EXAMINING THE SURFACE TRANSPORTATION BOARD'S ROLE IN ENSURING A ROBUST PASSENGER RAIL SYSTEM

(116–66)

REMOTE HEARING

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

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CONTENTS

	Page
Summary of Subject Matter	vii

STATEMENTS OF MEMBERS OF THE COMMITTEE

Hon. Daniel Lipinski, a Representative in Congress from the State of Illinois, and Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials:	
Opening statement	1
Prepared statement	4
Hon. Eric A. "Rick" Crawford, a Representative in Congress from the State of Arkansas, and Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials:	
Opening statement	5
Prepared statement	6
Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chairman, Committee on Transportation and Infrastructure:	
Opening statement	7
Prepared statement	8
Hon. Sam Graves, a Representative in Congress from the State of Missouri, and Ranking Member, Committee on Transportation and Infrastructure, prepared statement	93
Hon. Eddie Bernice Johnson, a Representative in Congress from the State of Texas, prepared statement	93

WITNESSES

Ann D. Begeman, Chairman, Surface Transportation Board, oral statement	10
Martin J. Oberman, Vice Chairman, Surface Transportation Board, oral statement	12
Prepared joint statement of Chairman Begeman and Vice Chairman Oberman	14
Romayne C. Brown, Chair, Board of Directors, Metra Commuter Rail:	
Oral statement	17
Prepared statement	18
Stephen J. Gardner, Senior Executive Vice President, Chief Operating and Commercial Officer, National Railroad Passenger Corporation (Amtrak):	
Oral statement	22
Prepared statement	24
Ian N. Jefferies, President and Chief Executive Officer, Association of American Railroads:	
Oral statement	37
Prepared statement	39
Randal O'Toole, Senior Fellow, Cato Institute:	
Oral statement	47
Prepared statement	48
Paul P. Skoutelas, President and Chief Executive Officer, American Public Transportation Association:	
Oral statement	51
Prepared statement	52

SUBMISSIONS FOR THE RECORD

Submissions for the Record by Hon. Daniel Lipinski:	
Statement of Jim Mathews, President and Chief Executive Officer, Rail Passengers Association	60

Page

Submissions for the Record by Hon. Daniel Lipinski—Continued
- Statement of Arun Rao, Chair, States for Passenger Rail Coalition, Inc. ... 67
- Statement of the American Train Dispatchers Association et al., "On the 40th Anniversary of the Staggers Act, Congress Should Consider the Collateral Damage to the Rail Industry, and How To Fix It" 94

APPENDIX

Questions to Chairman Ann D. Begeman and Vice Chairman Martin J. Oberman, Surface Transportation Board, from:
- Hon. Peter A. DeFazio 97
- Hon. Eric A. "Rick" Crawford 97
- Hon. Eleanor Holmes Norton 98

Questions to Stephen J. Gardner, Senior Executive Vice President, Chief Operating and Commercial Officer, National Railroad Passenger Corporation (Amtrak), from:
- Hon. Peter A. DeFazio 98
- Hon. Eric A. "Rick" Crawford 101
- Hon. Lloyd Smucker 106

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Washington, DC 20515

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NOVEMBER 13, 2020

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM:	Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE:	Subcommittee Hearing on "Examining the Surface Transportation Board's Role in Ensuring a Robust Passenger Rail System"

PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on Wednesday, November 18, 2020, at 10:00 a.m. in 2167 Rayburn House Office Building and via Cisco WebEx to hold a hearing titled "Examining the Surface Transportation Board's Role in Ensuring a Robust Passenger Rail System." The hearing will explore the role of the Surface Transportation Board (STB or Board) in passenger rail. The Subcommittee will hear testimony from members of the Surface Transportation Board, Amtrak, Metra, the American Public Transportation Association, the Association of American Railroads, and the Cato Institute.

BACKGROUND

The STB is a bipartisan, independent agency with jurisdiction over the economic regulation of railroads.[1] The STB's predecessor agency, the Interstate Commerce Commission (ICC), was responsible for the economic regulation of railroads until Congress created the STB with the ICC Termination Act of 1995 (ICCTA).[2] Congress last reauthorized the STB in the Surface Transportation Board Reauthorization Act of 2015 through Fiscal Year 2020.[3]

In general, the STB's jurisdiction includes the following:

- overseeing and monitoring railroad commercial practices nationally;
- enforcing freight railroads' common carrier obligations;
- evaluating challenges to the reasonableness of rail rates;
- reviewing proposed railroad mergers;
- ensuring rail carriers provide fair employee protective arrangements in certain transactions;
- monitoring rail carrier revenue adequacy;

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[1] https://prod.stb.gov/about-stb/.

[2] Pub. L. No. 104–88. The ICC was the first independent federal regulatory agency, created in 1887 to exercise congressional Article I, Section 8 Commerce Clause power. Over time, the ICC's jurisdiction expanded to include all common carriers except airlines. Starting in the mid-1970's, a wave of de-regulation began to strip away the ICC's authority as industries were deregulated and the remaining federal authority was transferred to other agencies. Dempsey, Paul Stephen. *The Rise and Fall of the Interstate Commerce Commission: The Tortuous Path from Regulation to Deregulation of America's Infrastructure*. 95 Marquette Law Rev. 1152 (2012).

[3] Pub. L. No. 114–110.

- investigating rail service matters of regional and national significance; and
- authorizing construction, operation, discontinuance, and abandonment of rail lines and service.

ICCTA preempts most state laws, with some limited exceptions.[4]

The STB's jurisdiction over passenger rail issues—both intercity and commuter—is more limited than its jurisdiction over freight rail issues. In general, 49 U.S.C. 10501(a) provides that STB has jurisdiction over transportation by rail carriers [defined in 49 U.S.C. 10102(5) as a person providing common carrier railroad transportation for compensation] that is part of the interstate rail network. To assert jurisdiction over a particular interstate passenger rail project, STB must determine that the project has a sufficient nexus to the interstate rail network.[5] The STB has applied this analysis to find that it has jurisdiction over projects such as a Los Angeles-to-Las Vegas rail connection,[6] California's High-Speed Rail effort to link a number of cities from Los Angeles to San Francisco,[7] and the Texas Central Railroad high speed rail project between Houston and Dallas.[8]

BOARD MEMBERS

The STB is composed of five Board members appointed by the President and confirmed by the Senate.[9] Each member serves a staggered five-year term, and members are permitted to serve up to a year after their term's expiration unless a successor is appointed. No more than three members may be appointed from the same political party. Currently, three of the five members are installed (two Republicans and one Democrat), with two nominees awaiting confirmation. The Board is assisted by a staff of approximately 142, mostly economists and lawyers.[10]

The Board currently consists of Chairman Ann D. Begeman (Republican), Vice Chairman Martin J. Oberman (Democrat), and Patrick Fuchs (Republican). Republican Michelle A. Schultz and Democrat Robert Primus are awaiting Senate confirmation to fill the two vacancies. Chairman Begeman's term expires at the end of 2020.

PASSENGER RAIL ISSUES

I. AMTRAK

Amtrak is the country's national intercity passenger railroad. It is a quasi-governmental entity, formed in the early 1970's when several major privately-owned railroads were in or nearing bankruptcy and Congress enacted legislation to relieve the freight railroads of their common carrier obligation to transport passengers.[11] While freight railroads no longer had to fulfill their common carrier passenger obligation, Congress included provisions requiring them to allow Amtrak trains to use rights-of-way for a fee and give preference to Amtrak-run trains except in emergencies.[12] Amtrak owns 363 miles of the 457-mile rail line that comprises the Northeast Corridor (D.C. to Boston), as well as 95.6 miles of track in Michigan and Indiana. Amtrak trains providing state-supported service and long-distance service largely operate over freight-owned rights-of-way.[13]

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[4] Pub. L. No. 104–88; 49 USC 10501(b) & (c). *See Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638 (2d Cir. 2005) (ICCTA does not preempt state and local governments from exercising traditional police powers over the development of railroad property such as electrical, plumbing and fire codes).

[5] *See, e.g., DesertXpress Enterprises, Ltd., Petition for Declaratory Order*, Docket. No. FD 34914 (STB served May 7, 2010). *See also American Orient Express v. STB*, 484 F.3d 554 (D.C. Cir. 2007) (establishing that the plain meaning of the term "jurisdiction over transportation by rail carrier" applies to STB jurisdictional determinations).

[6] *DesertXpress*, FD 34914.

[7] *Cal. High-Speed Rail Auth., Constr. Exemption, Merced, Madera, and Fresno Ctnys., Cal.*, Docket No. 35724 (STB served June 13, 2013).

[8] *Texas Central Docket R.R. and Infrastructure, Inc. & Texas Central R.R., LLC—Petition for Exemption—Passenger Rail Line Between Dallas and Houston, Tex.*, Docket No. FD 36025 (STB Served July 16, 2020).

[9] The STB is able to operate with only one Board member.

[10] "Budget Request Fiscal Year 2021." Surface Transportation Board, available at https://prod.stb.gov/wp-content/uploads/STB-FY-2021-Budget.pdf.

[11] Rail Passenger Service Act of 1970 (RPSA), Pub. L. No. 91–518, (1970); Peterman, David Randall. CRS Report No. R44973, *Amtrak: An Overview* (September 17, 2017).

[12] 49 U.S.C. 24308.

[13] Amtrak National Fact Sheet 2016–2017, P. 8, available at https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/nationalfactsheets/National-Fact-Sheet-FY2016-0717.pdf.

Key Amtrak-related statutory provisions within the STB's purview include the following:

*General Jurisdiction***:**

Under 49 U.S.C. 24301(c), the STB's jurisdiction over Amtrak operations is limited; many STB provisions dealing with rates and other economic aspects of freight shipment do not apply to Amtrak.[14]

Right of Access and Preference

Under 49 U.S.C. 24308(a), Amtrak is authorized to make agreements with freight railroads to use their facilities for a fee, and these agreements must include a penalty for untimely performance. Further, if Amtrak and the freight providers cannot come to an agreement, the STB has jurisdiction over the dispute and authority to prescribe reasonable terms for Amtrak to use the freight facilities.[15] Pursuant to 49 U.S.C. 24308(c), "except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation in using a rail line, junction, or crossing unless the Board orders otherwise. . . ."

Dispute Mediation for Amtrak Northeast Corridor and State-Supported Routes

The Fixing America's Surface Transportation Act of 2015 (FAST) Act included provisions involving cost recovery by Amtrak for Amtrak's operation of state-supported routes and for the costs allocated to states (including state commuter agencies and other entities) on the Northeast Corridor.[16] Included was a provision that gave the Board jurisdiction to resolve cost allocation and access disputes between Amtrak, the states, and potential non-Amtrak operators of intercity passenger rail service. The FAST Act also directed the Board to establish procedures for the resolution of disputes.[17] In response, the STB promulgated regulations at 49 CFR 1109.5 to establish procedures for mediation of these disputes.[18]

STB's Role in Metrics and Standards for On-Time Performance

The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) included a provision that requires the Federal Railroad Administration (FRA) and Amtrak to jointly develop new or improved metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, including on-time performance (OTP) and minutes of delay.[19] As part of that process, PRIIA requires Amtrak and FRA to "consult with the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, passenger representatives, and Amtrak employees about the appropriate metrics and standards."[20] Congress enacted the provision to support the statutory Amtrak preference over freight traffic. The STB is the venue for enforcement if the OTP of any intercity passenger train averages less than 80% for any two consecutive calendar quarters.[21]

FRA first issued final metrics and standards under Section 207 of PRIIA in May 2010, but these metrics and standards never took effect because the Association of American Railroads (AAR) launched various legal challenges to the provision that tied it up in litigation.[22] Ultimately, the courts invalidated an arbitration clause in section 207(d), but held that without this clause, the provision did not unconstitutionally facilitate Amtrak to exercise undue coercive power over its freight rail competitors.[23] After the Supreme Court declined to consider the case in June 2019, it was remanded for FRA and Amtrak to develop new metrics and standards.[24]

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[14] *See* 49 U.S.C. 24301(c), (stating "Application of Subtitle IV.—Subtitle IV of this title shall not apply to Amtrak, except for sections 11123, 11301, 11322(a), 11502, and 11706. Notwithstanding the preceding sentence, Amtrak shall continue to be considered an employer under the Railroad Retirement Act of 1974, the Railroad Unemployment Insurance Act, and the Railroad Retirement Tax Act").

[15] 49 U.S.C. 24308(a)(2)(A).

[16] Pub. L. No. 114–94.

[17] 49 U.S.C. § 24712(c)(2) & 24905(c)(4).

[18] Dispute Resolution Procedures under the Fixing America's Surface Transportation Act of 2015, Docket No. EP–734 (Served Nov. 29, 2016); 49 CFR 1109.5.

[19] Pub. L. No. 110–690 section 207.

[20] *Id.*

[21] 49 U.S.C. § 24308(f).

[22] Goldman, Ben. CRS Report No. R45783: *Improving Intercity Passenger Rail Service in the United States* (June 25, 2019), P. 11.

[23] *Association of American Railroads v. DOT*, No. 17–5123 (DC Cir. 2018).

[24] Trains Magazine, Supreme Court declines AAR request on Amtrak performance standards (updated) (June 3, 2019), available at https://trn.trains.com/news/news-wire/2019/06/03-supreme-court-declines-aar-request-on-amtrak-performance-standards.

Earlier this week, FRA issued a final rule establishing a customer OTP metric, which represents the total number of customers on an intercity passenger rail train who arrive at their destination point within 15 minutes of their published scheduled arrival time divided by the total number of customers on such intercity passenger rail train.[25] FRA, with Amtrak, set a minimum standard for customer OTP of 80 percent for any two consecutive calendar quarters.[26] This OTP standard will be used in cases where STB investigates substandard performance under 49 U.S.C. 24308(f).

The Moving Forward Act (H.R. 2), which passed the House on July 1, 2020, included provisions related to Amtrak's preferential access to freight-owned corridors. Specifically, section 9204 provides a means for Amtrak to seek judicial enforcement of the statutory right of preference directly in Federal court without intermediaries. Section 9205 updates existing provisions to allow Amtrak to add additional services on host railroads, while providing that any unreasonable interference to freight service they would create is mitigated by capital investments.

