS’s request Amtrak has frequently cancelled the *Crescent* service south of Atlanta to facilitate NS track work, most recently in January and February, 2016. During January through March of 2016 Amtrak agreed to modify the schedule for the *Sunset Limited* for a period of approximately six weeks, in order to accommodate track work being performed by UP and by BNSF. For the UP work, Amtrak agreed to shift the eastbound

⁷ PRTs may be verified if a field study supports doing so. In December 2014, when [] complained that the PRTs for certain trains were incorrect, Amtrak offered to conduct a field study with []’s participation. [] never accepted that invitation.

schedule by six hours and lengthen it by 50 minutes. During 2014 and 2015, Amtrak and BNSF agreed to temporarily lengthen the *Empire Builder* schedule by up to 90 minutes westbound and three hours eastbound to facilitate BNSF construction of significant additional capacity on the line. And during February 2016 Amtrak canceled the *Palmetto* and *Carolinian* south of Richmond, VA for six days to accommodate CSX track work. See Track Work Advisories attached hereto collectively as Exhibit C.⁸

d. Amtrak Train Schedules Are Modified On a Long Term Basis When Conditions Warrant and the Parties Agree

Some of the Freight Commenters assert that “Amtrak rarely adjusts its schedules.” See, e.g., NS Initial Comments at 16. (But see CSXT Initial Comments at 13, referring to “Amtrak’s ever changing public schedules.”) To substantiate this, NS notes that it currently operates under the same schedule for the westbound *Capitol Limited* train that it agreed to in 2007. NS does not, however, state that it requested a change to this westbound schedule at any time since 2007.⁹

In any event, negotiated and agreed-upon Amtrak public train schedules are changed in response to proposals made by either the host or Amtrak, provided Amtrak and all hosts on the route affected by the change agree. Looking only to more recent examples involving the Freight Commenters, a review of the public timetables shows that in early 2015 CSX and Amtrak agreed to and implemented changes to 44 schedules, four of which have been changed again since then. One of the revised public schedules was for the *Capitol Limited* trains, which run on both CSX and NS tracks. Since 1991, when the route of the *Capitol Limited* was changed to its current configuration, the schedules for those trains have been lengthened by 20 minutes in the westbound direction and 28 minutes in the eastbound direction. During approximately the same time period, the schedule of the *Lake Shore Limited* on the segment between Schenectady and Chicago, part of which is owned and dispatched by CSX and part by NS, has been lengthened by a half hour in the westbound direction and an hour in the eastbound direction.¹⁰

⁸ See also Initial Comments of State of North Carolina at 2, regarding lengthening schedules for the *Carolinian* and *Piedmont* services operated on CSXT and NS tracks: “Some of the recent delays are likely attributable to construction impacts of NCDOT and Federal investment in the corridor; however NCDOT has allowed NS to add time to the schedule to reflect these temporary disruptions.”

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¹⁰ As discussed more fully in Section C.1. below, the significant lengthening of the *Sunset Limited* schedule did not lead to an appreciable improvement in UP’s on-time performance. As a result of that experience, Amtrak has been hesitant to significantly lengthen negotiated and agreed upon schedules without consideration in the form of a binding commitment by the host railroad to improve performance.

e. The “System” For Measuring On-Time Performance Against The Public Schedule Is Not Outdated or unbalanced

The Freight Commenters argue that measuring performance against the fixed points in existing schedules is an outdated measure of performance because of changes in the freight network. *See, e.g.,* CSXT Initial Comments at 9. This is a fallacy. Measuring performance against public schedules at either the endpoint (as in the 1973 ICC *Adequacy of Service* regulations) or at all stations (as in the amended 1976 ICC regulations) remains valid regardless of changes in infrastructure, traffic, congestion, or other factors in the system being measured. While times have changed, passengers in 2016, like passengers in 1973, expect to arrive at their destinations expeditiously and on time.¹¹

Many of the “changes” that the Freight Commenters rely on to demonstrate that conditions have changed so much as to justify ignoring the public schedules are simply not borne out by the facts. For example:

- CSX’s assertion (at 9) that “higher-speed intermodal trains did not exist in 1973” is incorrect. Railroads operated many high speed intermodal – and merchandise freight – trains in 1973, some of which were faster than their present day counterparts and operated on schedules comparable to Amtrak’s current schedules. For example, Santa Fe’s *Super C*, initiated in 1968, made the Chicago-Los Angeles run in just 40 hours, [<http://web.archive.org/web/20090301181609/http://www.atsfry.com/OralHistory/Elwood/elwood2.htm>], compared to Amtrak’s current Southwest Chief trip time of 43 hours. See <http://trainweb.org/milwaukee myths/>
- Similarly, CSX asserts (at 10) that “commuter rail service volumes have spiked” since 1973, and cites the *Capitol Limited* route as an example. However, whereas today there is only one commuter rail service on the *Capitol Limited* route (the MARC commuter service between Washington and Martinsburg, WV), in 1973 there were two other commuter rail services along that route that no longer exist: the PATrain commuter train service between McKeesport, PA and Pittsburgh (see <https://news.google.com/newspapers?id=k9wNAAAAIBAJ&sjid=Am0DAAAAIBAJ&pg=7385,470817&dq=versailles+train+pittsburgh&hl=en>); and a Penn Central-operated commuter service between Hammond-Whiting, IN and Chicago (see [https://en.wikipedia.org/wiki/Calumet_\(train\)](https://en.wikipedia.org/wiki/Calumet_(train))). And for many years, freight railroads have invariably required large capacity investments by commuter rail authorities as a prerequisite to initiation or expansion of commuter rail services. *See, e.g.,* <http://m.soundtransit.org/About-Sound-Transit/News-and-events/News-releases/News-release-archive/Sound-Transit-finalizes-Sounder-commuter-rail-agreement-with-BNSF---Seattle-to-Everett-service-starts-December-21> (2003 agreement

¹¹ Indeed, the Freight Commenters arguing for measurement under the incentive/penalty provisions of the Operating Agreement would also measure arrival time at fixed, specified locations along the route; they would just allow for more delay than the public schedules.

for initiation of limited commuter rail service north of Seattle required the commuter authority to pay \$258 million for track and signal improvements).

Finally, the relevant date for assessing the reasonableness of the benchmark is not 1973 or 1976, but 2008, by which time the cited changes in the freight network had already occurred. Congress, which would have been aware those changes in 2008, balanced them against the abysmal performance of Amtrak trains, and PRIIA 213 was the result.¹²

C. THE BOARD SHOULD REJECT ALL OF THE “ALTERNATIVE” ON-TIME PERFORMANCE MEASURES PROPOSED BY THE FREIGHT COMMENTERS.

- 1. All the proposed “alternative” triggers would have the effect of measuring on-time performance against benchmarks longer than the public schedule, thus excusing the poor performance experienced by Amtrak passengers.**

The effect of the Freight Commenters’ proposals is to measure train performance against a benchmark that includes more time than the public schedules to which the host railroads have agreed – in many cases, so much additional time as to render any schedule practically meaningless. For example, CSX (at 14-15) proposes a minimum of 15 minute tolerance for each segment and host railroad, plus an additional five minutes for each additional 100 miles. Since most Amtrak trains operate on the tracks of multiple host railroads, these segment-by-segment tolerances would add up quickly and unrealistically. For example:

- The *Wolverine* service between Chicago and Detroit/Pontiac, MI operates on 8 different host railroad segments (from west to east: Amtrak-NS-Amtrak-MIDOT-CN-MIDOT-Conrail-CN). Under CSX’s proposal, a train could become 15 minutes more late on each of these 8 host railroad segments, for a total of up to 2 hours late while still being considered “on time.”
- The *California Zephyr* operates on 4 different host railroad segments (from west to east: UP (1,400 miles), Denver RTD (less than one mile), BNSF (1,036 miles), and Amtrak (1 mile)). Under CSX’s proposal a train on this service could become 75 minutes late on UP, 15 minutes more late on Denver RTD, 60 minutes more late on BNSF, and 15 minutes more late on Amtrak, for a total of up to 2¾ hours late while still being considered “on time.”

UP (at 10-12) proposes either 15 minutes’ tolerance per 100 miles, or 10% of scheduled trip time (15% for routes of less than 750 miles). On the *California Zephyr* this equates to 375 minutes under the

¹² For the same reason, the argument that the Board must “balance” the interests of freight rail and passenger rail at the trigger stage (*see, e.g.*, CSX Initial Comments at 7) is spurious. PRIIA 213 – which provides for the review of information by all parties and the consideration of schedules, congestion, and other factors – represents a balancing of interests already struck by Congress.

mileage-based formula, and 313 minutes under the trip time-based formula; that is, passengers on this service could be regularly over *five hours late* and that would be considered on-time for PRIIA 213 purposes.