II. AUTHORITY OVER COMMUTER RAIL PASSENGER TRANSPORTATION

STB has limited authority over commuter rail transportation. STB does not have jurisdiction over public transportation provided by a local government.[27] Some commuter rail transportation is provided by public authorities, whereas some partner with Amtrak for various commuter rail services and others contract out their operations or services to the private sector. An entity providing commuter rail operations may be under the Board's jurisdiction if STB determines the entity to be a "rail carrier," defined as a person providing common carrier railroad transportation for compensation. However, it does not include street, suburban, or interurban electric railways not operated as part of the general system of rail transportation.[28] Also, the STB can determine compensation when agreement cannot be reached between Amtrak and commuter rail authorities (or other carriers) related to certain railroad assets that were acquired under the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976.[29]

Additionally, in 2008, PRIIA authorized the STB to conduct nonbinding mediation at the request of a public transportation authority or a rail carrier.[30] Either party may apply for STB's nonbinding mediation if, after a reasonable period of negotiation, the public transportation authority cannot reach an agreement with the rail carrier to use trackage of, and have related services provided by, the rail carrier for purposes of commuter rail transportation. Either party may also apply for nonbinding mediation if, after a reasonable period of negotiation, the public transportation authority cannot reach an agreement with the rail carrier to acquire an interest in a railroad right-of-way for the construction and operation of a segregated fixed guideway facility to provide commuter rail passenger transportation.[31] This authority is codified at 49 U.S.C. section 28502 (trackage use) and section 28503 (rights-of-way). To date, this process has not been used.

H.R. 2 included provisions that would amend sections 28502 and 28503 to require that a rail carrier must provide "good faith consideration" to a "reasonable request" from a provider of commuter rail passenger transportation for access to trackage and provision of related service and to such a request for access to rail right-of-way for purposes of commuter rail passenger transportation.[32] Additionally, under H.R. 2, in circumstances in which dispatching for the relevant trackage is controlled by a rail carrier other than the trackage owner or the right-of-way owner, both the controlling rail carrier and the owner of the trackage or right-of-way would be subject to STB's nonbinding mediation authority and included in any mediation process.

[25] 85 Fed. Reg. 17835 (March 31, 2020).
[26] *Id*.
[27] 49 U.S.C. 10501(c)(2).
[28] 49 U.S.C. 10102(5).
[29] 49 U.S.C. 24903.
[30] Pub. L. No. 110–432, div. B. title IV, Sec. 401(a).
[31] 49 U.S.C. §§ 28502 and 28503, respectively.
[32] Sections 9401 and 9402, Title IV, Division D, H.R. 2, the Moving Forward Act, respectively.

WITNESSES

- Ms. Ann D. Begeman, Chairman, Surface Transportation Board
- Mr. Martin J. Oberman, Vice Chairman, Surface Transportation Board
- Ms. Romayne C. Brown, Chair of the Board of Directors, Metra
- Mr. Stephen Gardner, Senior Executive Vice President, Amtrak
- Mr. Ian Jefferies, President and Chief Executive Officer, Association of American Railroads
- Mr. Randal O'Toole, Senior Fellow, Cato Institute
- Mr. Paul Skoutelas, President and Chief Executive Officer, American Public Transportation Association

EXAMINING THE SURFACE TRANSPORTATION BOARD'S ROLE IN ENSURING A ROBUST PASSENGER RAIL SYSTEM

WEDNESDAY, NOVEMBER 18, 2020

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2167 Rayburn House Office Building and via Cisco Webex, Hon. Daniel Lipinski (Chairman of the subcommittee) presiding.

Mr. LIPINSKI. OK. We will come to order.

I ask unanimous consent that the chair be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

Now, as this is a hybrid hearing, I want to remind Members of key regulations in the House Committee on Rules to ensure this hearing goes smoothly. Members must be visible onscreen for purposes of identification when joining the hearing. Members must also continue to use the video function of today's software platform, Cisco Webex, for the remainder of the time they are attending this hearing unless experiencing connectivity issues or other technical problems.

If a Member experiences any connectivity issues or other technical problems, please inform committee staff as soon as possible so you can receive assistance. A chat function is available for Members on the Cisco Webex platform for this purpose. Members can also call the committee's main phone line at 202–225–4472 for technical assistance by phone.

Members may not participate remotely in any other proceedings that may be occurring simultaneously.

It is the responsibility of each Member seeking recognition to unmute their microphone prior to speaking. To avoid any inadvertent background noise, I would request that every Member keep their microphone muted when not seeking recognition to speak. If I hear any inadvertent noise, I will ask the Member to please mute their microphone.

Finally, despite this being a hybrid hearing, I want to emphasize that all of the standard rules of decorum apply.

As the chair of today's hearing, I will make a good faith effort to provide every Member experiencing connectivity issues an opportunity to participate fully in the proceedings.

Members are allowed their standard 5 minutes to ask questions.

To insert a document into the record, please have your staff email it to the committee's clerk, Mike Twinchek.

This hearing is also being livestreamed for the public to view.

So now that I have gotten all of those formalities taken care of, I should say the same applies to the witnesses. If you have any connectivity problems, don't be concerned. We will get all of those things worked out. So we have been doing this for a few months now, and there are always some glitches, but hopefully everything will run smoothly today.

I want to begin by recognizing myself for 5 minutes for an opening statement.

Good morning. I want to first say I will be a little more than 5 minutes. This is the last hearing of the subcommittee for the year, and there are a few things I want to go over in addition to talking about today's hearing.

I want to first welcome you to the final hearing of the Railroads, Pipelines, and Hazardous Materials Subcommittee for the 116th Congress.

During a very tough 2 years, I am very proud of the work that this subcommittee has done, along with Chairman DeFazio. The House passed an historic surface transportation reauthorization bill that includes a robust $60 billion investment for rail infrastructure, the highest amount ever.

As a strong proponent of passenger rail, I am proud that we were able to include very significant Amtrak investment and to include a top priority of mine in making commuter railroads eligible for a greatly expanded CRISI grant program. That program, which can fund a wide variety of projects, including quiet zones, grade separations, and station improvements, was expanded to $7 billion over 5 years.

The other priority of mine that will improve safety and reduce delays was the establishment of a dedicated grade separation program.

Now, I am optimistic that in the Biden administration and under the leadership of Chairman DeFazio, this bill will get done. As far as other work under the subcommittee for the rest of this year, I remain very hopeful that we will complete a pipeline safety reauthorization bill and have that signed into law.

Now, in our hearing today, we will be looking at the Surface Transportation Board's role in ensuring we have a robust national passenger rail system, both intercity and commuter. The STB was last reauthorized 5 years ago, and that authorization expired October 1st. So this is a good time to be talking about this issue.

I am also hopeful that STB will get its full five confirmed Board Members which is authorized in the 2015 bill.

I am not just a big supporter of passenger rail. I am a frequent passenger on both Metra commuter rail at home and on Amtrak.

To achieve a more robust passenger rail system, both intercity and commuter, we need to do a few things. First, we should significantly increase the amount of public investment in rail infrastructure.

Second, we will have to expand our domestic rail supply industry so we can meet the demand.

Finally, we will need to establish a more balanced and efficient process to utilize existing trackage, much of which is owned by freight railroads, for expanded passenger rail service.

Trying to expand passenger rail service on a new right-of-way is just not feasible from a cost or time perspective in a majority of the country. In the places that it is feasible, we should have public investment, while also encouraging private investment. But where this is not feasible, the expansion on current rail lines does not need to be contentious.

Investments by the public sector to establish or expand passenger rail service can also help freight railroads by increasing freight capacity when not used by passenger rail service. This model in particular has been used to great success by the BNSF Railway.

The Surface Transportation Board is a critical part of this future, which is why I wanted to have a hearing focused on the STB's role in helping achieve a better and more expansive passenger rail system. Congress in recent years has expanded STB's jurisdiction on intercity passenger rail but more is needed.

With respect to intercity passenger rail, the STB has responsibility for adjudicating any disputes when Amtrak or another railroad wants to initiate new rail service on existing rail lines.

In northern Illinois, there has been longstanding interest to start new rail service between Chicago and the Quad Cities. A significant amount of Federal and State funds has been allocated to this project, but it has been caught in continuing delays due to a lack of cooperation. We should look more at what can be done in situations such as this.

Beginning in 2008, STB was assigned the task of enforcing the Federal Railroad Administration's on-time intercity rail performance metrics. The recent publication of the on-time performance rule by the FRA makes the STB's role in solving Amtrak-freight disputes even more critical.

First, mentioned in the written testimony, Amtrak may want to add more about the agency's desire for the STB to have additional authority and expertise to solve Amtrak-freight disputes in a timely and cost-effective manner just like the STB has done to resolve shipper disputes. Unlike Amtrak, Metra and other commuter railroads do not have a statutory Federal preference prioritizing commuter trains over freight trains.

Additionally, commuter railroads generally do not have standing to bring cases before the STB. Therefore, commuter railroads have very limited leverage when it comes to trying to expand their service on freight rail lines or ensuring that freight railroads do not delay commuter trains. This is oftentimes not a problem, as I have been involved in helping Metra work with a number of railroads to successfully expand and improve service on their lines in the Chicagoland region. An excellent example is when I worked with

Norfolk Southern to create opportunities to start weekend service through my district with the SouthWest Service line.

So I would like to take note that freight railroads can be collaborative partners to help improve commuter service, and they have been at many times, but sometimes there are issues. For these occasions I believe that Congress should establish a dispute resolution process between commuter railroads and freight railroads at the STB. If this is not enough to help give commuters the type of service they deserve, perhaps Congress should take a balanced look at other options that can help improve service for commuters.

With all of these challenges, there must be a better, yet still balanced, way it can achieve desirable outcome for public and private stakeholders.

I look forward to hearing from all of our witnesses today on the role of the Surface Transportation Board in helping achieve better passenger rail system.

I would like to welcome two witnesses in particular today.

One is Metra's new chairwoman, Romayne Brown. Chairwoman Brown made history this year as the first African-American woman to chair Metra. She brings a lifetime of experience in public transit in Chicagoland to the position.

Second we have Marty Oberman, current Vice Chair of STB, who I have known for about 45 years, although I hate to admit that for either of us. I believe this is the first nonconfirmation congressional hearing that he has testified at.

So a warm welcome to both of you and all of our witnesses.

With that, I thank everyone for their indulgence for this time here, and I am going to yield to Ranking Member Crawford for an opening statement.

[Mr. Lipinski's prepared statement follows:]

Prepared Statement of Hon. Daniel Lipinski, a Representative in Congress from the State of Illinois, and Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Good morning. I want to welcome everyone to the final hearing of the Railroads, Pipelines and Hazardous Materials Subcommittee for the 116th Congress. During a very tough two years, I am very proud of the work that this Subcommittee has done along with Chairman DeFazio. The House passed an historic surface transportation reauthorization bill that includes a robust $60 billion investment for rail infrastructure, the highest amount ever. As a strong proponent of passenger rail, I'm proud that we were able to include very significant Amtrak investment and to include a top priority of mine in making commuter railroads eligible for a greatly expanded CRISI grant program. That program, which can fund a wide variety of projects including quiet zones, grade separations, and station improvements, was expanded to $7 billion over 5 years. Another priority of mine that will improve safety and reduce delays was the establishment of a dedicated grade crossing separation program. I am optimistic that in a Biden Administration and under the leadership of Chairman DeFazio this bill will get done. As far as other work under this subcommittee for the rest of the year, I remain very hopeful that we can complete a pipeline safety reauthorization bill and have that signed into law.

In our hearing today we will be looking at the Surface Transportation Board's role in ensuring we have a robust national passenger rail system, both intercity and commuter. The STB was last reauthorized 5 years ago and that authorization expired October 1st, so this is a good time to be talking about these issues. I'm also hopeful that the STB will get its full five confirmed board members, which was authorized in the 2015 bill. I'm not just a big supporter of passenger rail, I'm a frequent passenger both on Metra commuter rail at home and on Amtrak. To achieve a more robust passenger rail system, both intercity and commuter, we need to do a few things. First, we should significantly increase the amount of public investment in rail infrastructure. Second, we will have to expand our domestic rail supply industry so we can meet the demand. Finally, we will need to establish a more balanced and efficient process to utilize existing trackage, much of which is owned by freight railroads, for expanded passenger rail service. Trying to expand passenger rail service on new right of way is just not feasible from a cost or time perspective in the majority of the country. In the places it is, we should have public investment while also encouraging private investment. But where this is not feasible, the expansion on current rail lines does not need to be contentious. Investments by the public sector to establish or expand passenger rail service can also help freight railroads by increasing freight capacity when not used by passenger rail service. This model in particular has been used to great success by the BNSF railroad.

The Surface Transportation Board (STB) is a critical part of this future, which is why I wanted to have a hearing focused on the STB's role in helping achieve a better and more expansive passenger rail system. Congress in recent years has expanded the STB's jurisdiction on intercity passenger rail but more is needed.

With respect to intercity passenger rail, the STB has the responsibility of adjudicating any disputes when Amtrak or another railroad wants to initiate new rail service on an existing rail line. In northern Illinois, there has been long-standing interest to start new rail service between Chicago and the Quad Cities. A significant amount of federal and state funds have been allocated to this project, but it has been caught in continuing delays due to a lack of cooperation. We should look more at what could be done in situations such as this.

Beginning in 2008, STB was assigned the task of enforcing the Federal Railroad Administration's on time intercity rail performance metrics. The recent publication of the on-time performance rule by the FRA makes the STB's role in solving Amtrak-freight disputes even more critical. Though it's mentioned in the written testimony, Amtrak may want to add more about the agency's desire for the STB to have additional authority and expertise to solve Amtrak-freight disputes in a timely and cost effective manner just like the STB has done to better resolve shipper disputes.

Unlike Amtrak, Metra and other commuter railroads do not have a statutory federal preference prioritizing commuter trains over freight trains. Additionally, commuter railroads generally do not have standing to bring cases before the STB. Therefore, commuter railroads have very limited leverage when it comes to trying to expand their service on freight rail lines or ensuring that freight railroads do not delay commuter trains. This is oftentimes not a problem, as I have been involved in helping Metra work with a number of railroads to successfully expand and improve service on their lines. An excellent example is when I worked with Norfolk Southern to create opportunities to start weekend service through my district for the SouthWest Service line. So I would like to take note that freight railroads, NS in this case, can be collaborative partners to help improve commuter service.

But sometimes there are issues. For these occasions, I believe that Congress should establish a dispute resolution process between commuter railroads and freight railroads at the STB. If this is not enough to help give commuters the type of service they deserve, perhaps Congress should take a balanced look at other options that can help improve service for commuters. With all of these challenges, there must be a better, yet still balanced, way that can achieve desirable outcomes for public AND private stakeholders.

I look forward to hearing from all of our witnesses today on the role of the Surface Transportation Board in helping achieve a better passenger rail system. I would like to welcome two witnesses in particular today. One is Metra's new Chairwoman, Romayne Brown. Chairwoman Brown made history this year as the first African-American woman to chair Metra. She brings a lifetime of experience in public transit in Chicagoland to the position. Second, we have Marty Oberman, current vice-chair of STB, who I have known for 45 years. I believe this is the first non-confirmation Congressional hearing he has testified at. So a warm welcome to both of you and all our witnesses.

With that, I yield to Ranking Member Crawford for an opening statement.

Mr. CRAWFORD. Thank you, Chairman Lipinski, for holding this hearing and thanks to our witnesses for being here today.

I especially want to thank Chairman Lipinski for his leadership of this subcommittee and his willingness to operate in a bipartisan manner. I appreciate my friend's thoughtful approach on rail and pipeline safety issues and will miss working with him, and I certainly wish him the best in every future endeavor.

Our hearing today is to review how the Surface Transportation Board works to support passenger railroads. The COVID–19 pandemic has devastated our Nation's passenger rail network. Amtrak has significantly cut its routes, announced large cuts to its workforce, and has requested record amounts of taxpayer funding for this fiscal year. We must work to ensure that Amtrak's services return in a way that offers the most benefit to riders and makes responsible use of the taxpayer resources required to keep it running.

We must also balance the needs of passenger rail with the most important needs of our Nation's robust and resilient freight rail network. We cannot discuss important issues, such as preference, on-time performance, and Amtrak schedules, without fully considering the needs of the freight railroads and their rail network, which have continued to deliver essential goods throughout the country during this difficult year.

The Surface Transportation Board, Amtrak, and the FRA have addressed these issues recently, including through decisions and rulemaking that seek to improve and modernize on-time performance metrics and standards.

Thank you again to all of our witnesses for being here today. And I yield back the balance of my time.

[Mr. Crawford's prepared statement follows:]

Prepared Statement of Hon. Eric A. "Rick" Crawford, a Representative in Congress from the State of Arkansas, and Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Thank you, Chair Lipinski, for holding this hearing. And thanks to our witnesses for being here today.

I especially want to thank Chair Lipinski for his leadership of this subcommittee and his willingness to operate in a bipartisan manner. I appreciated his thoughtful approach on rail and pipeline safety issues and will miss working with him. I certainly wish him the best in his future endeavors.

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Thank you again to all of our witnesses for being here today.

Mr. LIPINSKI. Thank you, Ranking Member Crawford. And you saved everyone's time. I guess I used up your time in my statement, but thank you. It has been great working with you over these past 2 years. So thank you very much for all of your cooperation in our work together.

Mr. CRAWFORD. My privilege. Thank you.

Mr. LIPINSKI. With that, I am going to recognize the full committee chairman, Peter DeFazio.

Mr. DEFAZIO. Thanks, Chairman Lipinski, Ranking Member Crawford, for today's hearing on the STB's role in ensuring a robust passenger rail system. I would note it is Chairman Lipinski's last hearing, and I want to thank him for his years of service to this committee and all of the constructive work he has done.

This is obviously a challenging time for Amtrak. Intercity and commuter rail has been decimated by the pandemic, and this puts additional burdens on both Amtrak's budget and on city and State budgets also.

The House has taken the initiative now, well, three times—CARES, Heroes 1, and Heroes 2—to pass a comprehensive COVID relief bill that would include support for Amtrak and commuter rail. Hopefully, the McConnell-led Senate will see the wisdom of providing some additional assistance in this time of economic crisis in the pandemic in the near future.

Passenger rail is an important part of the climate change puzzle. It is extremely efficient, fuel efficient, much more so than individual passenger vehicles, buses, and airplanes obviously. And the commuter systems in particular take cars off our congested roadways and reduce short-haul flights.

I think there is tremendous potential in the city pairs that are 100 to 500 miles apart if we have dependable and at least higher speed service. I am not even going to talk about high speed. You know, Eugene to Portland, 110 miles, supposed to be 2 hours, 35 minutes. Last time I took it, it was 3 hours and 30 minutes. If they could get it near 2 hours, 2 hours and 15 minutes regularly, there are hundreds and hundreds of more passengers who would take that train every day rather than getting on Interstate 5, which is frequently blocked because of wrecks and you can't predict how long it is going to take you to get to Portland; same to Seattle.

These kinds of city pairs have tremendous potential to displace commuter flights and to displace traffic on our highways, but they have to run on time. This has been a challenge in Oregon, and as I mentioned, the southbound Cascades State-supported route had a 58.3-percent on-time performance rate, totally unacceptable, and it is not a way to grow passenger rail service.

Freight delays are a significant source of Amtrak delays. Most Amtrak trains outside of the Northeast Corridor run on tracks owned by the freight railroads. Freights are legally required to give preference to Amtrak when dispatching trains. This preference was part of the bargain when Congress many years ago created Amtrak and relieved freight rails of their common carrier obligations to transport passengers. It was not rescinded. It was just transferred to Amtrak.

But for many years there have been questions about whether the freight railroads are holding up their end of the deal by giving preference to Amtrak trains. In fact, Congress included provisions to fix Amtrak on-time performance in 2008. That is when PRIIA added provisions directing the FRA and Amtrak to work to develop on-time performance metric standards to be used as a basis for an STB investigation.

Unfortunately, those benefits haven't been realized. It has been 12 years since PRIIA was passed. FRA's metrics and standards for on-time performance were published this last Monday, 12 years later, for the second time, and after this long and unacceptable delay, I look forward to seeing an improvement on Amtrak's performance both in my State and nationwide.

I do believe that we can have a very healthy and robust freight rail system. Today the Amtrak testimony will be provided by a former train dispatcher who says that he just can't believe that freights say, well, we have got to run one train on that route today, therefore, you are going to be unnecessarily delayed—that they can't coordinate these things better.

We are willing to partner with the freight railroads. In my State we built some additional sidings but now they have lengthened the trains to the point where they can't use those sidings. There has to be some compromise here, and we have got to find a middle ground to have a robust freight system because freight rail is the most efficient way to move large amounts of freight in this country, much more so than trucks obviously. The only thing more efficient is maritime, and that won't get us everywhere in the country.

I want to weigh in on the disputes between Amtrak and commuter railroads. Both Amtrak and the commuter railroads require the same scarce access to tracks and platforms in major urban areas. It is expensive to maintain and expand, modernize this infrastructure, but there is no commuter railroad that I am aware of that makes money, and Amtrak only claims to make money on the NEC. Neither can subsidize the other.

Worldwide I am not aware of any railroads, passenger railroads that make money, although Virgin claims they do in England because they don't have to maintain the tracks. Pretty easy to make money if all you have to do is put a train set on it and run it back and forth. That is not the major expense.

To say that we shouldn't be subsidizing commuter rail or we shouldn't be subsidizing Amtrak is just saying you don't want to run trains, because everywhere else in the world they are subsidized.

But my message to commuter rail and to Amtrak is you have to work together and resolve the massive challenges you face, and this committee will be happy to help play a role in facilitating that coordination and cooperation.

With that, Mr. Chairman, I yield back the balance of my time.

[Mr. DeFazio's prepared statement follows:]

Prepared Statement of Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chairman, Committee on Transportation and Infrastructure

Thank you, Chairman Lipinski and Ranking Member Crawford, for calling today's hearing on the Surface Transportation Board's role in ensuring a robust passenger rail system. Also, today is Chairman Lipinski's last hearing as chairman of the Subcommittee on Railroads, Pipelines, and Hazardous Materials—thank you for your dedication and service.

I want to first recognize that this is a challenging time for Amtrak and commuter rail systems. Ridership on intercity and commuter rail has been decimated by the pandemic. And efforts to forestall the continued rise in infections, hospitalizations, and deaths have been needlessly politicized and rendered ineffective. Ridership levels are going to stay depressed for some time. Unfortunately, this puts additional burden on already depleted state and city budgets. The House has repeatedly taken the initiative to pass a comprehensive COVID relief bill that includes substantial relief for Amtrak and commuter rail systems. Hopefully the Senate will come to its senses soon.

Passenger rail is an important piece of the climate change puzzle. Rail's benefits extend far beyond the passengers who take it. By serving as an alternative to driving and flying, Amtrak and commuter systems help to take cars off our congested roadways and reduce short haul flights. This reduces travel times and helps keep the air clear of noxious pollutants. If we are serious about stopping climate change, we must give travelers more attractive and cleaner options, such as reliable and timely passenger rail.

In my state of Oregon, residents rely on the Oregon Cascades state-supported route, the Coast Starlight Amtrak long-distance route, and TriMet's commuter train. Each service plays an important part in the transportation network, and I want them all to continue to thrive and provide more sustainable travel options.

One thing you need in order to expand rail service and attract riders is for the trains to run on time. This has been a challenge in Oregon—in 2019, service on the southbound Cascades state-supported route had a 58.3 percent on time performance rate. That is totally unacceptable, and it is not the way to grow passenger rail service.

Unfortunately, freight delays are a significant source of Amtrak delays systemwide. Most Amtrak trains outside of the Northeast Corridor run on tracks owned by the freight railroads. The freights are legally required to give preference to Amtrak when dispatching trains—this preference was part of the grand bargain when Congress created Amtrak and relieved the freight railroads of their common carrier obligations to transport passengers. But for many years, there have been questions about whether the freight railroads are holding up their end of the deal by giving preference to Amtrak trains.

In fact, Congress included provisions to fix Amtrak on-time performance way back in 2008. That is when PRIIA added provisions directing the Federal Railroad Administration and Amtrak to work to develop "on-time performance" metrics and standards to be used as the basis for a Surface Transportation Board investigation. Unfortunately, these benefits have not been realized. It's been 12 years since PRIIA was passed, and FRA's metrics and standards for on-time performance were just published on Monday. After the long and unacceptable delay, I look forward to the STB overseeing improvement to Amtrak's on-time performance—both in my district and nationwide.

I also want to weigh in on the disputes between Amtrak and commuter railroads. Both Amtrak and commuter railroads require the same scarce access to tracks and platforms in major urban areas. Maintaining and expanding this infrastructure is expensive, but no commuter railroad makes money, and Amtrak only makes money along the NEC. Neither can subsidize the other. In this pandemic, both are bleeding money and slashing service. My message to commuter railroads and Amtrak is: You will have more success if you unite and work together to resolve the massive challenges you face.

I look forward to hearing from our witnesses today about how they plan to cooperate to address these big challenges.

Mr. LIPINSKI. Thank you, Chairman DeFazio. And thank you for all of your work and the work you will continue to do. I very much enjoyed working with you over all of these years. You certainly know the issues very well, and I am glad to see that you are continuing on now.

So with that, I want to welcome our witnesses for our panel today. We have Ms. Ann D. Begeman, Chairwoman of the Surface Transportation Board; Martin J. Oberman, Vice Chairman of the Surface Transportation Board; Ms. Romayne C. Brown, chair of the board of directors of Metra; Mr. Stephen Gardner, senior executive vice president of Amtrak; Mr. Ian Jefferies, president and chief executive officer, Association of American Railroads; Mr. Randal O'Toole, senior fellow at the Cato Institue; and Mr. Paul Skoutelas, president and chief executive officer, American Public Transit Association.

Thank you all for participating today, and I look forward to your testimony.

Without objection, our witnesses' full statements will be included in the record.

Now, since your written testimony has been made a part of the record, the subcommittee requests that you limit your oral testimony to 5 minutes.

And now we are going to proceed with the testimony in the order that I read out the names of the witnesses, and we will begin with Ms. Begeman.

You may proceed.

TESTIMONY OF ANN D. BEGEMAN, CHAIRMAN, SURFACE TRANSPORTATION BOARD; MARTIN J. OBERMAN, VICE CHAIRMAN, SURFACE TRANSPORTATION BOARD; ROMAYNE C. BROWN, CHAIR, BOARD OF DIRECTORS, METRA COMMUTER RAIL; STEPHEN J. GARDNER, SENIOR EXECUTIVE VICE PRESIDENT, CHIEF OPERATING AND COMMERCIAL OFFICER, NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK); IAN N. JEFFERIES, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS; RANDAL O'TOOLE, SENIOR FELLOW, CATO INSTITUTE; AND PAUL P. SKOUTELAS, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

Ms. BEGEMAN. Good morning. Thank you very much. Mr. Lipinski, this is also, I believe, my last hearing as Chairman of the STB, so thank you for the opportunity.

And I also would like to thank Chairman DeFazio and Ranking Member Crawford and all of the Members for allowing my colleague, Martin, and I to testify before you.

We greatly appreciate your interest in the Surface Transportation Board's work and welcome the opportunity to discuss our passenger rail service jurisdiction.

I will begin by discussing that role, and Marty will then discuss the Board's other important work. And I also do want to acknowledge our other Board Member colleague, Patrick Fuchs, who was not asked to testify today.

My two colleagues joined the Board in January of 2019, and we have worked to timely resolve our cases and whenever possible to resolve them by consensus, and I want to thank them.

As you know, the Board's jurisdiction over intercity passenger rail carriers is more limited than its jurisdiction over freight rail carriers. In general, intercity passenger rail operations are subject to Board jurisdiction when they provide rail service between two States. An example is DesertXpress, which has proposed constructing a high-speed rail line between southern California and Las Vegas, Nevada.

There are also intercity passenger rail projects that operate within a single State but still fall within the Board's jurisdiction because of their extensive links to the interstate rail network, typically through those connections with Amtrak.

An example is Texas Central's proposed high-speed rail line between Dallas and Houston. Initially, in 2016, the Board found that it did not have jurisdiction over the project as proposed at the time because the line would neither have been part of nor sufficiently connected to the interstate rail network.

However, in July of this year, the Board found that the proposed line would be part of the interstate rail network and, therefore, subject to the Board's jurisdiction. This finding was based on new evidence presented by Texas Central showing both a clearly defined through-ticketing arrangement with Amtrak and a transfer service that would facilitate the movement of passengers in interstate commerce.

In contrast, an intercity passenger rail service that operates within a single State and does not connect with the interstate rail network would not fall within the Board's jurisdiction. For example, the Board found in 2012 that the All Aboard Florida service planned between Miami and Orlando was not within the Board's jurisdiction due to its lack of connectivity to the national rail network.

Other examples of such operations include tourist and excursion trains which typically operate within a single State and do not interchange passengers with the interstate carriers. Most intercity passenger rail service is provided by Amtrak, which is statutorily excluded from many of the Board's regulatory requirements applicable to freight carriers.