These proposals are bad public policy.

First, measuring performance against a benchmark longer than the public schedule has the effect of making acceptable the poor performance that led Congress to enact PRIIA 213 in the first place. It would also provide a disincentive for host railroads to improve performance, since doing so would also reduce the additional “padding” they would enjoy under their proposals.

Second, experience shows that padding existing schedules to permit more delay does not ensure improved on-time performance. In fact, the opposite is often true; when schedules are lengthened, host responsible delays actually increase. For example, in 2005, Amtrak and UP followed an approach similar to that proposed by the Freight Commenters, in an attempt to improve performance of the *Sunset Limited*. Amtrak agreed to add over three hours to the *Sunset Limited*’s schedule, having been assured by UP that doing so would result in improved on-time performance. When the time was added, however, All-Stations OTP improved only minimally, from 12% to 16%. [

].¹³

A similar example involves VIA Rail Canada, Amtrak’s Canadian counterpart, which did exactly what the railroads propose as the “solution” to poor on-time performance – *i.e.*, lengthening schedules on its Toronto-to-Vancouver route, the *Canadian*. It hasn’t worked. In December 2008, one night (12 hours) was added to the *Canadian*’s schedule in each direction.¹⁴ VIA noted that “CN is cooperating to ensure that trains will be able to depart and arrive on time” on the new schedule. The result is that the *Canadian*’s on-time performance on the much longer schedule has hovered around 25% over the past two years, achieving just 25.3% on-time performance in the most recent quarter. *See id.*, VIA’s First Quarter 2014 Report (p. 20), Third Quarter 2014 Report (p. 27) and Third Quarter 2015 Report (p. 9).¹⁵

¹³ This example excludes stations on the portion of the *Sunset Limited* route east of New Orleans, where service was subsequently suspended due to Hurricane Katrina and where no additional time was added.

¹⁴ VIA Rail Ann. Rep. at 19 (2008) available at http://www.viarail.ca/sites/all/files/media/pdfs/About_VIA/our-company/annual-reports/2008/VIA_Rail_complet_en.pdf.

¹⁵ VIA Quarterly Reports are available at http://www.viarail.ca/sites/all/files/media/pdfs/About_VIA/our-company/quarterly-reports.

Third, padding the schedules to increase allowable delays would strand the significant investments that taxpayers have already made to increase capacity and improve infrastructure, in order to improve the conditions that the freights now argue requires additional time. For example:

- While NS discusses conditions in the Chicago area, it fails to acknowledge the two significant taxpayer-funded projects that increase capacity on the NS-owned Chicago-area lines that are used by Amtrak: (1) the Englewood Flyover, which eliminated an at-grade crossing, and (2) the Indiana Gateway Project, which is adding seven miles of additional track, seven crossovers, and four added or improved sidings. These projects were almost entirely funded by the federal High Speed and Intercity Rail Program at a total cost to the taxpayer of \$200 million.
- With respect to the *Carolinian* and *Piedmont* services operated on NS and CSXT tracks, the North Carolina Department of Transportation and United States Department of Transportation “have invested over \$1.1 billion in new and refurbished equipment, station upgrades, and railroad track capacity upgrades” to relieve capacity issues and “provide a better customer experience to passengers using North Carolina supported services.” See Initial Comments filed by North Carolina Department of Transportation.

Such examples exist throughout the country. But the Freight Commenters propose to lengthen schedules as if these significant and costly improvements had never been made.

2. A host railroad’s on-time performance should not be measured with reference to the compensation provisions of their Operating Agreements.

CN and UP urge the Board to loosen the standard by which their performance is measured by “incorporating” portions of the compensation provisions found in their Operating Agreements. That is a Pandora’s Box that the Board should decline to open.

a. Applying the compensation provisions would require the Board to resolve disputes about the interpretation of terms in the parties’ Operating Agreement, which the Board has historically declined to do. See, e.g., *National R.R. Passenger Corp. and Union Pacific R.R., Use of Tracks and Facilities and Establishment of Just Compensation*, 348 I.C.C. 926, 935 (1977) (“it is not our function to construe the terms of the Basic Agreement” between Amtrak and host railroads. As described more fully in subsection c. below, those contractual terms are complex, differ from host to host, and have historically given rise to disputes about interpretation.

b. Despite the attempt to define them as “existing contractual measures of on-time performance,” UP Initial Comments at 3, the compensation provisions are not designed to fulfill that purpose. Rather, they were designed, often decades ago, to serve a very narrow purpose, which is to determine whether a host railroad will earn incentive payments. They contain exceptions, exclusions,

and rules that apply to calculating payments but do not affect the service a passenger experiences. They also were deliberately designed to be more generous in terms of time than the public schedule. That is because the purpose of an incentive provision is not to set a benchmark for acceptable service, but to encourage (*i.e.* incentivize) better performance. These provisions simply do not constitute a measure of the performance of trains vis-à-vis Amtrak passengers.

c. Use of contract compensation calculations would create a hodgepodge of complex “triggers” for PRIIA 213 investigations. Amtrak has 35 separate, individually-negotiated compensation agreements with host railroads that support Amtrak’s regularly scheduled intercity passenger rail service. Only a small number of these agreements include checkpoint-style incentive/penalty calculations []. Of the 35 compensation agreements:

- []
- 7 compensate host railroads based on minutes of delay
- 8 have a checkpoint-style compensation system [], though even these differ from each other as discussed below
- 7 have other types of runtime-based compensation systems.

Thus, the “uniform” system proposed by UP and CN would be new to nearly 80% of Amtrak host railroads. Moreover, even where these systems do exist they are complex, difficult to administer, and differ considerably from host to host.

The Amtrak-[] compensation agreement, for example, devotes 40 pages to describing two separate systems currently used for the calculation of incentives and penalties for Amtrak trains on []. Many of these pages are devoted to describing the over 30 negotiated situations in which [] may be compensated, or avoid penalties, even though trains are late (“Relief”). The [] agreement also has two separate performance-based compensation systems – [] - but only the latter is a checkpoint-based system analogous to []. The [] compensation system also has approximately 30 Relief items, some of which are similar to the [] relief items and some of which are not. [], by contrast, is compensated for operations in the [] based on run time with no Relief items.¹⁶

¹⁶ See Appendices V and VI of the [] Operating Agreement, attached hereto as Exhibit D. While the [] incentive provisions are not representative of all the host railroads’ agreements – since they vary from one another in many important respects as described above – they do provide a flavor for the types of calculations (and disputes) that the Board will be faced with resolving if these compensation provisions are used as the benchmark for defining on-time performance in the context of PRIIA 213 as urged by several of the Freight Commenters and the AAR.

In all cases, Amtrak and host railroads have negotiated these terms as part of a broader compensation arrangement. One host may prefer more-generous Relief in exchange for smaller earning potential, whereas another host may prefer fewer Relief items in exchange for more-generous earning potential. A third host may seek different Relief in exchange for another contractual provision that has nothing to do with compensation or train performance. If STB were to measure Amtrak OTP based on these three hosts' compensation terms, these hosts would all be held to different standards based on factors that have nothing to do with train operations or the service provided to the traveling public.

d. The interpretation and application of these provisions is often contentious. For example, in the [] agreement [] gets Relief for time spent setting out a bad-order Amtrak car at a station stop; but if the car is set out at a location other than at a station stop [] gets relief only to the extent that the delay, summed together with any delays related to 12 other specifically-negotiated issues enumerated in the agreement, does not exceed a negotiated number of minutes that is different for each train operated on []. Such complex provisions lead to frequent disputes between the parties, which the Board would have to resolve simply in order to determine if a PRIIA investigation could commence.

e. The purpose of the 80% trigger in PRIIA 213 is not solely to measure whether host railroads are providing Amtrak with certain level of service; it is to determine whether the service being delivered to passengers meets Congress's minimum requirements. If the incentive provisions of the privately-negotiated bilateral agreements are used to define on-time performance, Amtrak and the host railroad could collectively provide poor service to passengers while preventing the Board or other interested parties from ever initiating an investigation, a result Congress surely did not intend. And since the purpose of a PRIIA 213 investigation is ultimately to improve the service provided to Amtrak passengers, it would be odd indeed if the benchmark for initiating those investigations consisted of provisions of which passengers are not, and likely never will be, aware.

CN and UP attempt, but fail, to demonstrate any support for using privately negotiated compensation terms as the benchmark for a PRIIA 213 investigation.¹⁷ Those proposals should be rejected.

¹⁷ UP suggests that 49 U.S.C. sec. 24308(a)(1) provides support because it requires contracts to establish standards for "untimely performance." But PRIIA itself provides the rebuttal. PRIIA 207 requires that, to the extent practicable, Amtrak and the host railroads were to "incorporate the metrics and standards developed" under that section "into their access and service agreements." This shows that Congress was aware of the parties' Operating Agreements and knew how to refer to them when it wanted to. Those agreements are not mentioned in PRIIA 213.

3. The Freight Commenters' proposals would make triggering a PRIIA 213 investigation unnecessarily complicated, burdensome, costly, and contentious.

CSXT proposes that this rulemaking should be just the first step in a much longer process to determine the meaning of “on-time performance.” CSXT asks the Board (Initial Comments at 13) to adopt a rule providing that the Board will *further* “consider and analyze, with the requisite seriousness, and care, alternative definitions” of on-time performance for purposes of triggering an investigation. It provides eight essential elements that such a standard should include (*id.* at 14-18) – suggesting that there may well be “other [unspecified] elements” – and every one of those elements would be the subject of much debate, further delaying the investigatory process. If a host railroad’s performance falls below 80% using that as-yet undefined metric, the Board should then proceed to accept evidence and argument on whether “the run time for each segment of a route is realistic, fact-based, and can be achieved with reliability.” *Id.* at 18. Only then could an investigation begin, amounting to an investigation before the investigation.¹⁸

Similarly, NS suggests that the complaining party be “given an opportunity to present targeted evidence regarding a realistically-achievable schedule” based on historical data “or possibly other limited concrete and probative facts,” providing only that the evidence may not be based on Amtrak’s public schedules. NS Initial Comments at 24. This too would require a full blown proceeding just to determine if an investigation should begin.¹⁹

CN and UP urge the Board to adopt the compensation provisions of their Operating Agreements to measure their on-time performance. For the reasons discussed above, applying those provisions is not only inappropriate, but would consume time and resources of both the Board and the parties that should instead be spent trying to determine the causes of delay and ameliorating them.

4. 80% On-Time Performance should be measured by train as mandated by PRIIA 213., not by host or by segment

Subsection (1) of PRIIA 213 provides that an investigation will be initiated if “the on-time performance of any intercity passenger train” fails to meet the trigger, and will determine whether the

¹⁸ CSX also asserts that on-time performance must always yield to safety concerns. Amtrak agrees that safety is always a paramount consideration, and that a PRIIA 213 investigation could inquire into which delays are legitimately related to safety concerns.

¹⁹ NS also suggests an alternative metric where various additional tolerances would be added to the public schedule in order to achieve the same effect of making NS’s past performance the new benchmark for acceptable performance. Under this alternative, the Board would need to calculate the tolerance applicable to each route. NS Initial Comments at 26-27.

delays are due to causes that can be addressed by Amtrak or by a rail carrier “over whose tracks the intercity passenger trains operates...” The focus of the section is on “a train” as a whole, not a segment of a route or one of multiple hosts which own tracks on that route. That is because a passenger rides a train, not a host railroad, and expects to arrive at or near the time provided in the schedule for that train.²⁰

As always, the Board retains discretion to fashion a PRIIA 213 investigation in a way that will be most expeditious and fair. It may often be quickly apparent which host railroads on a route are contributing to delays, and the investigation can be shaped to concentrate the inquiry on the behavior of certain host railroads and not others. As well, the Board has the discretion to distinguish among hosts in making recommendations and fashioning other relief. But the determination of the cause of delays to an “intercity passenger train” should be part of the investigation itself, not for the trigger.

5. The Board has the authority and jurisdiction to interpret and apply the 80% on-time performance trigger.

The Freight Commenters raise several legal challenges to the Board’s rulemaking, none of which has merit.

The AAR argues that the Board lacks statutory authority to define the term “on-time performance,” on the grounds that only Amtrak and the FRA were vested, under PRIIA 207, with the authority to develop metrics for purposes of triggering a Section 213 investigation. The Board has already considered and rejected the argument that there is only one trigger for a PRIIA 213 investigation, holding that the word “or” in PRIIA 213 means that the 80% on-time performance trigger is independent of the metrics developed under PRIIA 207.²¹ Even if “[g]rants of rulemaking power are necessarily exclusive,” AAR Initial Comments at 5, Congress is not barred from making two separate grants of rulemaking power to two separate entities, as it has done in PRIIA 207 (Amtrak and the FRA) and independently in PRIIA 213 (the Board).

CN endorses the AAR’s argument, and goes a step further by requesting that if the Board proceeds with the rulemaking it should “clarify that whatever OTP trigger it adopts will be the exclusive OTP trigger for Section 213 investigations.” CN offers no support for this request other than the argument already rejected by the Board in its December 19th Decision.

²⁰ Subsection (2) of PRIIA 213 does provide for individual treatment of individual hosts, but only in the context of awarding damages for preference violations after an investigation. 49 U.S.C. 24308(f)(2).

²¹ *National Railroad Passenger Corporation – Section 213 Investigation of Substandard Performance on Rail Lines of Canadian National Railway Company*, STB Docket No. NOR 42134, slip op at 6-7 (STB served Dec. 19, 2014).

D. CONCLUSION

Amtrak -- like the Board in its Proposed Rule -- believes that the public Amtrak train schedules are the only benchmark for assessing PRIIA 213's 80% trigger that accords with the purpose and intent of PRIIA 213 while being "clear and relatively easy to apply." For the reasons given in its Initial Comments, Amtrak also believes all Amtrak stations -- and therefore all Amtrak passengers -- should be considered in measuring 80% on-time performance.

The AAR and the four Freight Commenters ask the Board to ignore the schedules that the passengers see and rely on, and that the host railroads have themselves agreed to, in favor of alternative benchmarks that would have the effect of complicating the determination of whether a PRIIA 213 investigation should be triggered, and of excusing the host railroads from being accountable for their performance. The Board should reject these alternatives and issue a rule adopting All-Stations On-Time Performance as the trigger for initiating PRIIA 213 investigations.

Respectfully submitted,

William H. Herrmann

William H. Herrmann
Vice President and Managing Deputy General Counsel
National Railroad Passenger Corporation

Dated: March 30, 2016

Exhibit A

Calendar No. 194

96TH CONGRESS }
1st Session }

SENATE

REPORT
No. 96-183

AMTRAK IMPROVEMENT ACT OF 1979

MAY 15 (legislative day, APRIL 9), 1979.—Ordered to be printed

Mr. CANNON, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 712]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 712) to amend the Rail Passenger Service Act to extend the authorization of appropriations for Amtrak for 3 additional years, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

PURPOSE

It is the purpose of this legislation to provide authorization of appropriations for the National Railroad Passenger Corporation (Amtrak) for fiscal years 1980 and 1981, to provide for the implementation and operation of Amtrak's new route plan, recommended by the Department of Transportation and to improve Amtrak operations through adoption of a number of amendments to the Rail Passenger Service Act. This legislation contains provisions to improve Amtrak's financial performance, to establish the basis upon which service changes can be made in the future, to improve Amtrak's administrative practices, and to help ease the transition from the old route system to the new route system. In addition, this legislation extends for 1 year, the expiration date on funding available under title V of the Railroad Revitalization and Regulatory Reform Act for railroad rehabilitation and improvement projects.

(A) For the payment of operating expenses of the basic system, including the Northeast Corridor, and for operating and capital expenses of rail passenger service provided pursuant to section 403(b) for those trains in operation on September 30, 1979; \$581,300,00 for fiscal year 1980 and \$610,000,000 for fiscal year 1981.

(B) For the payment of the costs of capital acquisitions or improvements to the basic system; \$122,000,000 for fiscal year 1980 and \$223,000,000 for fiscal year 1981.

(C) For the payment of the principal amount of obligations (other than leases) of the Corporation which are guaranteed by the Secretary pursuant to section 602 of the Act; \$25,000,000 for fiscal year 1980 and \$25,000,000 for fiscal year 1981.

(D) For the payment of operating and capital expenses for service commenced pursuant to section 403(b) on or following October 1, 1979; \$10,000,000 for fiscal year 1980 and \$10,000,000 for fiscal year 1981.

(E) For labor protection payments required pursuant to section 405 of the Act; \$59,000,000 for fiscal year 1980 and \$32,000,000 for fiscal year 1981.