However, with the enactment of the Passenger Rail Investment and Improvement Act of 2008, PRIIA, which both Chairman Lipinski and Chairman DeFazio have mentioned in their opening comments, as well as the Fixing America's Surface Transportation Act of 2015, FAST Act, the Board assumed additional Amtrak oversight responsibilities, including the authority to conduct investigations under certain circumstances and, when appropriate, to award relief and identify reasonable measures to improve performance on passenger rail routes.

As you know, lengthy litigation over the constitutionality of the PRIIA provision directing the FRA and Amtrak to establish on-time performance metrics and standards has prevented the Board from fully utilizing this authority before now.

After the constitutional issues were finally resolved last year, the FRA issued an ERISA proposed rulemaking on its new on-time performance and service metrics and standards. That rule, as you have heard, was finalized on Monday, and when it becomes effective, the Board expects to be able to fully exercise its authority under the law.

The Board generally does not have jurisdiction over public passenger transportation provided by local governments, which includes commuter rail passenger transportation and services, such as trollies, subways, and light rail lines. Under PRIIA, however, the Board is authorized to mediate disputes involving commuter rail providers seeking access to freight railroad tracks and services.

The Board also has certain limited jurisdiction over matters involving commuter services, including establishing appropriate compensation paid by the commuter rail provider to Amtrak for use of certain Amtrak facilities when the parties cannot reach an agreement on their own.

The Board is currently handling several pending matters involving passenger and commuter services. One involves Metra's continued use of Amtrak's Chicago Union Station. In that case, which the Vice Chairman has recused himself, the Board required Amtrak to continue to provide access to Metra on an interim basis while the parties participate in Board-sponsored mediation which was recently extended at the parties' joint request.

Similarly, in a petition filed by the Southeastern Pennsylvania Transportation Authority, SEPTA, to determine compensation for the use of certain Amtrak stations and parking facilities, the Board required Amtrak to continue to provide access on an interim basis while granting a joint motion to hold the proceeding in abeyance while the parties continued negotiations.

In another matter, the Board issued interim findings and guidance to Amtrak and the Canadian National Railway and we initiated Board-sponsored mediation in an effort to establish reasonable terms and conditions for Amtrak's use of CN's facilities and services.

Finally, the Board is also considering a request by DesertXpress to modify the route of the previously authorized high-speed rail line between California and Nevada.

As these proceedings are pending, we will not be able to comment further on them, but we did want to highlight them for the committee.

While freight matters do comprise the bulk of the work before the Board, our passenger rail work is important.

And I will now turn to Vice Chairman Oberman and thank the committee.

Mr. LIPINSKI. Thank you, Ms. Begeman, for your testimony.

And I will now recognize the next speaker, Mr. Oberman. You may proceed.

Mr. OBERMAN. Thank you.

Good morning, Chairman DeFazio, Chairman Lipinski, and Ranking Member Crawford. I am delighted to be here. As the chairman said, it is my first nonconfirmation appearance before Congress since I served there in 1959 as a page.

I will say this: I am a champion of passenger rail, but it is my privilege at this hearing to really summarize for the committee what our activities have been in the last 2 years involving primarily our freight rail responsibilities, and we have done a lot.

Under the very robust leadership of Chairman Begeman, we have tackled the congressional mandate to come up with a program to reduce the cost, complexity, and duration of rate reasonableness cases stemming from the report which Chairman Begeman commissioned in 2018 through a Rate Reform Task Force.

Since that task force report was issued in April of 2019, we have done the following: We adopted a new rule creating a streamlined process for establishing market dominance, which is a prerequisite for any shipper challenging a rate to satisfy before the Board.

Last December we held a 2-day hearing on the subject of revenue adequacy, which is quite complicated, and that consideration is ongoing.

We also adopted a rule amending our Waybill Sample data collection regulation so we will have a much more thorough database that will assist the Board and the stakeholders in decisionmaking and analysis.

And perhaps, most importantly, we have proposed a rule establishing a new rate reasonableness method called final offer rate review. Because this is such an important undertaking, we used our statutory authority to set up a series of ex parte discussions with the railroads and shipping sides of the industry, and last spring held many, many meetings to discuss both the floor proposal and alternatives, including one proposed by some of the Class I's to establish a voluntary arbitration procedure.

As the committee may know, the Board lacks the authority to mandate arbitration of rate matters; but a proposal has come forward to set up a methodology which the railroads propose to agree to voluntarily if it is adopted. I should emphasize that the rulemaking on final offer is ongoing and remains one of the Board's top priorities.

The other major area of undertaking was to consider issues involving demurrage and accessorial charges which began to skyrocket back in 2018. In the spring of 2019, we held a 2-day hearing on the subject out of which emanated a series of actions by the Board, including the adoption of a very lengthy policy statement setting forth the principles the Board will utilize when we evaluate demurrage claims that come before the Board and presumably will be also used by the courts when they consider these matters.

We have also proposed, have a pending rule that will greatly enhance the transparence and clarity of demurrage invoices providing rail customers with much more detailed information about the nature of charges so they can evaluate whether to pay them or challenge them.

We clarified regulations revoking certain exemptions so that certain exempt commodities can appear before the Board on demurrage matters. And we issued a final rule which clarifies the relationship between warehouses and shippers in terms of demurrage bills.

One other additional area to mention is that the Board has very vigorously been monitoring and staying in touch with both the railroads and the shippers as this pandemic has unfolded and monitoring the progress of service, including, very importantly, monitoring what has been happening as the economy has begun to return, making sure that the railroads are in a position to restore crew sizes and equipment that have necessarily been furloughed when the economy really went in a downward trend last spring.

And we have had very, very active cooperation with both railroads and rail customers and, for the most part I would say, we are impressed with the great effort put forward by all to try to keep our economy running as much as possible. But it is a challenge to gear back up now that rail traffic has begun to increase.

We specifically have asked the railroads, along with the FRA, to keep us posted on their efforts to restore their crew sizes and the amount of equipment available so that service will be adequate.

Finally, I just want to add on a very personal note, and I was going to acknowledge Chairman Lipinski that it was 45 years ago that your father and I entered the Chicago City Council on the very same day, and I have known you since then. So we have a very long history.

And I wanted to take a personal moment to congratulate you on your spectacular service in the Congress on behalf of certainly the country but certainly the Chicago area. We really have benefitted from the effort you have made in the area of transportation, championing not only rail but all infrastructure, highways, and aviation as well.

The list is too long to cite everything you have done, but two, which are really of great importance to the railroads, particularly in the Midwest, but this affects the Nation, the hundreds of millions of dollars that you have helped obtain for the CREATE program, which has straightened out the entire North American system if we could get things running more smoothly through Chicago, and you are adding at least $1½ billion, or nearly that, to the CRISI grant program.

There are many, many other things, and I, for one, will say that the country is going to miss your chairmanship of this subcommittee, and the city of Chicago and the Chicago region benefitted from your service, and we will miss your being around, but I know you are going to be around in some capacity. But I wanted to add that as a personal note.

Thank you.

[The prepared joint statement of Ms. Begeman and Mr. Oberman follows:]

Prepared Joint Statement of Chairman Ann D. Begeman and Vice Chairman Martin J. Oberman, Surface Transportation Board

Good morning, Chairman DeFazio, Ranking Member Graves, Subcommittee Chairman Lipinski, Subcommittee Ranking Member Crawford, and other members of the Committee. Thank you for inviting Vice Chairman Martin Oberman and me to appear today virtually. We appreciate your interest in the Surface Transportation Board's work and welcome this opportunity to discuss our jurisdiction and role in ensuring a robust passenger rail system. We would also like to give the Committee an update on all of the Board's important work.

As you know, the Board's jurisdiction over intercity passenger rail carriers is narrower than its jurisdiction over freight rail carriers. The Board's authority over rail transportation is derived from 49 U.S.C. § 10501, which gives the Board jurisdiction over transportation by rail carriers between a place in a state and a place in another state, and between a place in a state and another place in the same state, as long as that intrastate transportation is carried out "as part of the interstate rail network."

In general, intercity passenger rail operations are subject to Board jurisdiction when they provide rail service between two states. An example is DesertXpress (also known as Brightline West), which has proposed building a high-speed rail line between Southern California and Las Vegas, Nevada.

There are also intercity passenger rail projects, such as California High Speed Rail, that operate within a single state but nevertheless fall within the Board's jurisdiction because of their extensive links to the interstate rail network. Among other things, California High Speed's through-ticketing arrangements and shared stations with Amtrak brought that project under the Board's jurisdiction. More recently, the Board considered whether it has jurisdiction over Texas Central's proposed high-speed rail line project between Dallas and Houston. Initially, in July 2016, the Board found that it did not have jurisdiction over the project, as proposed at the time, because the proposed line would neither have been part of nor sufficiently connected to the interstate rail network. However, in July 2020, the Board granted a petition to reopen filed by Texas Central. In light of evidence presented on reopening showing a clearly defined through-ticketing arrangement with Amtrak and a transfer service that would facilitate the practical and continuous movement of passengers in interstate commerce, the Board found that the proposed line would be part of the interstate rail network and therefore subject to the Board's jurisdiction.

In contrast, an intercity passenger rail service that operates within a single state and does not connect with an interstate passenger rail carrier normally falls outside the Board's jurisdiction. For example, the Board found that the All Aboard Florida service—a 230-mile rail line between Miami and Orlando—was not within its jurisdiction due to its lack of connectivity to the national network. Other examples of such operations include tourist and excursion trains, which typically operate within a single state and do not interchange passengers with interstate carriers.

Although some private businesses provide regulated intercity passenger rail operations, most passenger rail service is provided by Amtrak, which is statutorily excluded from many of the Board's regulatory requirements applicable to freight carriers. However, with the enactment of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) and the Fixing America's Surface Transportation Act of 2015 (FAST Act), the Board assumed additional Amtrak oversight responsibilities, including the authority to institute investigatory action under certain circumstances and, if appropriate, to award relief and identify reasonable measures to improve performance on passenger rail routes. Lengthy litigation over the constitutionality of the PRIIA provision directing the Federal Railroad Administration (FRA) and Amtrak to establish on-time performance metrics and standards has prevented the Board from fully utilizing this authority before now. After the constitutional issues were finally resolved last year, the FRA issued a notice of proposed rulemaking pertaining to its new on-time performance and service metrics and standards. Once the rule has been finalized, the Board should be able to exercise its investigative authority under PRIIA.

The Board generally does not have jurisdiction over public passenger transportation provided by local governments, which includes commuter rail passenger transportation and services, such as trolley, subway, and light rail lines. Commuter rail transportation is understood to mean short-haul passenger rail transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations. Under PRIIA, the Board is authorized to mediate disputes involving commuter rail providers seeking access to freight railroad tracks and services. The Board also has certain limited jurisdiction over matters involving commuter services, including establishing appropriate compensation paid by commuter rail providers to Amtrak for use of certain facilities if the parties cannot reach agreement among themselves.

The Board is currently handling several pending matters involving passenger and commuter services. One is a petition filed by Amtrak regarding the continued use by Metra of Chicago Union Station. In this case, the Board required Amtrak to continue to provide access to Metra on an interim basis while the parties participate in Board-sponsored mediation. Similarly, in a petition filed by the Southeastern Pennsylvania Transportation Authority (SEPTA) to determine compensation for the use of certain Amtrak passenger rail stations and parking facilities, the Board required Amtrak to continue to provide access to the stations and facilities on an interim basis while granting a joint motion to hold the proceeding in abeyance while the parties continue negotiations. In another matter, the Board issued interim findings and guidance to Amtrak and subsidiaries of the Canadian National Railway and initiated Board-sponsored mediation in an effort to establish reasonable terms and compensation for Amtrak's use of the rail facilities and services. The Board is also considering a request by DesertXpress regarding the authorized construction of a high-speed rail line between Southern California and Las Vegas, Nevada. As these proceedings are pending matters, we cannot comment further.

While freight rail matters comprise the bulk of work before the Board, we take our passenger rail work very seriously, keeping informed of the latest issues and maintaining positive working relationships with Amtrak, FRA, and other passenger rail stakeholders.

Speaking of the Board's freight rail work, we have many important issues on that front, in particular, reform of rate review procedures, oversight of rail demurrage and accessorial charges, and monitoring rail service during the pandemic.

The Board is actively working to reduce the cost, complexity, and duration of rate reasonableness cases, particularly for smaller disputes. In 2018, the Board established the Rate Reform Task Force so that our stakeholders could share their views and offer constructive suggestions to improve our rate review processes and make them more accessible. Based on the report from the Task Force, which was issued in April 2019, the Board has adopted a rule creating a streamlined process for pleading market dominance; held a two-day public hearing on revenue adequacy issues; amended its Waybill Sample data collection regulations to provide a more robust dataset for decision-making and analyses; and proposed a new procedure for challenging the reasonableness of railroad rates in smaller cases, called "Final Offer Rate Review" (FORR).

To allow for additional stakeholder input in the FORR rulemaking proceeding, in May 2020, the Board waived its general prohibition on ex parte communications to permit post-comment period discussions with outside parties, including railroad and shipper interests, about the FORR proposal and possible supplements or alternatives to it, including the potential use of voluntary arbitration to resolve smaller rate disputes. Summaries of these meetings are posted on the Board's website. This rulemaking proceeding is ongoing and remains one of the Board's top priorities.

The Board also remains focused on Class I railroad demurrage and accessorial charges. In late 2018, when some Class I carriers announced plans to implement new rules related to demurrage and accessorial charges, the Board requested that Class I railroads report their revenues on a quarterly basis starting with 2018. In May 2019, we held a two-day public oversight hearing on this issue. Since that hearing, the Board has taken several important actions, including:

- Issuing a policy statement on principles the Board will apply in evaluating the reasonableness of demurrage and accessorial charges;
- Proposing rules to enhance the transparency and clarity of demurrage invoices;
- Clarifying certain regulatory exemptions and revoking others in order to ensure that the Board can exercise oversight over the reasonableness of demurrage and accessorial charges; and
- Issuing a final rule that permits warehousemen and shippers to specify which party should be billed for demurrage.

Finally, we would like to highlight the Board's on-going monitoring of rail service across the freight rail network. Since March, we have focused much attention on the disruptive impact of COVID–19 on rail service. During the initial phase of the pandemic, as many state and local jurisdictions implemented lockdowns, the Board engaged in daily and weekly communications with key railroad and shipper stakeholders to discuss the reliability of the freight rail network, especially in critical supply chains. These communications included weekly (now bi-weekly) conference calls with the Railroad-Shipper Transportation Advisory Council (RSTAC) and daily (later weekly) calls, hosted by FRA, with the Class I's and representatives of the short lines and Amtrak. The Board was also in frequent contact with senior management at the Class I railroads.