Under section 8, similar restrictions are placed upon the new authorization subsection as are found under subsection (a) of section 601. These restrictions require the Secretary to advance Amtrak its appropriated funds at the beginning of each quarter, unless Amtrak, for good cause, requests more frequent payment. Under the new section the term "Secretary's budget request as approved or modified by Congress" is substituted for the term "spending plans". Funds for capital improvements can be appropriated 1 year in advance of the time when they will be available for obligation. In addition, funds available under the labor protection account which remain available after such payments are made shall be made available for both capital and operating expenses.

Finally, section 8 restates Amtrak's authority to receive its capital grant money on a quarterly basis in order that Amtrak may use the funds for temporary reduction of outstanding loan balances through its cash flow management.

SECTION 9. TECHNICAL AMENDMENT

This section amends section 602(d) of the Rail Passenger Service Act by reducing the total loan guarantee authority given to Amtrak by the specific amount of debt retirement authorizations provided pursuant to section 8 of S. 712. This technical amendment identifies that loan guarantee authority will be reduced by debt retirement authorizations provided under both sections 601(a) and 601(b) of the Rail Passenger Service Act.

SECTION 10. ADEQUACY OF SERVICE

This section repeals section 801 of the Rail Passenger Service Act which requires the Interstate Commerce Commission to establish and enforce adequacy of service standards for intercity rail passenger service. As a result, sound business judgment—not Federal regulations—will determine which services will be provided on which trains.

SECTION 11. INTERMODAL TERMINAL PROGRAM

This section amends paragraph (5) of section 4(i) of the Department of Transportation Act to allow the Secretary to determine how soon the designs and plans for intermodal terminal conversions should be completed. The present 2-year deadline for completion of designs and plans has created an unforeseen hardship and has resulted in several potentially useful planning projects being incomplete and essentially unusable. This section would extend the deadline until such time as established by the Secretary of Transportation.

SECTION 12. REPORT ON REVENUES AND EXPENSES

This section amends Title VIII of the Rail Passenger Service Act by adding a new section entitled, "Revenue Report", that requires Amtrak to report to Congress on the ratio of revenues to total expenses on all routes in the basic system, to specifically identify those routes which do not achieve a 50 percent revenue-to-expense ratio, and to provide an explanation on the reasons which prevented such a ratio from being achieved. Such reports will be filed within 60 days of the end of each fiscal year beginning with fiscal year 1981.

SECTION 13. SYSTEMWIDE SPEED GOAL

This section directs the Secretary of Transportation, in consultation with Amtrak, to study the potential benefits and costs of a 55-mile-per-hour speed goal for Amtrak and to report the results of that study to Congress within 12 months of the date of enactment of this section.

SECTION 14. IMPLEMENTATION OF THE NEW ROUTE PLAN

This section amends section 4(g) of the Amtrak Improvement Act of 1978 by modifying the deadline for completing the implementation of the new route plan developed by the Department of Transportation and approved by Congress. Implementation of the new route plan must be completed within 12 months after the date of approval except in those instances where implementation requires operation over rail lines not in use for intercity passenger service upon the date of approval, the use of new facilities, or new labor agreements. This portion of the new route plan may be deferred until track and facility improvements or labor agreements are made to permit service that is equivalent or improved and is consistent with the goals contained in section 4(a) of the Amtrak Improvement Act of 1978. This section also provides that Amtrak may provide substitute service over existing routes pending deferred implementation of such recommendations without reference to the Route and Service Criteria.

SECTION 15. EXTENSION OF AUTHORITY TO ISSUE AND SELL FUND ANTICIPATION NOTES

This section amends sections 505, 507, and 509 of the Railroad Revitalization and Regulatory Reform Act of 1976 to extend for 1 year

AMTRAK REORGANIZATION ACT OF 1979

SEPTEMBER 28, 1979.—Ordered to be printed

Mr. STAGGERS, from the committee of conference,
submitted the following

CONFERENCE REPORT

(To accompany H.R. 3996)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3996) to amend the Rail Passenger Service Act to extend the authorization of appropriations for Amtrak for 3 additional years, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

TITLE I—AMTRAK REORGANIZATION

SHORT TITLE

SECTION 101. This title may be cited as the "Amtrak Reorganization Act of 1979".

PURPOSES

SEC. 102. Section 101 of the Rail Passenger Service

- (1) by inserting "(a)" immediately before "The Congress";
- (2) by striking out "and" after "this purpose";
- (3) by striking out the period after "Railroad Passenger Corporation" and inserting in lieu thereof the following: "; and that rail passenger service offers significant benefits in public transportation for the safe movement of passengers with minimum energy expenditure and represents a significant national transportation asset in time of national emergency or energy shortage."; and

able on existing routes, the reported bill requires substitute service to be provided by Amtrak until such time as the recommended routes can or should be implemented. Decisional authority with respect to the appropriateness of such implementation is vested in Amtrak.

Under the reported bill, Amtrak must provide substitute service over entire routes presently served by Amtrak involved in the restructuring recommendations and over feasible portions, not presently served by Amtrak, of recommended restructured routes. A separate authorization of \$20 million for fiscal year 1980 is provided for this purpose. For fiscal year 1981 such sums may be necessary are authorized. The Secretary has recommended that such funding be provided.

The Committee wishes to emphasize that the mandated substitute service over the full route network described above is essential to preservation of a national rail passenger system and notes that ridership over certain of the routes in question recently has improved markedly. Moreover, certain of such routes have not been given a fair opportunity to demonstrate their full potential as a result of scheduling, equipment and other problems. Consequently, the perceived advantages of implementation of the recommended routes must be fully justified prior to discontinuance of any of the mandated services. The Committee believes that continuation of recent trends may significantly alter the validity of the restructuring recommendations and expects full justification prior to implementation.

In this connection, the Committee notes that alternate routes not presently used by Amtrak may be available between endpoints of existing routes recommended for retention by the Secretary. In short-distance corridors where running times would not be seriously affected, Amtrak should make every effort to route service to attract additional ridership from more densely populated urban centers and hence increase passenger miles as well as revenues.

The Committee is aware that State participation in subsidizing interstate rail passenger service has been largely unworkable, although State participation on an intrastate basis has proven highly successful in certain instances. The Committee believes that the opportunity for State cost-sharing participation in all phases of intercity rail passenger service must be expanded to enable States, singly or in concert, to obtain additional services justified by market demand and cost-effectiveness standards. Therefore, the reported bill authorizes appropriations to Amtrak of \$25, \$30, and \$30 million for fiscal years 1980-82 respectively for an improved Federal-State cost-sharing program.

The reported bill provides that upon receipt of a qualifying application, which must include a market demand analysis and evidence of financial responsibility, by a State or group of States for new services under the Federal-State cost-sharing program, the Amtrak Board of Directors must convene a Technical Assistance Panel. Each panel must be composed of a State rail planning official from each applicant State, a representative of Amtrak, a representative of operating rail labor crafts, and a representative of non-operating rail labor crafts. The panel must evaluate projected cost data for the requested service and recommend to the Amtrak Board appropriate measures for minimizing the costs of such service and for appropriate cost allocation

among applicant States. Following receipt of such recommendations, Amtrak shall enter into an agreement to provide such service if sufficient resources are available. The Committee believes that this approach will result in cooperative efforts by the involved parties to reduce costs and hence generate additional service patterns, particularly on an interstate basis.

For qualifying new services, the Federal share of solely related operating costs is set at 80 percent for the first year of operation, 85 percent for the second year, and 50 percent for the third and subsequent years. The increased Federal operating share, as compared to the present 50 percent, in the first two years should facilitate State entry into the program and provide sufficient time for new services to be improved and aggressively marketed to attract additional ridership and revenues so that a 50 percent State operating share in the third year will not be prohibitive for some States. The reported bill also sets the Federal share of associated capital and costs at 80 percent for each year service is operated, and parallels other Federal transportation programs in this respect. In a situation where capital improvements must be made before service is started, such capital programs shall be eligible as long as there is a binding commitment to 403(b) service, whether or not the service is begun in the same fiscal year the capital improvements are made.

The Committee is convinced that substantial uncertainties exist with respect to essential future levels of rail passenger transportation capacity. Recent events have vividly demonstrated the impact of external events on such capacity. Stand-by preparedness to provide additional capacity to meet unanticipated demand is essential. Reinstitution of rail passenger services recommended for discontinuance by the Secretary may be warranted by changing circumstances. Such reinstitution may be extremely costly if necessary tracks and facilities are not preserved at passenger service levels.