In April, the Board issued a statement in support of rail service to provide informal guidance to state and local governments in implementing public health and safety measures in response to COVID–19 that might negatively impact freight rail operations, such as travel and lodging restrictions that could impair railroad crew and maintenance operations. The Board also monitored the imposition of railroad embargoes related to COVID–19.

As shippers ramped up production, we requested information from each Class I railroad about its plans to meet the increased rail service demand, including the availability of employee and equipment resources and enhanced railroad communication with shipper and other stakeholders. In August, the Board and the FRA reemphasized in a letter to all Class I railroads the importance of safe, dependable rail service as the nation works to restore jobs and promote economic recovery. All of these communications can be found on our website.

Finally, the Board's Rail Customer and Public Assistance (RCPA) office continues its frequent and regular communications with shipper and railroad stakeholders, including holding monthly calls with all Class I railroads to monitor rail service and operational developments. RCPA is available to assist interested stakeholders and the public by answering questions pertaining to Board regulations and procedures and facilitating informal private-sector dispute resolution of rail operational and service-related issues and other matters wherever possible. They can be reached at 202–245–0238 or RCPA@stb.gov.

Again, we thank the Committee for the opportunity to testify before you today. We look forward to answering any questions that you have for us.

Mr. LIPINSKI. Thank you very much for that.

The Chair will now recognize Ms. Brown for 5 minutes.

You may proceed.

Ms. BROWN. Thank you, Chairman Lipinski.

Good morning, Chairman Lipinski, Ranking Member Crawford, and members of this esteemed subcommittee. First, I want to thank Chairman Lipinski for all that he has done for transportation in his district and Chicagoland. His advocacy in Congress has meant so much to me in the Chicago region.

I also wanted to extend my sincere appreciation to Congressman García, from the Chicago City Council to the Illinois General Assembly, to the Cook County Board of Commissioners and now the U.S. Congress. He has been a tremendous advocate for social equity and infrastructure, and his efforts have made a real difference to so many in meaningful ways, especially for the underserved and minority communities.

I am also pleased to be on this panel with my former colleague and friend, STB Chair Marty Oberman. My name is Romayne Brown, and I am the chair of Metra's board of directors. I was elected in September. I have served on the board since 2013 representing Cook County. I have worked for over 30 years as professional transit manager at the Chicago Transit Authority, ending my career as vice president of rail operations.

This includes focusing on a strong relationship with our unionized employees, creating a safe, efficient, and pleasurable experience for our customers. I am particularly proud about the Fair Transit South Cook project, a 3-year pilot program that will lower Metra fares and provide new transit options for south suburban Cook County and Chicago residents, some of the most underserved communities in our region.

Metra operates the most complex commuter railroad network in the United States. We share infrastructure with six Class I railroads and Amtrak. The density of the Chicago network provides us a unique insight into the appropriate role the STB could and should take in passenger railroad policy.

However, before discussing the role with STB, I would be remiss to not mention the difficult times all Americans are facing due to the COVID–19 pandemic. Like many families and small businesses around the country, the transit industry is facing unique financial and safety challenges.

We appreciate Congress' support in passing the $25 billion in emergency relief through the CARES Act. It has been critical to the continued safe operation of our commuter service in Chicago and ensures we maintain and pay our dedicated unionized workforce.

Yet, we continue to face financial challenges. On November 13, Metra approved our budget for 2021. We are projected at least a $70 million budget gap in 2021 due to our extremely low ridership.

We join our colleagues at the APTA and the many hardworking and dedicated rail labor unions in calling for this Congress to enact at least another $32 billion in emergency transit relief immediately.

Simultaneously, the commuter rail industry faces significant operating and capital funding challenges that the Federal Government should address. The transit investment contained in this committee's INVEST Act represents significant progress for our agency, but more must be done, like creating commuter rail-only funding streams.

We are a highly regulated, capital-intense commuter railroad. We are a passenger railroad without full standing at the STB. The STB is traditionally known as the economic regulator of the rail industry, focused on freight rail and shipper concern; but it also must play an informed role in passenger rail policy. Yet, in its founding charter, it excluded public transportation provided by local government authorities from its jurisdiction.

We believe that Congress should correct this situation and ensure parity and a level playing field amongst all publicly subsidized passenger railroads. Since Congress created Amtrak in 1970, the growth of the commuter rail industry has been stunning. In the years of Amtrak's founding, there was only one commuter railroad. Today there are over 30, and in 2019 our industry served nearly 500 million passengers.

Over the last 50 years as all of these new commuter railroads were created, it was clear that commuter operators should have the same rights and privileges as freight railroads and Amtrak. This is not an indictment of our freight railroad partners. As an operator in Chicago, we have developed close and reliable partnerships with freight railroads as we work together to deliver service to the Nation's most congested rail corridor. In fact, our region owes much for the freight railroad industry through our successful partnership in the CREATE program.

However, even great partnerships can be challenging. Yet, unlike Amtrak, we lack the same ability to resolve disputes over right-of-way, on-time performance, and track access at the STB.

Metra looks forward to working with Congress as it debates surface transportation reauthorization, emergency COVID–19 relief, and, of course, reauthorization of the STB.

On behalf of Metra, I thank you for providing me with the opportunity to testify today, and I look forward to answering any questions you may have.

Thank you.

[Ms. Brown's prepared statement follows:]

Prepared Statement of Romayne C. Brown, Chair, Board of Directors, Metra Commuter Rail

INTRODUCTION

Good morning, Chairman Lipinski, Ranking Member Crawford, and Members of this esteemed Subcommittee. My name is Romayne C. Brown and I am the Chair of Metra's Board of Directors. I was recently elected to this position and I am greatly looking forward to continuing to advocate for Northeastern Illinois' commuter railroad and its riders, especially during these unprecedented and trying times. I am pleased to have this opportunity to speak to you today.

Let me first begin by commending the tremendous leadership that Chairman Lipinski and Congressman Garcia have brought in advancing transportation and infrastructure in our region and our nation. On behalf of Metra and Chicago's commuters, we thank you for all that you do and will continue to do for us.

Metra was created to run Chicago's commuter rail system by the Illinois General Assembly in 1983. Our creation followed a tumultuous period in which the private railroads that had been operating the service experienced major financial problems and bankruptcies. We have since grown to be the largest commuter railroad in the country based on track miles, and the fourth largest based on pre-COVID–19 ridership.

The Metra system has 11 separate lines with 242 stations and nearly 1,200 miles of track throughout the Northeastern Illinois region. Metra owns and operates four of those lines, has trackage-rights or lease agreements to operate Metra trains over freight railroads on three lines, and has purchase of service agreements with two freight railroads, which operate commuter service on four other Metra lines.

We are also not the only transit service provider in our region. Working through the Regional Transportation Authority (RTA), we coordinate closely with the Chicago Transit Authority and the Pace commuter bus. Together, our three agencies are dedicated to providing Chicagoans of all means and backgrounds a safe, affordable trip to school, work, or a medical appointment. We are pleased to partner with Cook County to advance the Fair Transit South Cook pilot, a three-year project that will improve transit service and lower fares for south suburban and Chicago residents. The pilot will provide lower Metra fares on two of our south lines and also provide for new Pace services. We are extremely pleased and excited to partner with our sister agencies on this pilot.

Clearly, our operating environment in Chicago—the most congested railroad region in the nation—provides us with unique insights into the importance of freight and passenger railroad relationships and the role of the Surface Transportation Board (STB) in overseeing passenger rail.

COVID–19 PANDEMIC AND OPERATIONS

However, as every Member of this panel knows, the COVID–19 pandemic has brought unprecedented hardship on families, essential workers, and small businesses across the United States. Transit agencies like ours have been no exception and I would be remiss if I did not address the COVID–19 crisis and its impact on commuters before you here today.

In March, Congress passed the CARES Act which provided $25 billion in emergency funding for transit agencies around the United States. This funding has been critical to the continued, safe operation of our commuter services in the Chicagoland region and ensured we could maintain well-paying rail union jobs throughout the pandemic up to this point. I must commend the commitment of our employees on the front lines as well as union leadership as they have been strong and loud advocates for additional COVID–19 emergency relief.

However, while we appreciate the necessity of the CARES Act, our agency is still facing a difficult reality as we await further action from Congress.

On October 6, Metra released its proposed $700 million 2021 budget. The proposed budget was presented on November 13 to the Metra Board of Directors. Like our peers around the country, our budget made many assumptions about ridership, fare revenues, and operating costs, all of which have been severely impacted by the COVID–19 pandemic. Our proposed budget estimates our ridership will be about 20% of pre-COVID–19 levels by the end of 2020 and normalize around 50% by the end of 2021. However, at our current service and spending levels, we are currently projecting a $70 million gap in our budget, which may grow if ridership does not return to projected levels.

One of the biggest conundrums of the coronavirus pandemic has been how to effectively maintain services that Chicago's essential workers rely on, while facing increased costs to maintain these services. Transit agencies like Metra are facing a new operating reality as we respond to the virus. We work daily to ensure our trains and crew facilities are stocked with sanitizer and PPE, we utilize additional maintenance vehicles and rolling stock to allow for social distancing for employees and riders, and we have expanded our human resource services to assist our employees impacted by the virus. While we are committed to safely serving the public and supporting our workforce during these unprecedented times, these are added costs that simply did not exist before the pandemic.

If we continued to run service at normal levels, we would spend $2.65 billion over the 2021–23 period. However, our available operating funds over that same period in 2021–2023 (CARES, diminished fare revenues and diminished tax revenues) will only amount to $2.080 billion, a gap of $570 million. This $570 million shortfall is largely due to lower ridership and given the pain many Chicagoans are experiencing, fare increases are not practical at this time for our Board.

Over the 2021–23 period, we are anticipating millions in additional costs for cleaning, PPE, cleaning materials, and adding extra vehicles for social distancing. Yet, we cannot spend more than we have available, unlike the federal government. Without additional financial assistance from Congress, we will face some extremely difficult decisions, including potential cuts in service, to overcome this $570 million shortfall.

At our present "burn rate" we project that our CARES Act funding will run out sometime in the second half of 2021. While we will continue to step up to safely provide services to essential workers and those who lack access to a car, we are facing increases in costs to provide the same level of pre-pandemic service.

We must also operate with the goal of regaining riders and attracting new customers. This requires us to continue consistent service levels and provide innovative schedules, as we have done to accommodate many Chicagoland essential workers. Providing our passengers and Chicago's workforce flexibility and reliability is something we take pride in. However, continuing to provide an attractive level of service to encourage riders to return is not without risks. If these riders do not return, we will be under further budgetary pressure.

I request your support in Congress for enacting at least another $32 billion in emergency transit relief. This additional assistance would ensure essential transit services can continue around Chicago and our nation, and help transit prepare to drive the economic recovery as the nation returns to a more normal travel pattern. We appreciate the continued leadership and advocacy from the American Public Transportation Association (APTA), who we are pleased to be on this panel with today. Their work has been critical in uniting the nation's transit agencies and speaking with one, urgent voice on this pressing issue.

Commuter Rail Funding

While we are desperate for additional emergency funding to deal with COVID–19, structural funding challenges also remain for Metra and the commuter rail industry.

Throughout the United States, commuter rail systems receive a combination of funding from federal, state, and local government sources, though not all receive federal funds. Our industry has been working diligently to install and implement Positive Train Control (PTC), but the federal safety mandate has put great strain on our limited dollars for state of good repair and capital projects. I am pleased to report that Metra will meet its 2020 Alternative Schedule and be fully compliant with the PTC deadline for implementation on all 11 lines. Further, legacy commuter railroads, like Metra, face unique capital challenges as we work to maintain and upgrade aging track infrastructure and rolling stock.

Since 1985, Metra has invested more than $6 billion to rebuild, maintain and expand Chicagoland's passenger rail network. Operating funding is provided through system-generated revenues—primarily fares—and subsidized in large part through a regional sales tax. Capital funding is provided through a variety of federal programs, state and local funding sources, and a small amount of fare revenue.

Capital funding to maintain and improve our aging system remains a constant challenge. Metra's capital program is mostly funded through federal formula funds (Sec. 5307 and 5337) totaling $173.6 million for Fiscal Year (FY) 2019. However, our needs far exceed the level of funding available. In fact, the RTA, our region's transit funding and oversight agency, estimates that Metra needs to invest $1.2 billion annually over the next decade to achieve and maintain a state of good repair.

While we must reinvest in our network to continue to safely and efficiently move our customers, our complete PTC system is expected to cost Metra more than $400 million, equal to the amount of federal formula funding Metra receives every 2½ years. Further, based on our own estimates and discussions with our freight railroad partners, PTC operation and maintenance costs are expected to be between 5–10% of the total installation cost per year, or $15–$20 million per year.

I wanted to take this opportunity to thank this Committee for its work on the INVEST in America Act, which was passed by this House as a part of the Moving Forward Act (H.R. 2). H.R. 2 contained many visionary provisions and funding levels that we have not seen before at Metra. For example, the INVEST Act authorized $105 billion for public transportation programs funded by federal formulas. Compared to the FAST Act, this represents over a 50% increase in funding for public transit.

Additionally, we appreciate that Congress and the Federal Railroad Administration for allowing commuter railroads, including Metra, to access the Consolidated Rail Infrastructure and Safety Improvement (CRISI) grant program for PTC installation projects. Importantly, the INVEST Act builds on this important progress by increasing funding for the program by over 300%, compared to the FAST Act, and makes a wide array of commuter railroad projects eligible for funding. This would potentially include support for operating and maintaining PTC systems, a potential funding deficit for many commuter rail agencies around the country.

We were also pleased to see continued Congressional support for U.S. DOT discretionary grant programs, as well as the development of new, innovative funding programs for intercity passenger rail across the United States.

However, despite the important progress made in the INVEST Act, we remain concerned about the state of federal commuter rail funding. Creating a new grant program specifically for commuter railroads would provide much needed additional relief to public agencies, like ours, struggling to respond to the COVID–19 pandemic while ensuring our long-term capital projects are addressed.

The federal formula funding that Metra receives annually is the bedrock of our capital program. However, because our needs are great and state funding has been inconsistent, it has been nearly impossible to effectively budget and plan a capital renewal program. We believe Congress should also consider creating a dedicated formula funding stream for commuter railroads to ensure the numerous commuter rail systems across the country are no longer forced to rely on sporadic discretionary grants and can effectively plan for both safety and capital expenditures.