The reported bill, therefore, provides that tracks and facilities owned by private railroads and used by Amtrak for passenger service recommended for discontinuance by the Secretary shall not be downgraded or disposed of until Amtrak has assessed the importance of preserving such tracks or facilities in passenger condition. If, after consideration of certain relevant factors, Amtrak determines such preservation is necessary or appropriate, it may enter into an agreement to that effect with the railroad in question. If the parties are unable to agree within 60 days, the Secretary of Transportation is required to determine the avoidable costs to be incurred by the railroad in preserving the tracks or facilities in the condition requested by Amtrak. If, within 60 days following the Secretary's determination, Amtrak does not agree to pay such costs, the railroad will be permitted to downgrade or dispose of the tracks or facilities in question. The reported bill authorizes \$3 million for each of fiscal years 1980-82 for "rail banking" of tracks and facilities determined to be needed for reinstituted passenger service.

Amtrak's ability to provide high quality, reliable rail passenger service has been hampered not only by budgetary constraints but also because of the failure to develop clearly defined goals. The reported bill contains specific goals so as to provide Amtrak with clear objectives designed to improve Amtrak's service. The Committee believes

that both structural and attitudinal changes must be made if Amtrak is to achieve goals set forth in the reported bill. Four specific programs are mandated for Amtrak by the reported bill in order to improve Amtrak's performance.

An operational improvement program is required to be developed by the corporation not later than January 1, 1981 and to be implemented on an incremental basis as soon as any portion of it is developed. The program must include a zero-based assessment of all operating practices and implementation of changes necessary to achieve the minimum use of employees consistent with safe operations and adequate service. It also requires the development of a systematic program for optimizing the ratio of train size to passenger demand; a systematic program for trip time reduction on all trains in the basic system; establishment of training programs to achieve ontime departures and priorities for passenger trains over freight trains enroute; adjustments of purchasing and pricing of food and beverages to ultimately achieve profitability; and cooperative marketing programs to increase revenues.

For the purpose of monitoring its own operations, Amtrak is directed to establish a performance evaluation center. This center must evaluate both short and long-term operational problems and make recommendations for the improvement of operations. In carrying out its responsibilities, the center should concentrate on both the detection and correction of all operational problems. Its role should be not only to monitor and keep track of all operational problems but should also expedite the prompt solution of those problems.

In its "trouble-shooting" role, the center must be an integral part of Amtrak management. Quick knowledgeable response is essential whether the problem be one of equipment availability, equipment maintenance, employee performance, or carrier cooperation.

The effectiveness of the performance evaluation center will only be as good as its available knowledge about specific Amtrak operations. The reported bill establishes a method for receiving adequacy of service reports. The bill gives the President of Amtrak the authority to direct the conductor on any Amtrak train to report to the center any inadequacy of train operation. When requested to do so the conductor must submit his report directly to the center whether he is an employee of Amtrak or an employee of a carrier having a contract with Amtrak. The center shall specify the types of information it needs in order to evaluate the adequacy of service. Such information could include lack of departure on time; lack of arrival on time; on schedule delays en route, including mechanical breakdowns or interference with operations because of freight train operations or maintenance of wayward; nonworking toilets or drinking equipment on trains; any other mechanical failures including door failures or temperature malfunctions by car number; and lengths of delay caused by crew changes.

Establishment of the performance evaluation center and the adequacy of service reports provides a system for Amtrak to knowledgeably monitor all of its operations. The Committee is cognizant of the fact that the full cooperation of all Amtrak employees is necessary if the performance evaluation center is to have accurate data for making the judgments necessary to significantly improve performance.

The reported bill relieves the Interstate Commerce Commission of its current responsibility to evaluate the adequacy of Amtrak's service because it would only duplicate the activities of the center. Moreover, the center must submit a report of its activities and recommendations to the appropriate authorizing Committees of both Houses of the Congress and to the Secretary every six months.

One of the most significant problems affecting Amtrak performance has been the poor condition of its equipment. Testimony at the hearings indicated that both old and new Amtrak equipment is in need of repair. The reported bill mandates a corporation to establish not later than January 1, 1980 a regional maintenance plan. The bill enumerates the basic characteristics which should be included in any such plan including the establishment of a systematic preventive maintenance program. Equipment reliability and passenger comfort are essential for improved performance by Amtrak. Only a systematic, comprehensive, regional maintenance plan can provide reliable equipment performance and passenger comfort.

The Committee recognizes that the responsibility for the success or failure of Amtrak in meeting the goals set forth in this Act rests primarily with the Amtrak and contract carrier employees who manage and operate the Amtrak system. In the past the perennial questions about the future of inter-city rail passenger service and of Amtrak itself have not been conducive to high employee morale. In general, the Amtrak Reorganization Act of 1979 should clearly demonstrate to both Amtrak employees and contract carrier employees who operate many Amtrak trains that this Committee is committed to intercity rail passenger service. Moreover, the reported bill contains two specific provisions for the purpose of improving employee commitment to Amtrak.

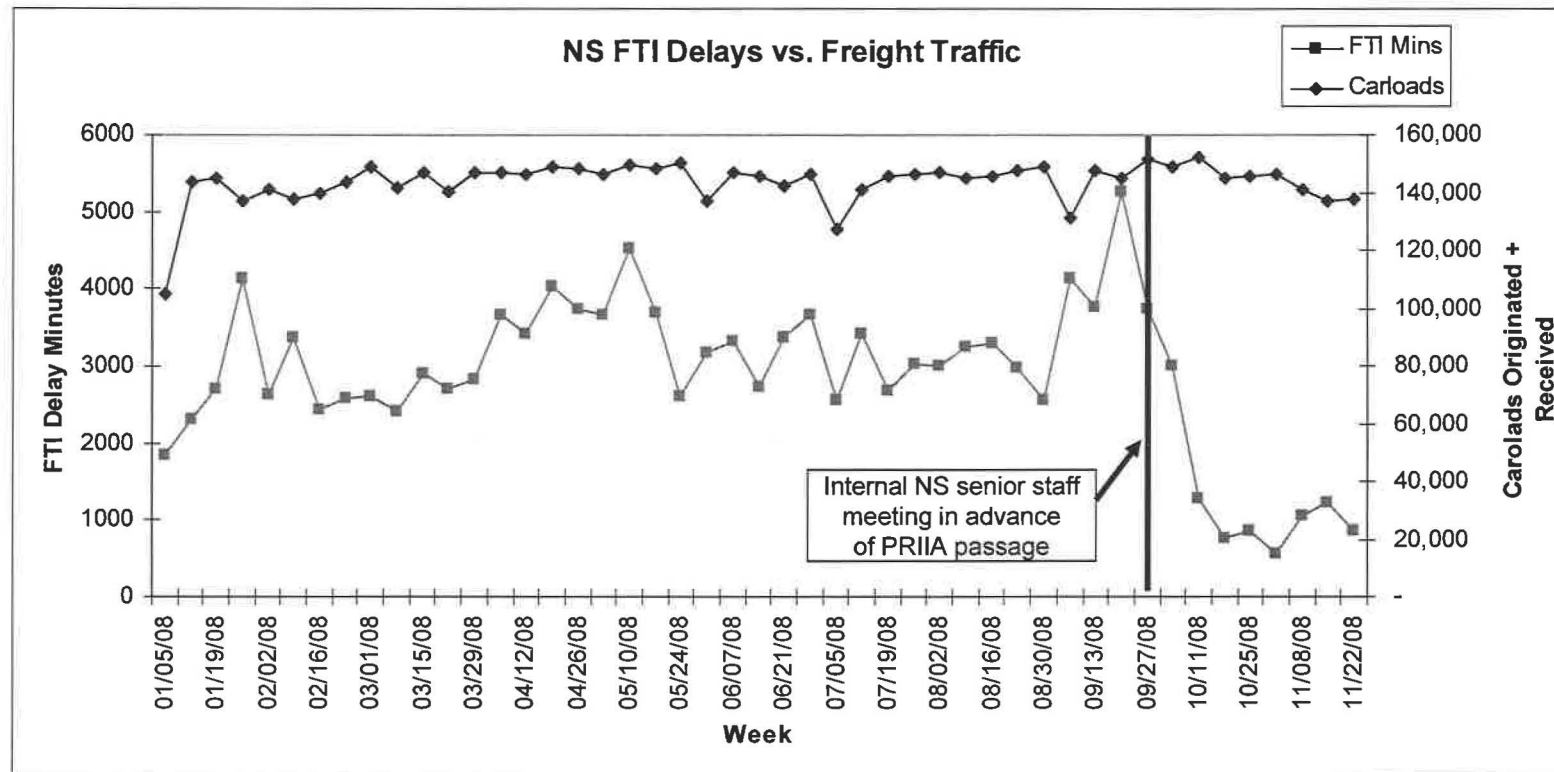
First, the reported bill institutes an employee stock ownership plan by directing the corporation to issue a new class of common stock to be distributed to both Amtrak employees and contract carrier employees who operate Amtrak trains. The stock may be issued to qualified employees on both a length of service basis and in recognition of outstanding performance. Eventually the stock shall pay dividends as part of the corporation's compensation basis.