Metra, like other publicly funded railroads, is a highly regulated, capital-intensive entity. It requires a substantial annual investment to maintain its own rights-of-way and track structure. Metra's capital assets are diverse and extensive: locomotives, passenger cars, track signal and communications equipment, yard and maintenance facilities, station buildings, platforms, parking lots and headquarters. Each day, the delivery of safe, reliable, efficient train service depends on these assets. Constant maintenance, rehabilitation, required COVID–19 cleanings and asset replacement, requires significant and predictable funding.

THE STB AND COMMUTER RAILROADS

The STB plays an important role as the economic regulator of the freight railroad industry, as well as an important adjudicating body on railroad policy related issues. It maintains a limited jurisdiction over passenger railroads, primarily focused on intercity passenger railroads. Specifically, "public transportation provided by a local government authority," is excluded from its jurisdiction, with minor exceptions.[1] However, unlike some of our commuter agency peers, Metra maintains status as a rail carrier, which provides for greater standing at the Board.

We believe that Congress should create parity amongst all publicly subsidized passenger rail operations, which includes standing at the STB. Since Congress created Amtrak as the nation's preeminent intercity and long-distance passenger rail carrier in 1970, the growth of commuter rail services has been stunning. At the time of Amtrak's creation, there was one publicly owned commuter railroad. Today, there are now over 30 active commuter rail systems in the United States that deliver over 490 million passenger trips annually and provide the safest form of surface transportation for commuters. By comparison, in FY 2018, Amtrak served approximately 32 million passengers.

This rapid growth has placed an incredible demand on our limited railroad infrastructure capacity. Commuter rail agencies must coordinate with both the freight railroads and Amtrak in order to operate, especially in Chicago where we must deal with more than 700 freight and Amtrak trains each weekday. While in general, we all work collaboratively in trying to solve issues and move goods and people in a capacity constrained system, like in all partnerships, there are sometimes challenges.

Commuter railroads and Amtrak operate with one another over some of the most congested and complex areas in the United States, including the Northeast Corridor (NEC) and the greater Chicagoland region. Since we operate together in some of the most congested regions with limited available trackage for passenger rail operations, commuter railroads, Amtrak, and other passenger transportation services often share rail terminals, yard, and stations. While Amtrak often owns many of the rail assets and stations, it is no longer necessarily the only major passenger operator in the area. In fact, in certain instances, there are stations in which commuter railroad operations are responsible for over 50%, in some cases even 60%, or 70%, of the train movements, but do not own the underlying assets or infrastructure.

Under federal law certain preferences have been given to Amtrak, including greater standing at the Surface Transportation Board; however, those preferences have not been extended to publicly funded commuter railroads even though, in many cases, Amtrak, freight railroads and commuter railroads share the same tracks. As an example, Amtrak enjoys access to freight infrastructure at incremental costs, Amtrak charges commuter railroads a market rate to utilize their infrastructure, treating state and local taxpayer dollars differently than federally provided ones.

Our current passenger rail system has not kept up with the pace of growth in commuter rail operations. Short-trip and commuter passenger services have increased dramatically yet lack parity with our intercity and long-distance passenger

[1] 49 USC 10501

rail counterparts. We believe the Congress in its reauthorization of the STB should consider mechanisms that level the playing field between Amtrak and publicly-funded commuter rail agencies.

In addition to the passenger rail congestion in our region, freight trains from six Class I railroads also interact and share tracks with passenger trains from both Amtrak and our commuter trains. Because of this, Metra has developed strong working relationships with freight railroads as we work together to effectively move passengers and freight across Chicagoland.

Our partnerships are further enhanced by the landmark Chicago Region Environmental & Transportation Efficiency (CREATE) program led by Chairman Lipinski and others in our congressional delegation. This program continues to be a positive example of the federal government, rail operators, and local and state governments coming together to tackle a major challenge. Expanding capacity in Chicago, removing bottlenecks, and bringing the network to a state-of-good-repair will enhance passenger train speeds and ensure our freight partners can continue to effectively serve their customers. We continue to appreciate the Chairman's leadership on CREATE and would strongly support Congress and this Subcommittee as it considers other changes to ensure we have a modern passenger rail system that provides for a level playing field amongst all passenger rail operators.

However, even great partnerships can be challenged. Yet, unlike Amtrak, we lack the same ability to resolve disputes over right of way, on-time performance, and track access at the STB. Despite the tremendous growth of commuter rail services nationally, federal law still only provides preference to the federally subsidized passenger rail services while state and local taxpayer subsidized passenger operations are excluded from full standing at the STB. Worse, Amtrak continues this malpractice with its access rates.

Metra looks forward to working with Congress as its debates authorizing new surface transportation programs, the Surface Transportation Board, and further emergency COVID–19 relief. Our current financial outlook is bleak, as we struggle to provide the same levels of pre-pandemic service while experiencing new and increased costs. In the long-term, while we appreciate the Committee's efforts in the INVEST Act, we continue to call on Congress to create long-term, predictable funding steams exclusively for commuter rail agencies. Lastly, we would support federal efforts to modernize the passenger rail system and create a more level playing field between all passenger rail operators.

Metra thanks Congress for its continued support of public transportation and systems like ours and appreciates the opportunity to update this committee on our operations and challenges. Thank you for inviting me to testify and I look forward to answering any questions you may have.

Mr. LIPINSKI. Thank you, Chairwoman Brown.

I now recognize Mr. Gardner.

You may proceed.

Mr. GARDNER. Good morning, Chairman Lipinski, Chairman DeFazio, and Ranking Member Crawford, members of the subcommittee, and my fellow witnesses. Thank you for the opportunity to testify today about the Surface Transportation Board's key role enabling Amtrak to effectively serve the Nation.

We strongly support the STB and believe the Board needs updated authority and additional resources for passenger rail so we can achieve the service levels and on-time performance your constituents deserve.

Congress created Amtrak in 1970 to take on a job that today's freight railroads no longer wanted. In exchange for Amtrak's assumption of these private railroads' common carrier obligation for passengers and the associated operating losses for passenger service, the freights agreed to allow Amtrak to operate wherever and whenever it wanted over their lines, to provide Amtrak trains with dispatching preference over freight, and to empower what is now the STB to ensure Amtrak's access to the rail network.

It has been nearly 50 years since freight railroads agreed eagerly to this bargain, and yet today, many of our host railroads fall short in fulfilling some of these key obligations——

Mr. LIPINSKI. Mr. Gardner, if you will suspend. We can't see you, and we need to be able—we need to have your video on so we can see you for you to be able to testify.

Mr. GARDNER. Absolutely.

Is that better?

Mr. LIPINSKI. We see you now.

Mr. GARDNER. All right. Sorry.

Mr. LIPINSKI. You can continue.

Mr. GARDNER. Great. Thank you.

Since our founding, Congress has had to clarify and amend the law to try and ensure host compliance. For example, by 1973, the freights had begun delaying Amtrak trains so severely that Congress enshrined this promise of Amtrak preference into Federal law. And in 2008, delays had gotten so bad that Congress created a new process to set Amtrak on-time performance and provided the STB with the authority to investigate poor OTP.

But for several reasons these efforts haven't remedied the problems. For Amtrak and your constituents, that has meant millions of delayed passengers and years of impediment as we try to add trains or start new routes to keep up with changing markets and demand.

As the AAR made clear in its litigation opposing the PRIIA metrics and standards rule, many hosts see supporting our operation not as their obligation to the public but as competition for the use of their infrastructure. But Amtrak wasn't created to relieve host railroads of their requirements to support passenger trains. It was created to help them reduce financial losses and ensure that passenger trains could still serve the country.

We need this committee's help to restore your original deal with the freights. For example, you can provide us, as you have in the Moving Forward Act, a way to enforce our existing rights of preference. You can make real Amtrak's statutory ability to start new routes and add additional trains without arbitrary barriers.

You can create an Office of Passenger Rail within the STB and require them to use their investigative powers to pursue significant instances of poor OTP. And you can require more efficient STB processes to grant Amtrak access to hosts and fairly set any compensation capital investment requirements.

To be clear, Amtrak strongly supports our freight railroads. We want the whole rail network to grow and succeed, and we have some great host railroad partners who deliver very good service to Amtrak. But today many freights seem to essentially view us and our millions of passengers as an imposition to be minimized instead of a valuable public service to be supported. And this is why we and the STB must have clear and appropriate authority to support our mission.

I am pleased to say that just this week FRA and Amtrak took an important step in this direction with the publication of the PRIIA metrics and standards rule. This rule will empower the STB to investigate poor performance and help enforce Amtrak's preference rights, which could make a huge difference in train performance.

As our CEO, Bill Flynn, recently testified, we are hopeful that with COVID relief funding and your support, we can quickly restore service and recover from this pandemic, setting in motion a new era of growth and a chance for Amtrak to play a significant role in helping reduce carbon emissions across the country.

A rarely heralded fact is that the U.S. has the largest rail network in the world, and yet we use so little of it for intercity passenger rail service. The fundamental reason for this is our inability to gain quick, reasonable access to the network and receive reliable service that we are owed under law.

This has effectively blocked our growth and left much of our Nation underserved. City pairs like Los Angeles and Phoenix or Atlanta to Nashville could clearly benefit from Amtrak service. Existing rail lines already connect them. Shouldn't Amtrak trains be serving these and many other similar corridors nationwide?

With your help, we can answer this question with a yes, by gaining strengthened rights and proper STB enforcement, coupled with a long-term dedicated source of funding for both Amtrak and intercity passenger rail expansion. With these, we can provide the type of modern and reliable intercity passenger rail service that nearly every other developed nation now takes for granted.

I want to thank you particularly, Chairman Lipinski, for your longstanding support of Amtrak, for your leadership role throughout many issues affecting Amtrak and for your time with the committee. We have always appreciated your support. Thank you very much for it.

And I look forward to answering any of the questions from the committee.

Thanks very much.

[Mr. Gardner's prepared statement follows:]

Prepared Statement of Stephen J. Gardner, Senior Executive Vice President, Chief Operating and Commercial Officer, National Railroad Passenger Corporation (Amtrak)

INTRODUCTION

Good morning Chairman Lipinski, Ranking Member Crawford, and all the members of this subcommittee. My name is Stephen Gardner and I serve as Senior Executive Vice President and Chief Operating and Commercial Officer for Amtrak. It is my pleasure to testify here today on behalf of Amtrak's many dedicated employees. Despite the challenges faced by our nation this year, thousands of our employees continue to further Amtrak's mission and provide a valuable service to the American public. I would like to thank them for their dedication and recognize the support Amtrak has also received from our state partners, labor unions, host railroads, and commuter colleagues as we navigate these difficult times.

I would like to thank this subcommittee for convening today's hearing to discuss a topic of great importance to Amtrak. A well-functioning Surface Transportation Board (STB) is essential to Amtrak's mission and core to the future of our company. With the strong backstop of an empowered STB, we can better connect communities across this nation with efficient, sustainable, modern service, and create thousands of new, good-paying jobs in the process as part of a vital effort to help this nation recover from the pandemic.

The STB has a central role to play in many issues critical to Amtrak including our ability to run trains in a timely fashion and efficiently expand and improve our network and the enforcement of Amtrak's statutory right to preference over freight trains. Amtrak's ability to grow and to reliably operate trains in an efficient manner without delay while traveling on tracks owned by host railroads lies at the heart of the company's ability to fulfill its congressional mandate. In each case, the STB is the forum that can help to ensure our success.

I would like to begin my testimony with a brief history of the STB's jurisdiction over various Amtrak matters before narrowing the focus of my remarks to emphasize three issues of particular importance to today's discussion.

A BRIEF HISTORY OF AMTRAK AND THE SURFACE TRANSPORTATION BOARD

Prior to Amtrak's creation, private railroads—today commonly called "freight railroads"—were required to provide intercity passenger rail service pursuant to what is known as their "common carrier obligation." This obligation, for both passenger and freight transport, ensured that in return for giving railroads the right to construct, operate and generate profits from railroad networks—which, like other infrastructure-based network industries whose assets cannot easily be replicated, give the infrastructure owner a de facto monopoly—there would be adequate rail service to meet public demand.

By the late 1960s, public investment in the highway and aviation industries had crushed the privately-funded intercity passenger rail business, and these losses—which amounted to over $1.4 billion annually adjusted for inflation—threatened the financial viability of the entire railroad industry.

Recognizing the need to protect simultaneously the core intercity passenger rail network for the public and the viability of the private railroads, Congress enacted, and the Nixon Administration signed, the Rail Passenger Service Act (RPSA) of 1970. The RPSA created Amtrak to relieve the private railroads of their intercity passenger rail service obligation in return for making their tracks, facilities and services available to Amtrak on reasonable terms. As the Interstate Commerce Commission (ICC), the predecessor of the STB, stated, the RPSA

> represents a public bargain that was struck with the nation's freight railroads, whereby the freight railroads were relieved of any duty to provide passenger service in exchange for making their tracks available to Amtrak at incremental costs.[1]

Since the enactment of the RPSA 50 years ago last month, the ICC/STB have been tasked with effectuating this public bargain by ensuring, and resolving disputes over, Amtrak's access to the railroads and regional transportation authorities over which it operates or seeks to operate, which are referred to as "host railroads." The RPSA provisions governing Amtrak's access to its host railroads, codified at 49 U.S.C. 24308, provide that if Amtrak and a host railroad are unable to reach agreement on matters pertaining to Amtrak's operations, Amtrak may seek an STB order requiring that access be provided and establishing terms.

Under the RPSA's access provisions, Amtrak has the right to operate over all rail lines of any railroad or regional transportation authority whenever that is necessary for Amtrak to carry out the broad purposes of the RPSA. If Amtrak and a railroad or authority cannot agree upon terms, Amtrak may petition the STB to order that the railroad or authority's rail lines, facilities, and/or services be made available for Amtrak's operations, and to determine all terms governing Amtrak's access, including compensation, in some circumstances train schedules and speeds, and any capital investments by Amtrak or a state partner that may be required for new or expanded Amtrak service. The RPSA specifies that the compensation Amtrak pays shall be limited to the incremental costs that such a host railroad incurs as a result of Amtrak's operations; any additional payments (typically called "performance payments") must take into account the quality of service (e.g., on time performance) the host railroad provides to Amtrak.

The RPSA's access provisions also give the STB the authority, upon application by Amtrak and satisfaction of applicable statutory requirements, to require host railroads:

- To allow Amtrak to operate additional trains on a schedule based on legally permissible operating times, with the host railroad having the burden of proof if it asserts that the new trains would unreasonably impair freight transportation;
- To allow Amtrak trains to operate in an emergency; and
- To allow Amtrak trains to operate at accelerated speeds.