The specific source and method for paying dividends will be one of the recommendations made by the Employee Compensation and Incentive Commission established in the reported bill. In addition to determining the source and method for payment of dividends on employee held stock, the Employee Compensation and Incentive Commission shall evaluate the salary paid officers of Amtrak in relation to Amtrak's ability to attract and maintain qualified officers. There is concern by the Committee that Amtrak's salaries be comparable to those in private industry so that the best possible employee talents be applied toward making Amtrak work well.

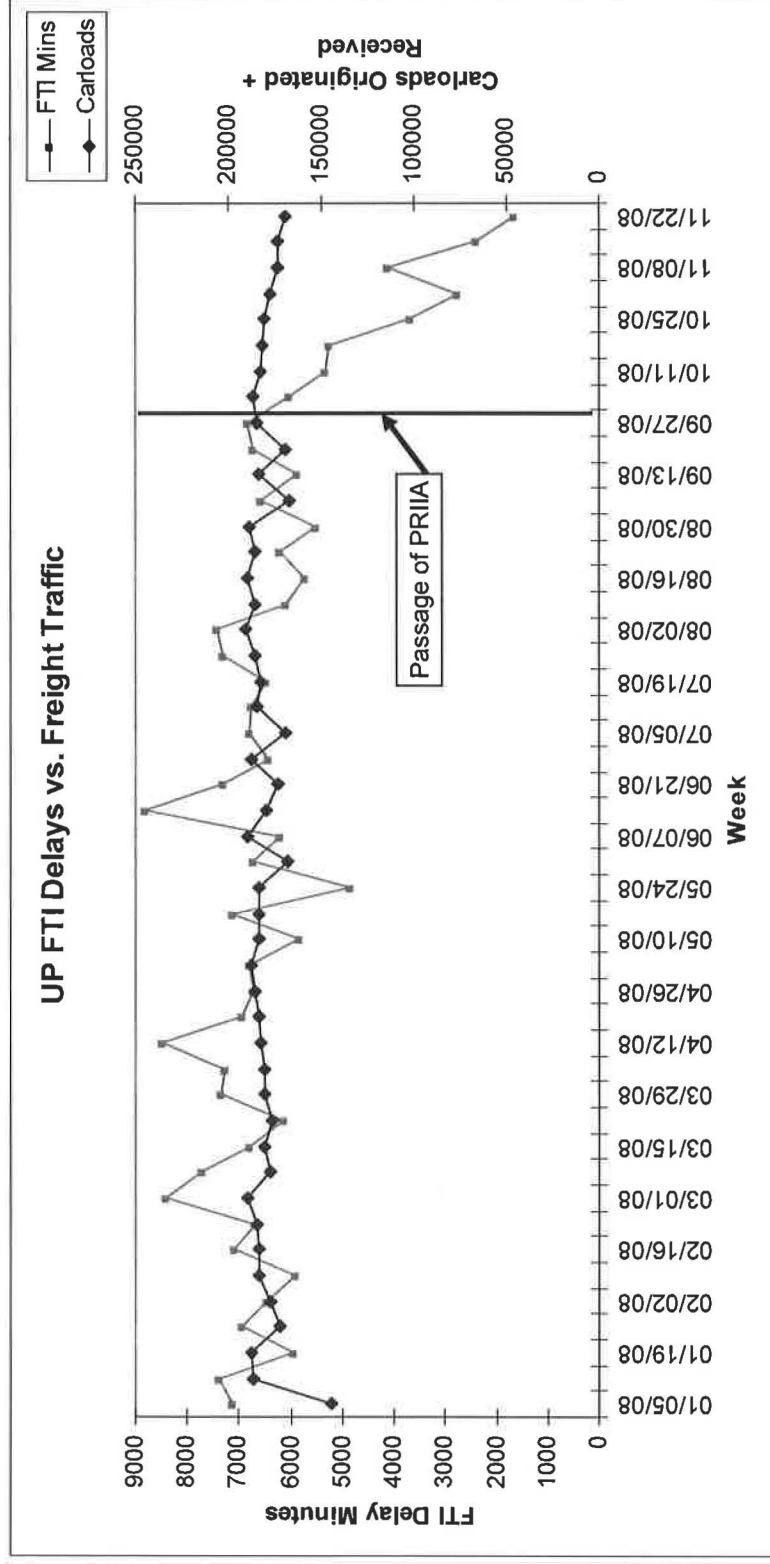
As part of its effort to improve employee morale, the Committee also directs the corporation to establish an incentive awards program. It cannot be too greatly emphasized that the future success of Amtrak depends upon the dedication and performance of both Amtrak employees and contract carrier employees who operate Amtrak trains.

Exhibit B

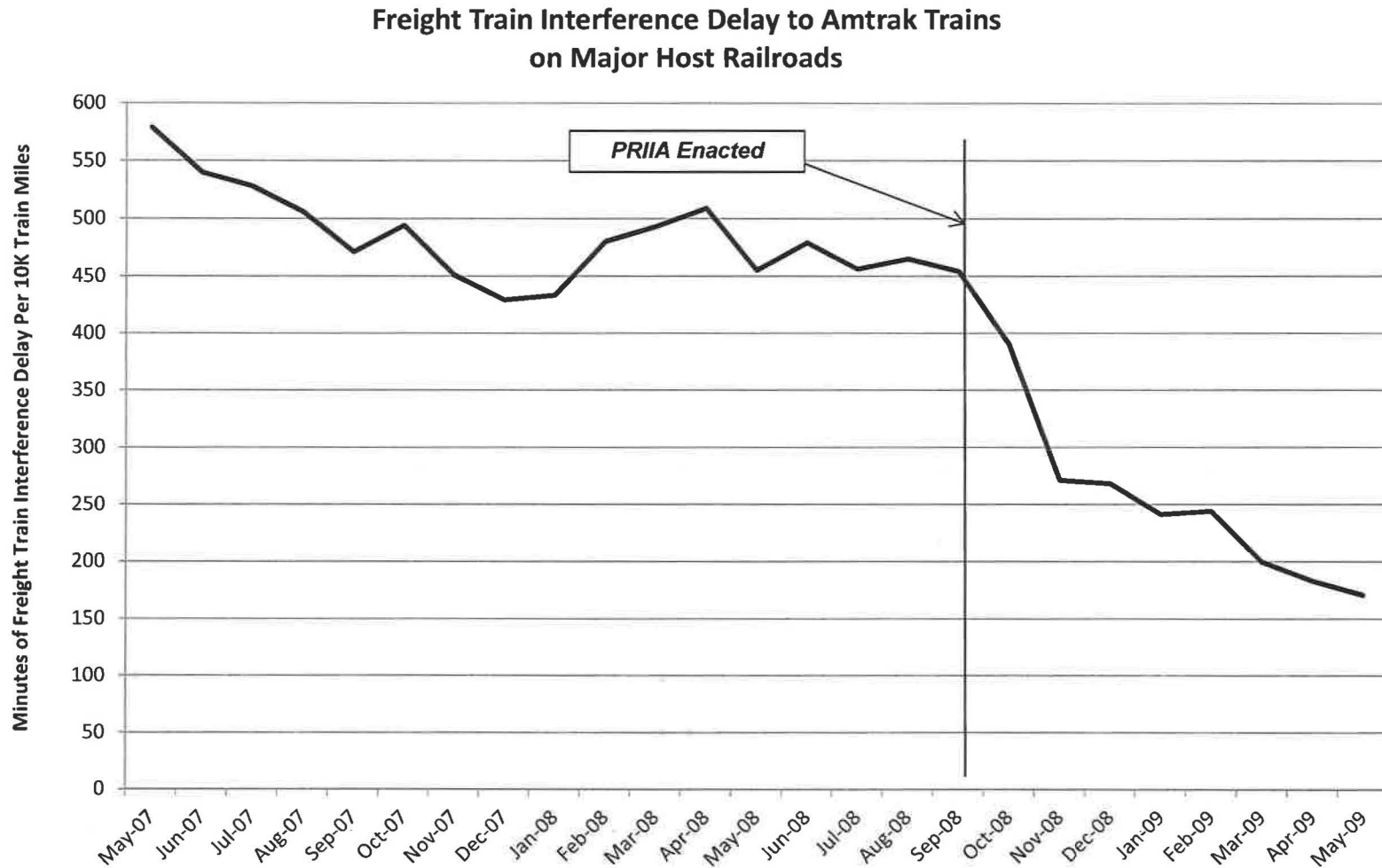
NS reduced Freight Train Interference delays overnight when PRIIA first became law