The Supreme Court has characterized the railroads' "ongoing regulatory obligations" under the RPSA to "provide operational assistance and facilities" for Amtrak

[1] Interstate Commerce Commission, "Study of Interstate Commerce Commission Regulatory Responsibilities," October 25, 1994, p. 62.

under terms determined by the ICC/STB as "consistent with the railroads' continuing obligations as common carriers." [2] The RPSA also empowers the STB to convey interests in real property, including rail lines, to Amtrak, and to determine the compensation Amtrak should pay for such property interests.[3]

In order to appreciate the importance of the RPSA's access provisions, it bears noting that 97% of Amtrak's 22,300 route-mile network and over 70% of Amtrak's train-miles in 2019 were on rail lines owned by freight railroads and regional transportation authorities. While the vast majority of the terms governing Amtrak's operations over host railroads are negotiated without STB involvement, those negotiations take place against the backdrop of an STB that is empowered to resolve disputes and impose reasonable terms if the parties are unable to agree. In every case in which Amtrak has sought access to a host railroad's lines, facilities, or services under these provisions, the ICC/STB have found that the access Amtrak requested was necessary to carry out the RPSA. Were it not for these access provisions, the fulfillment of Amtrak's statutory goals, the continued operation of nearly every Amtrak route, the expansion of Amtrak's routes and services, and the compensation and terms applicable to Amtrak's operations on host railroads would be subject to the whims of individual host railroads who could demand unreasonable compensation and other terms or simply refuse to accommodate Amtrak's operations.

For example, Amtrak has temporarily reduced the frequencies of certain long distance trains. Our right to restore service is firmly grounded in statute, but that may not stop some host railroads from seeking to prevent these important trains from resuming daily service. This is why the STB's enforcement authority is essential.

The RPSA also requires railroads to give Amtrak trains preference over freight trains, but Amtrak had no means of achieving enforcement of this statutory obligation until enactment of Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). This provision, codified at 49 U.S.C. 24308(f), authorizes the STB to conduct investigations of poor on time performance of Amtrak trains, and if it finds that the poor performance was attributable to failure to provide preference, to award damages and other relief. Section 213 also transferred authority for determining, upon application by a railroad, whether providing preference to Amtrak would materially lessen the quality of transportation for freight shippers from the Secretary of Transportation to the STB. As I will discuss in a moment, more than twelve years after the enactment of PRIIA the STB continues to be precluded from carrying out its responsibilities under PRIIA 213 due to litigation brought by the AAR.

In addition to its jurisdiction over disputes between Amtrak and its host railroads, the STB also has authority:

- To require continuation of, and determine compensation for, certain commuter and freight rail operations on the portions of the Boston-to-Washington Northeast Corridor and other rail lines that Amtrak acquired pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976; [4]
- To resolve, or assist in resolution of, disputes regarding the implementation of or compliance with the Northeast Corridor (NEC) Cost Allocation Policy developed pursuant to Section 212 of PRIIA to allocate NEC costs among Amtrak and commuter railroads; [5]
- To resolve, or assist in resolving, certain types of disputes arising under the Cost Methodology Policy for State Supported Services operated by Amtrak in partnership with states that was developed pursuant to Section 209 of PRIIA; [6] and
- To require, if certain conditions are met, that Amtrak provide facilities, equipment or services to a state that has selected an entity other than Amtrak to provide services for the operation of a state-supported route.[7]

I would like to focus my testimony on three of the issues regarding Amtrak and its host railroads over which the STB has jurisdiction: Amtrak's preference rights; the schedules of Amtrak trains; and resolution of disputes regarding the operation of additional Amtrak trains.

[2] National Railroad Passenger Corp. v. Atchison, T. & S. F. Ry., 470 U.S. 451, 468–469, n. 23 (1985).
[3] 49 U.S.C. 24311(c).
[4] 49 U.S.C. 24903(c).
[5] 49 U.S.C. 24905(c).
[6] 49 U.S.C. 24712(c).
[7] 49 U.S.C. 24702 note.

ON TIME PERFORMANCE AND PREFERENCE OVER FREIGHT TRANSPORTATION

The public bargain with the freight railroads that relieved them of the obligation to operate unprofitable intercity passenger rail service and created Amtrak included an important condition: freight railroads would provide Amtrak passengers traveling over their rail lines with "preference" over freight transportation. This was not a new concept at the time. When freight railroads operated their own passenger trains before Amtrak, they recognized that prioritizing trains carrying passengers over slower freight trains carrying cargo was critical to providing a viable passenger service. Pity the dispatcher that delayed the 20th *Century Limited* or the *Super Chief* for a freight train. As the AAR has stated, when Amtrak was established freight railroads' assurances that they would "grant Amtrak trains preference over their own freight trains" comprised an important part of the deal.[8] The commitment was short-lived. Some railroads quickly backtracked on their promise and customers suffered: on time performance (OTP) of Amtrak's long distance trains plummeted from 70% in 1972 to 35% in 1973. This led Congress to enact a 1973 amendment to the Rail Passenger Service Act specifically providing that "[e]xcept in an emergency . . . Amtrak has preference over freight transportation . . ." which remains the law today.

Amtrak's right to preference over freight transportation under the law is clear but often ignored, most likely because of a lack of enforcement, as I will cover later. The largest cause of delay to our customers is "freight train interference," typically caused by a freight railroad requiring an Amtrak passenger train to wait so that its freight trains can operate on the tracks ahead. On the U.S. rail network, rail line owners control the dispatching of trains that operate on their lines, which means the freight railroads have substantial control over the on-time delivery of Amtrak customers traveling on freight-owned rail lines. An analogy to air travel puts this reality in perspective. What if air cargo carriers were responsible for air traffic control? I would posit that planeloads of travelers would be left circling above airports while cargo jets landed first unless an effective regulatory regime existed to ensure the opposite.

When freight railroads ignore the law, our customers and your constituents suffer. Amtrak rigorously tracks all delays on every train to the minute and categorizes them according to the cause of delay. Freight train interference delays amounted to one million minutes in FY 2019—equivalent to nearly two years of passengers waiting for freight trains to operate first. As a result of these delays, the on time performance of nearly all long distance services, and many state-supported trains, is unacceptably low. In FY 2019, only 42% of long distance customers and 75% of state-supported customers arrived at their destination on time, and a complete listing of the on time performance for each Amtrak route is included in the Appendix. The disregard of Amtrak's right to preference set forth in law is a fundamental challenge to Amtrak's survival and our ability to provide reliable service to the nation, including to many of your home districts. This is not fair to your constituents and they deserve better service than they are receiving from many host railroads.

Moreover, while the law allows the STB to grant relief to a freight railroad from the obligation to provide preference in the event that doing so would materially lessen the quality of freight transportation provided to shippers, no railroad has ever sought such relief. Why? We believe this is because the presence of a few daily passenger trains on freight railroad mainlines is no threat to the quality and growth of freight transportation. For comparison, Amtrak's mostly two-track Northeast Corridor mainline between Newark and New York Penn Station hosts up to 48 trains an hour. On most host railroad mileage, Amtrak operates two trains *a day*.

The experience of VIA Rail Canada, Canada's intercity passenger rail operator, clearly demonstrates the dire consequences when there is not even the pretense of the right to preference over freight transportation. As noted in a 2016 Special Examination Report of VIA Rail by Canada's auditor general, "in Canada, passenger trains do not have the right of way. Therefore, VIA's trains are frequently required to yield to freight traffic, which sometimes results in significant delays."[9] These delays due to lack of preference have decimated the performance of VIA's principal long distance train, the Toronto-Vancouver *Canadian*. In 2009, VIA added an extra night to the *Canadian*'s schedule with the expectation that this would improve its poor on time performance. Instead, on time performance plummeted to just 8% in

[8] Statement of Edward R. Hamberger, President & CEO of the AAR, at Hearing on Passenger Rail Financing, Subcommittee on Surface Transportation and Merchant Marine of the U.S. Senate Committee on Science, Commerce, and Transportation, June 5, 2003, p. 5.

[9] VIA Rail Canada, *Special Examination Report—2016*, March 16, 2016, p. 12 (https://www.viarail.ca/sites/all/files/media/pdfs/About__VIA/2016__OAG__Special__Exam__VIARail__Canada__ENG.pdf).

2018 and some trains operated as much as 43 hours late.[10] In that year, VIA added an additional 12 hours to the *Canadian*'s schedule, but on time performance continued to deteriorate.[11] VIA's recently released five-year plan states that operation of the *Canadian* "is not sustainable" due to a "combination of poor OTP" and "significant increases to the schedule."[12]

One of the reasons why freight railroads can delay our passengers while facing essentially no consequences is because Amtrak's ability to enforce our right to preference is limited. Only the U.S. Attorney General is presently allowed to bring a case to enforce provisions of the RPSA, and in the 47 years since the preference law was enacted, the U.S. Department of Justice (DOJ) has only initiated one case to enforce Amtrak's preference rights. That was in 1979, in a case against what was then the Southern Pacific (since merged into Union Pacific). The D.C. District Court entered a Consent Order under which Southern Pacific was ordered to "accord to the operations of the *Sunset Limited* between New Orleans and Houston a preference over freight trains in the use of Southern Pacific's rail lines in accordance with" the preference law, as well as other requirements to support that order. Because DOJ does not represent Amtrak, it has no obligation to enforce Amtrak's preference rights and has not done so for over 40 years.

That is why Amtrak is particularly appreciative of the work of this Committee to include a provision in the Moving Forward Act that would allow Amtrak itself to seek enforcement of its right to preference, a vital step toward improving Amtrak on time performance. Simply put—if this provision is enacted, we believe host railroads will stop ignoring the law and your constituents will receive the service that they deserve.

More than ten years ago, Congress recognized the challenges that Amtrak faces regarding freight railroad noncompliance with the statutory right to preference and passed two provisions in the Passenger Rail Investment and Improvement Act of 2008 (PRIIA): Section 207, which directed Amtrak and the Federal Railroad Administration (FRA) together to develop metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, and Section 213, which set forth a new process for the STB to investigate the causes of substandard on time performance. Section 213 provides that the STB may initiate an investigation, or "Amtrak, an intercity passenger rail operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service" may require the STB to initiate an investigation, when "the on time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 207 of the Passenger Rail Investment and Improvement Act of 2008 fails to meet those standards for 2 consecutive calendar quarters . . ." The STB would then determine whether the failure to achieve the minimum standards "are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation" and potentially award damages or prescribe other relief to Amtrak.

Unfortunately, shortly after the metrics and minimum standards rule was issued in 2010, the AAR filed suit, spending nearly a decade and millions of dollars fighting to prevent the implementation of the minimum standards. When the litigation finally concluded in 2019, Amtrak and FRA once again developed metrics and minimum standards, publishing a proposed rule in March of this year.

Just this week, the final metrics and standards were issued once again. This landmark rule fulfills the intent of Congress to create a framework to help ensure that your constituents traveling on Amtrak arrive at their destination on time, and if they do not, the responsible parties are held accountable. The establishment of an 80% customer on time performance standard grounds the regulatory framework in the experience of our passengers. That is, for a given train, a minimum of 80% of our customers must arrive at their destination within 15 minutes of the scheduled time for two consecutive quarters. If the standard is not met, the STB can investigate in accordance with the terms of Section 213. We appreciate the hard work and leadership of Administrator Batory and the FRA to progress the rule and reach this critical milestone in the pursuit of a reliable intercity passenger rail network.

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[10] VIA Rail Canada, *Summary of the 2019–2023 Corporate Plan and 2019 Operating and Capital Budgets*, July 26, 2019, p. 9 (https://www.viarail.ca/sites/all/files/media/pdfs/About__VIA/our-company/corporate-plan/Corporate__Plan2019.pdf).

[11] VIA Rail Canada, *Second Quarter Report 2019*, p. 37 (https://media.viarail.ca/sites/default/files/publications/VIA__Q2__2019__EN__1.pdf).

[12] VIA Rail Canada, *Summary of the 2020–2024 Corporate Plan and 2020 Operating and Capital Budgets*, September 30, 2020, pp. 19–20 (https://www.viarail.ca/sites/all/files/media/pdfs/About__VIA/our-company/corporate-plan/Summary__2020-2024__Corporate__Plan.pdf).

While the final rule has been issued, Amtrak remains concerned that the AAR will pursue additional legal challenges to prevent the rule's implementation. Last year, the AAR testified to Congress that while the devil is in the details, the federal government should "move forward in its development of metrics and standards . . . [and that the] STB is the appropriate authority to evaluate and investigate those situations once the metrics and standards are in place." The AAR stated further that the metrics and standards represented "a path forward that can be workable." Now that the final metrics and standards have been published, more than a decade after Congress first directed the development of these standards in PRIIA, the important question is: will the AAR once again try to block the implementation of these minimum standards? Riders need more on time trains, not more litigation. Another protracted legal fight would simply not be fair to our customers and your constituents.

The metrics and standards form just one of two potential triggers for an STB investigation. The second is ostensibly more straightforward: 80% on time performance. Here, the AAR and some freight railroads spent more money and energy in litigation to strike down the STB's definition of on time performance. The result was to make it impossible for Amtrak to appeal to the STB to investigate poor on time performance and preference violations.

Freight railroads' and AAR's history of using their tremendous resources to thwart the intent of Congress to give Amtrak a remedy for their violations of federal law demonstrates the need for Congress to make crystal clear that the 80% on time performance standard is measured by the arrival of an Amtrak train at each station, no later than 15 minutes from the time in the published schedule. This is consistent with the statutory goals for on time performance of Amtrak trains that have been in force for 39 years. Performance below this standard would permit Amtrak to appeal to the STB for relief, as originally envisioned by Congress.

Amtrak would prefer not to litigate to redress preference violations, but history has proven that the only times when Amtrak is provided with reliable service across the system is when a real threat of preference enforcement has existed. Around 2008, with the looming passage of Sections 207 and 213 of PRIIA, the average on time performance of Amtrak long distance trains increased 45 percentage points to 75%. After AAR launched its legal challenge to Section 207, the average on time performance of these same trains fell a full 22 percentage points within one year. An annotated chart presenting the on time performance of long distance trains since Amtrak's inception is included in the Appendix.