UP also substantially reduced Freight Train Interference delays when PRIIA first became law

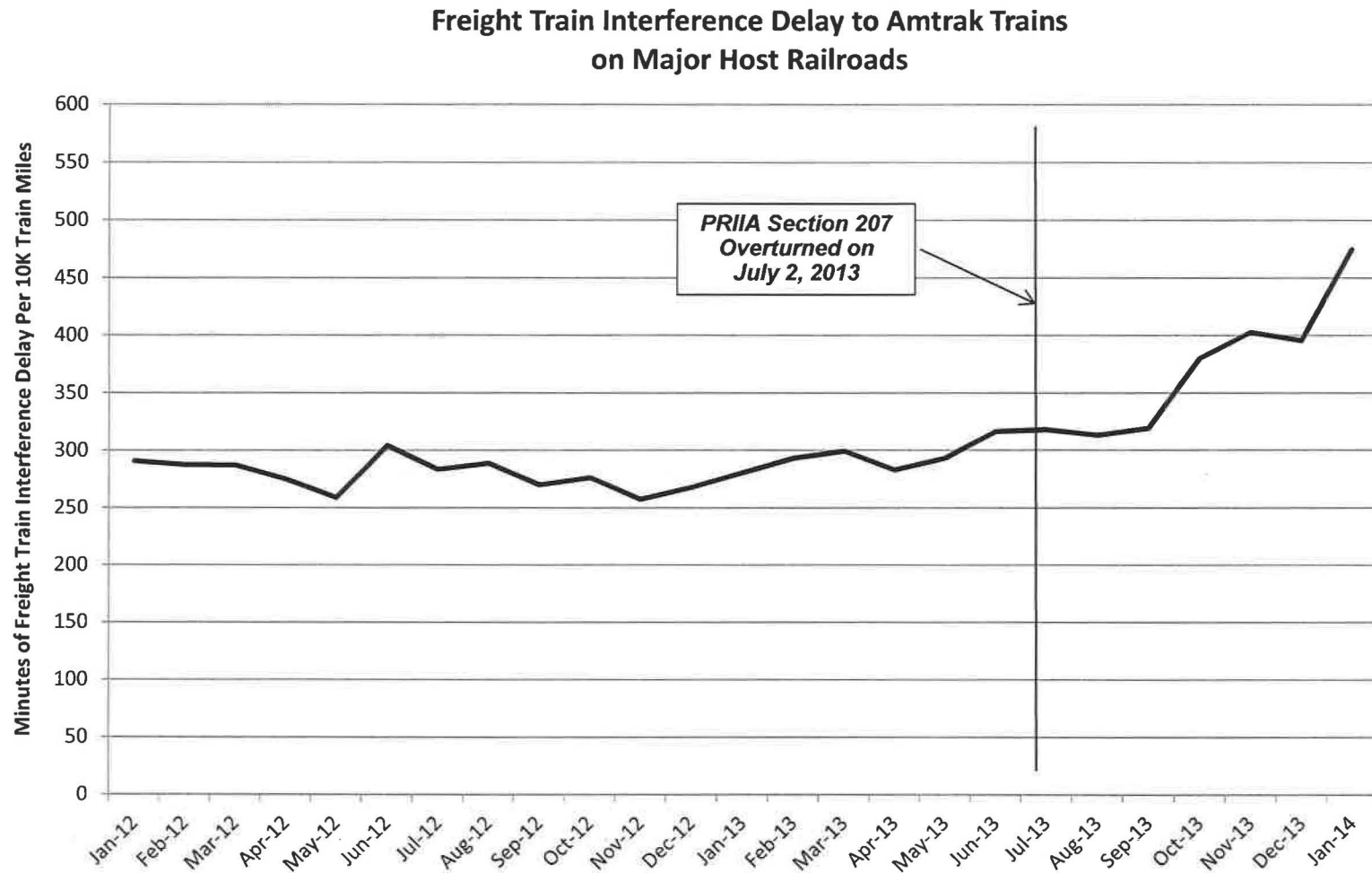


The same trend was apparent among the major freight host railroads overall



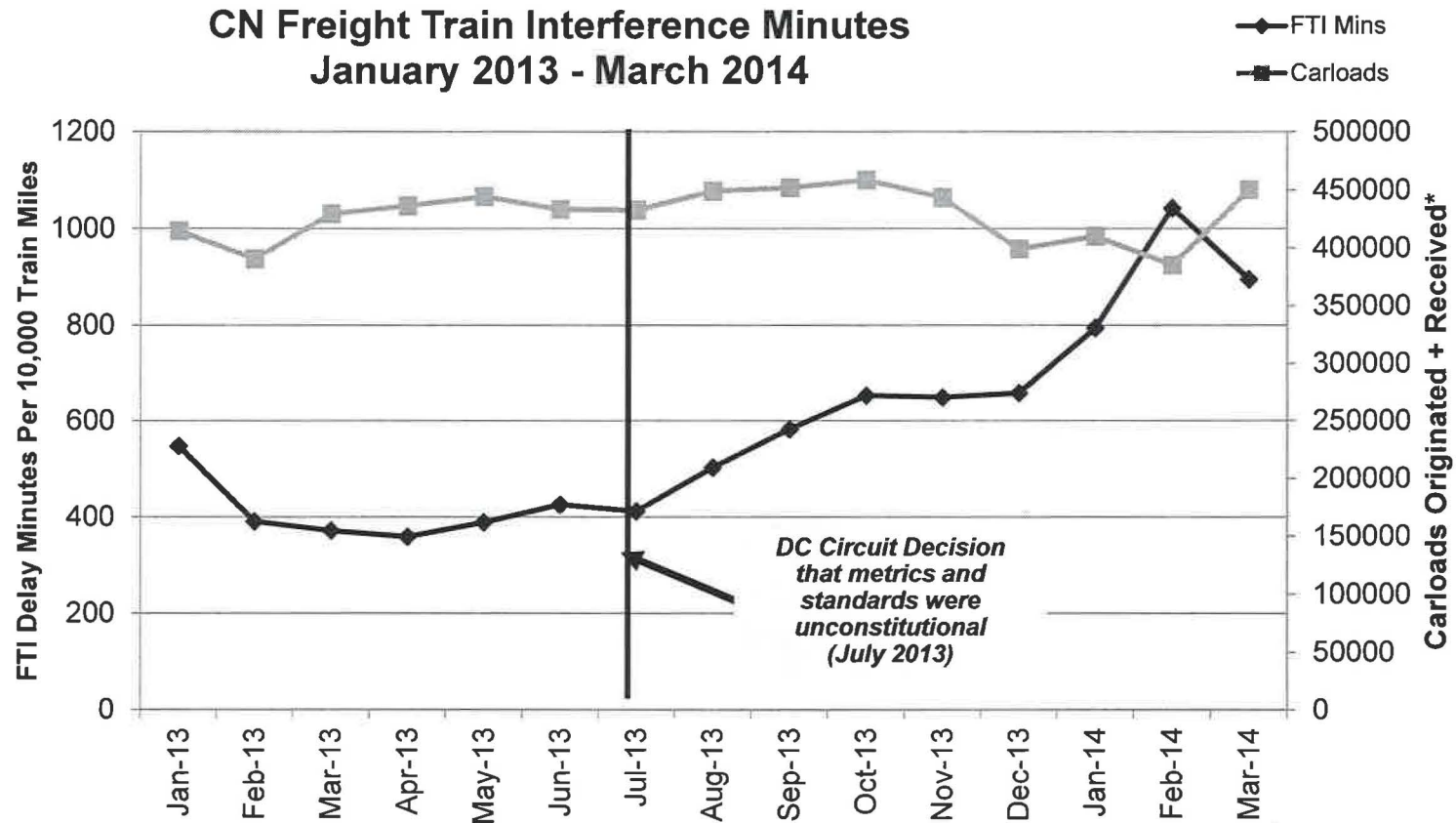
Major Freight Hosts are BNSF, CN, CP, CSX, NS, and UP.

Freight Train Interference delays on the major freight host railroads increased substantially when PRIIA 207 was overturned



Major Freight Hosts are BNSF, CN, CP, CSX, NS, and UP.

Freight Train Interference delays on Canadian National more than doubled when the DC Circuit held performance standards to be invalid



*Carload data are from published AAR weekly data prorated to monthly data



Exhibit C

Track Work Advisory 16-016

Crescent Service

Issued 09 Dec, 2015, CNOC

Carrier/Subdivision	NS/Alabama Division
ARROW area affected	Atlanta, GA (ATL) –New Orleans, LA (NOL)
Work	Dual rail and tie gangs installing: 5.46 miles of dual rail, 3.2 miles of single sided curve rail, 46.8 miles of ties, 41.4 miles of surfacing work, and bridge and crossing upgrades in various locations.
Work location(s)	Numerous locations, from south of ATL to NOL
Work time frame	January 4 th – February 4 th , 2016 Monday through Thursday Morning of Mon, Jan 04 through evening Thu, Jan 07, Morning of Mon, Jan 11 through evening Thu, Jan 14, Morning of Mon, Jan 18 through evening Thu, Jan 21, Morning of Mon, Jan 25 through evening Thu, Jan 28, Morning of Mon, Feb 01 through evening Thu, Feb 04,

Amtrak Operating Plan:

Amtrak trains **19** and **20**, the *Crescent*, which normally operate between New York and New Orleans, will be cancelled between Atlanta (ATL) and New Orleans (NOL) on the above track work dates. This will affect **Train 19** originating at New York (NYP), Sunday through Wednesday and **Train 20** originating at New Orleans (NOL), Monday through Thursday.

Crescent service operating plan as follows (these are origin dates):

Train 19

Operates NYP-ATL only: (Sunday thru Wednesday)

Train 19(03Jan), 19(04Jan), 19(05Jan), 19(06Jan)
Train 19(10Jan), 19(11Jan), 19(12Jan), 19(13Jan)
Train 19(17Jan), 19(18Jan), 19(19Jan), 19(20Jan)
Train 19(24Jan), 19(25Jan), 19(26Jan), 19(27Jan)
Train 19(31Jan), 19(01Feb), 19(02Feb), 19(03Feb)

Operates Normal NYP-NOL: (Thursday thru Saturday)

Train 19(07Jan), 19(08Jan), 19(09Jan)
Train 19(14Jan), 19(15Jan), 19(16Jan)
Train 19(21Jan), 19(22Jan), 19(23Jan)
Train 19(28Jan), 19(29Jan), 19(30Jan)

Train 20

Operates ATL-NYP only: (Monday thru Thursday)

Train 20(04Jan), 20(05Jan), 20(06Jan), 20(07Jan)
Train 20(11Jan), 20(12Jan), 20(13Jan), 20(14Jan)
Train 20(18Jan), 20(19Jan), 20(20Jan), 20(21Jan)
Train 20(25Jan), 20(26Jan), 20(27Jan), 20(28Jan)
Train 20(01Feb), 20(02Feb), 20(03Feb), 20(04Feb)

Operates Normal NOL-NYP: (Friday thru Sunday)

Train 20(08Jan), 20(09Jan), 20(10Jan)
Train 20(15Jan), 20(16Jan), 20(17Jan)
Train 20(22Jan), 20(23Jan), 20(24Jan)
Train 20(29Jan), 20(30Jan), 20(31Jan)

Alternate Transportation

Bus services will be provided between Atlanta and New Orleans for all missed stops in both directions.

One bus will operate express and one local in each direction.

Express Buses – 3019 & 3020

Local Buses – 4019 & 4020

WBS Element **B.TR.100150.1882** has been issued for this operation.

The following Internal Orders are valid:

1198 – General Support

1388 – On Board Services

1798 – M of W

1288 – Station Services

1689 – Train Ops (T & E)

1889 – M of E

Track Work Advisory 16-019 - UPDATE

Sunset Limited Service

Updated 08 Feb, 2016 CNOC

Carrier/Subdivision	UP/Gila Sub BNSF/Lafayette Sub
Arrow area affected	Sunset Limited Route Los Angeles, CA (LAX) to New Orleans, LA (NOL)
Work	UP & BNSF Tie Projects
Work location	UP - Yuma/MP 732.4 to Maricopa/MP 898.8 BNSF - Schriever/MP 55.0 to Baldwin/MP 106.5
Work schedule	UP – January 8 th – March 13 th , 2016 Work Window 12am to 9am BNSF – January 15 th – February 19 th , 2016 February 28, 2016

Amtrak Operating Plan:

Effective **Friday, January 8th through Sunday, March 13th**, Amtrak ***Sunset Limited*, train 2** which operates between Los Angeles, CA (LAX) and New Orleans, LA (NOL) three days a week, Sunday, Wednesday, and Friday, will operate LAX-NOL, six (6) hours earlier than current schedule. Trains will depart LAX at 4PM instead of the current 10PM departure time and operate through to arrival at San Antonio on the earlier adjusted schedule. From San Antonio to New Orleans trains will operate 5'10" earlier than current schedule.

Note: This includes the operation of the ***Texas Eagle*, train 422**. **Train 422** will operate between Los Angeles and San Antonio on the six (6) hour earlier schedule. This will **not** affect the connection with train 22 at San Antonio

Effective **Friday, January 15th through ~~Friday, February 19th~~, Sunday, February 28th**, Amtrak ***Sunset Limited*, Train 1** which operates between New Orleans, LA (NOL) and Los Angeles, CA (LAX) three days a week, Monday, Wednesday, and Saturday, will depart NOL 90 minutes later than current schedule. Trains will depart NOL at 1030AM instead of the current 9AM departure. Operating between New Orleans and San Antonio, trains will be able to recover time after passing the BNSF work area. Trains will operate between San Antonio and Los Angeles on the current schedule.

Note: This will **not** affect the connection with the ***Texas Eagle*, train 421** at San Antonio.

Connecting Passengers

Due to the earlier operation of train 2/422, passengers off the *Coast Starlight*, Train 11 will miss their connection at LAX. **Bus 3011** will be provided from Sacramento to Los Angeles to enable passengers to make the connection.

WBS Element **B.TR.100150.1893** is in effect for this operation. The following Internal Orders are valid:

1198 – General Support	1288 – Station Services
1388 – On Board Services	1689 – Train Ops (T & E)
1798 – M of W	1889 – M of E

Track Work Advisory 16-029 - UPDATED
Palmetto/Carolinian/Silver Star Service

Updated 04 Feb, 2016, CNOC

Carrier/Subdivision	CSX / Florence Division/ South End Sub.
ARROW area affected	Richmond, VA to Savannah, GA
Work	T-3 & T-5 Tie Work, Installing 86,188 ties
Work location	Florence/MP A 290 to Charlie Baker/ MP A 119
Work schedule	Tuesday thru Thursday, Feb 9 th – Feb 18 th 7 am to 5 pm

Amtrak Operating Plan:

To accommodate the above outlined track work Amtrak Service
will be adjusted as follows:

Palmetto Service

Tuesday through Thursday, Feb 9th – Feb 18th, Trains 89 & 90, which normally operate between New York and Savannah, are **cancelled** between Richmond and Savannah. Trains **will** operate between New York and Richmond only. No alternate service will be provided between RVR & SAV.

Affected Trains

Train 89 (09Feb), (10Feb), (11Feb), (16Feb), (17Feb), (18Feb)

Train 90 (09Feb), (10Feb), (11Feb), (16Feb), (17Feb), (18Feb)

**Note: On the affected dates, Trains 97 & 98 will make station stops at
Dillon (DIL) and Selma (SSM) to accommodate passengers**

Carolinian Service

Tuesday through Thursday, Feb 16th – Feb 18th, Trains 79 & 80, which normally operate between New York and Charlotte, are **cancelled** between New York and Raleigh. Trains **will** operate between Raleigh and Charlotte only.

Affected Trains

Train 79 (16Feb), (17Feb), (18Feb)

Train 80 (16Feb), (17Feb), (18Feb)

Silver Star Service

Monday through Wednesday, Feb 15th – Feb 17th, northbound **Train 92**, which operates between Miami and New York will depart MIA at 9:10 AM, 2'40" earlier than current schedule. This will enable the train to operate through the affected area ahead of the curfew. Train will operate through to NYP on the earlier schedule, making all scheduled station stops.

Note: The earlier schedule of train 92 will result in two trains with the same number departing SAV on the same date. As a result, for the affected dates, train 92 is renumbered to **Train 1092**.

Affected Trains

(Origin dates)

Train 1092 (15Feb), (16Feb), (17Feb)

WBS Element **B.TR.100150.1916** has been issued for this operation.
The following Internal Orders are valid:

1198 – General Support

1288 – Station Services

1388 – On Board Services

1689 – Train Ops (T & E)

1798 – M of W

1889 – M of E

550258 – General Ledger Acct. for alternate Psgr travel/scheduled track work

Exhibit D