Preference violations—and the absence of preference enforcement—have also meant that public investment in freight railroad infrastructure to improve passenger rail performance has not yielded promised returns for passengers or state funding partners. For example, after nearly $500 million were invested in the freight railroad line used by the State of North Carolina-supported *Piedmont* service, host railroad delays actually increased in the year after completion of the project, up to twice the level they were prior to the investment. Host railroad delays eventually fell somewhat, but there is still much room for improvement. On the route into Chicago used by three train services supported by the State of Michigan, as well as our *Capitol Limited* and *Lake Shore Limited* long-distance trains, $200 million of public funds were invested into the Englewood Flyover and Indiana Gateway projects. Today, however, passengers traveling on this line regularly encounter severe—and eminently avoidable—host railroad delays. Taxpayers and passengers deserve a better return on their investment.

Even freight railroads' own initiatives to improve operating efficiency have sometimes resulted in more delays to Amtrak customers. Most of the major freight railroads have recently adopted new operating practices, called "Precision Scheduled Railroading," that they claim have made their operations more reliable. However, passengers traveling over lines owned by railroads that have deployed Precision Scheduled Railroading principles have experienced severe delays, in part driven by the operation of trains too long to fit into the existing sidings on the line. In recent months, passengers on Amtrak Cascades and *Missouri River Runner* trains have been forced to follow freight trains for miles, at a slower speed, because the freight train ahead could not fit into a siding to allow the Amtrak train to pass. Passengers have also been stuck on trains for hours while freight trains experience mechanical issues, inherent to the operation of extremely long and heavy freight trains, that effectively shut down the line. We appreciate that the Committee has recognized the potential adverse effects of certain Precision Scheduled Railroading practices and included in the Moving Forward Act a Government Accountability Office study on the impact of the implementation of Precision Scheduled Railroading on Amtrak and other stakeholders, as well as a National Academies study of the safety impacts of freight trains that are longer than 7,500 feet.

Some freight railroads claim that providing passenger trains with preference is an unreasonable standard that limits the efficiency of the rail network and service provided to shippers, or that it will bring freight movement to a standstill. These inflated claims do not withstand any level of scrutiny. First, freight railroads can seek relief from the STB if they truly believe that providing Amtrak with preference materially lessens the quality of freight transportation provided to shippers. The fact that not one railroad has sought such relief suggests that either railroads do not believe providing preference affects the quality of service provided to shippers or the railroads are not providing Amtrak with preference in the first place. Second, there is no correlation between freight volumes and freight train interference delays on most rail lines, which means dispatching decisions unrelated to the level of freight traffic drive Amtrak on time performance. Simply stated, freight railroads cannot show that compliance with federal law on preference leads to a detrimental impact on their freight transportation business. When freight leadership has decided to dispatch Amtrak trains according to the law, we have seen Amtrak's on time performance improve literally overnight. During these times, there was no evidence of negative impacts to the overall fluidity of America's rail network. In fact, it has been reported by some freight railroad leaders that efficient Amtrak service is a strong indicator that their own operations are running efficiently.

The disparate levels of service experienced by passengers traveling over each host rail line can be stark. Canadian Pacific, which received an "A" on Amtrak's 2019 Host Railroad Report Card (a copy of which is included in the Appendix) dispatches Amtrak trains with minimal delay, which has led to on time performance of the *Hiawatha* consistently above 90% each year. At the other end of the class is Norfolk Southern, which received an "F" on the last Host Railroad Report Card. Customers traveling on Norfolk Southern often encountered severe delays. On the *Crescent*, which primarily operates over Norfolk Southern, nearly 70% of customers were an average of an hour and a half late to their destination in 2019. Host railroads can quickly improve the passenger experience if they elect to do so. CSX reduced freight train interference delays to passengers by nearly 50% in a matter of months in late 2018, improving its overall performance to the equivalent of a "B+" on the report card.

There is absolutely no reason why this nation cannot have both a world class freight rail network and modern intercity passenger rail service. Amtrak wants both freight and passenger rail to succeed, and it appears that individual freight railroads agree with us to widely varying degrees depending on the railroad and sometimes on the individuals making decisions.

The law is perfectly clear: passenger trains have preference over freight trains. This was the promise that the freight railroads made to convince Congress to relieve them of their passenger obligations; and when that promise was broken, it was the intent of Congress in passing the preference law. Clarifying the statute would empower the STB to investigate violations of that law. Until then, your constituents ultimately face the consequences in the form of hours-late trains, missed business meetings and family events, and the lost opportunity to travel reliably by rail across the country.

Schedules Must Serve the Needs of Amtrak Customers

The train schedule is one of the fundamental attributes of Amtrak travel that determines whether a trip is attractive to customers and provides a valuable transportation option for communities. The AAR and some freight host railroads claim that schedules are outdated and never change. This is incorrect. It is important to note that all schedules in operation have been agreed on with every host railroad and state partner associated with each train. Amtrak and host railroads discuss schedules frequently—every week, in the case of some host railroads—and schedule accuracy is also regularly tested using statistical analysis and ride study programs.

The importance of schedules was recognized at Amtrak's founding and is embedded into law. The RPSA directs Amtrak to offer "efficient and effective intercity passenger rail mobility consisting of high-quality service that is trip-time competitive with other intercity travel options." Congress also provided that Amtrak should "operate Amtrak trains, to the maximum extent feasible, to all station stops within 15 minutes of the time established in public timetables" and "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." Unfortunately, for too many trains these standards are not met, with limited trip-time competitiveness compared to alternative travel modes and an effective speed much lower than 60 miles per hour.

Schedules are designed based on the amount of time it takes to travel between two points without delay, plus recovery time or "pad" to help a train maintain the published schedule in the event delays are encountered during the trip. There are often several hours built into a long distance train's schedule to absorb delays. For example, on the *Coast Starlight*, which operates between Los Angeles and Seattle, it would take 27 hours to travel the route by train without delay. However, the published schedule includes five hours of recovery time to absorb en route delays. Even with this pad, only 50% of customers arrived within 15 minutes of their scheduled time in FY 2019, and 64% arrived on time in FY 2020.

Schedule modifications are regularly implemented, often at a host railroad's request. For example, in recent years Amtrak has not operated the *Crescent* between Atlanta and New Orleans for over a month at Norfolk Southern's request. This year, the schedule of the *Illini/Saluki* between Chicago and Carbondale, Illinois was temporarily modified many times, adjusting the departure times by as much as three hours and adding half an hour to the schedule at Canadian National's request; several trains were also canceled in their entirety. Note that these changes can have a severe impact on your constituents; at the host railroad's insistence, the train may operate at a time that is no longer convenient or attractive to a potential customer.

The proposed rulemaking for Metrics and Minimum Standards for Intercity Passenger Rail Service that the FRA published in March of this year included guidance on schedules, stating that the recovery time should be redistributed within each schedule—with no time added—to align the schedule with the proposed customer OTP metric and improve the likelihood that a customer will arrive on time by putting the pad in the "right" place. Amtrak and host railroads have redoubled our efforts to assess schedules and determine whether any changes are necessary in light of the proposed metric. Customer OTP has been Amtrak's internal measure of reliability for several years, so many schedules have already been designed or modified to align with the customer OTP metric, such as the *San Joaquin* service in California and *Northeast Regional* trains that operate in Virginia. For other routes, we are nearing agreement on potential modifications.

What is often lost in the negotiations with host railroads and AAR talking points is that schedules must serve the needs of passengers. In fact, there seems to be a general indifference to the competitiveness of Amtrak's service relative to driving or flying by most hosts, as if the trip times of a hundred years ago—many of which we currently cannot even meet owing to the slow-speed design of our now freight-biased system—are all we should hope for. Congress expects Amtrak to offer intercity passenger rail as a viable alternative to other modes as codified in Amtrak's mission. In the 21st century, that means achieving highway-like average speeds and reliable service, on schedules optimized for the needs of the traveling public.

While some host railroads assert there is a trade-off between longer schedules and on time performance, that is a false choice. Current schedules already include plenty of time to absorb delays and lengthening schedules provides more opportunity to delay passengers. Further, what some host railroads deem to be a "modest" schedule change has historically included the addition of as many as several hours to the schedule—drastic and unnecessary schedule changes when OTP could be improved by simply reducing delays and enforcing Amtrak's right to preference. Lengthening the schedule allows for additional time to delay the train and inconveniences our passengers who would otherwise be able to arrive at their destination sooner. Additionally, lengthening the schedule costs Amtrak and any state that funds the service.

For many of Amtrak's trains, schedules already reflect an average speed that is far below 60 miles per hour and offer limited trip-time competitiveness. Even with the substantial pad in the existing schedules, host railroads regularly ask Amtrak to lengthen schedules further—sometimes by several hours—to absorb additional host railroad delays. The question we must ask is why should your constituents bear the burden of a host railroad's inability to manage their own operations effectively?

Communities and passengers across the country deserve intercity passenger rail service that meets their needs, and the standards set forth under law and schedules must be designed accordingly. If we are to provide compelling, trip-time competitive transportation services, we need cooperation from host railroads to offer attractive schedules to customers that are dispatched on time according to the law.

Resolving Disputes Over Amtrak's Operation of Additional Trains

One of Amtrak's most important rights administered by the STB is the ability to add additional trains and routes on any rail line whenever that is necessary to advance the broad purposes of the RPSA. When Amtrak was created, Congress anticipated that it would expand beyond its original route network and operate faster trains to attract passengers away from congested highway and aviation systems. In testimony urging the enactment of the RPSA of 1970, the president of the AAR assured Congress that private railroads stood ready to accommodate new high-speed Amtrak services on their tracks:

> If the passenger trains run 150 miles an hour and we are still to run heavy coal trains over them, from my experience we will have a little problem of maintenance, but we can do it and the costs can be fairly shared.[13]

However, after Amtrak began operations, some freight railroads did not fulfill their obligation to allow Amtrak to operate additional trains, even those that would operate at conventional speeds. Finding that railroads were impeding additional Amtrak services by demanding "inordinate capital investments" before they would allow them, Congress enacted in 1980 the Additional Trains Provision of the Rail Passenger Service Act (RPSA). That provision, now codified at 49 U.S.C. 24308(e), was intended to provide an "expedited procedure," supplementing Amtrak's existing legal remedies, for Amtrak to obtain an order from the Secretary of Transportation allowing it to operate additional trains, with the railroad having the burden of proof if it claimed that the additional trains would impair freight operations.

The problem of host railroad intransigence the Additional Trains Provision was intended to address remains today. Rail freight traffic has been declining—down 10% from 2006 to 2019—and railroads that have embraced Precision Schedule Railroading claim that it has produced excess rail line capacity. Nevertheless when Amtrak seeks to add additional trains—often at the request of state agencies who will be funding the additional service—many host railroads continue to demand exorbitant capital investments that clearly are not necessary to accommodate limited new operations or modest increases in service on existing routes. Some host railroads have refused to engage in joint planning using objective, agreed-upon, criteria to determine whether, and if so what, capital investments are required. Instead, they insist that Amtrak or its state partners fund capacity modeling studies performed by the railroad or consultants it controls, using assumptions and criteria unilaterally chosen by the railroad and data not shared with Amtrak.

Host railroad demands have delayed, and in some cases thwarted entirely, efforts by Amtrak and its state partners to add additional trains and routes to serve growing regions and corridors that are underserved or not served at all by Amtrak's existing network. Despite the substantial time and resources expended by Amtrak and state partners, efforts to expand Amtrak service take far too long. Even with nearly five years of joint planning and negotiations, we still do not have an agreement to restore passenger service to the Gulf Coast. It simply should not take five years to determine what needs to be done to enable the operation of two daily round trips. Amtrak and its partners have also struggled for years to pursue growth opportunities for the *Hiawatha* and *Pennsylvanian* services, preventing potential customers and communities from benefitting from increased connectivity and attractive transportation alternatives. Efforts with the host railroad just to add temporary trains to improve Pacific Northwest service during the World Athletics Championships in Eugene, Oregon (now scheduled for 2022) have been persistently challenged.

At the heart of these tactics appears to be a concerted effort to alter Amtrak's right of access by fiat. The law is clear that Amtrak has a right to use host railroad infrastructure at incremental cost, and to add additional trains to meet increased demand. We do this, in essence, to fulfill the railroads' former common carrier passenger service obligation. As the Supreme Court has stated, the railroads have "ongoing regulatory obligations" under the RPSA to "provide operational assistance and facilities" for Amtrak under terms determined by the STB that are "consistent with the railroads' continuing obligations as common carriers."[14]

Amtrak should not be required to undertake years-long studies, or provide massive capital investment to increase capacity, every time we seek to add an additional train. Yet, today, these are the demands of many of our hosts for new or additional service. They have effectively inverted the logic of the law, denying us the additional use of their rail lines we need and forcing us to the STB to gain access, as opposed to providing us access as a matter of course and seeking relief themselves before the Board if they felt real harm to freight transportation was the likely outcome of our additional service. Imagine what it would be like if a company with a government-granted monopoly over an essential telecommunications network limited ac-

[13] Testimony by Thomas M. Goodfellow, President of the AAR, at Passenger Train Service—Supplemental Hearings, Subcommittee on Transportation and Aeronautics of the U.S. House of Representatives Committee on Interstate and Foreign Commerce (June 3, 1970), p. 111.

[14] National Railroad Passenger Corp. v. Atchison, T. & S. F. Ry., 470 U.S. 451, 468–469, n. 23 (1985).

cess to the level of use in 1971? Or if Amtrak demanded exorbitant capital investments each time one of the Class I railroads that provide freight service on the Northeast Corridor and other Amtrak-owned rail lines sought to operate an additional freight train to serve growing port traffic or new industries?

To address this problem, the Additional Trains Provision needs to be updated and clarified to provide a fair, well-defined, and expeditious process for resolving disputes over adding Amtrak services. Crucially, the current language does not take into account that, while some rail lines will require investments to increase capacity, others have the capacity to accommodate additional Amtrak trains on existing infrastructure.[15] Nor does it require that assumptions, criteria, and processes used to decide upon any necessary capital investments be determined impartially, and not unilaterally by the host railroad.

Amtrak is gratified that the Moving Forward Act that originated in this Committee and the House adopted includes, in Section 9205, amendments to the Additional Trains Provision that address these issues. I have appended to my testimony the language of that provision as amended by the Moving Forward Act and have noted several additional minor changes that Amtrak recommends be incorporated. One of the cornerstones of Amtrak's reauthorization proposals is to develop new routes, and increase service frequency on existing routes, to reflect demographic changes, population increases, and growing demand for passenger rail services since Amtrak's largely unchanged route system was developed a half century ago. These goals directly correlate with Congress's vision for Amtrak to bring service to underserved communities and regions, provide a viable, energy-efficient, low-carbon alternative to flying or driving, and work with its state partners to provide additional service in fast growing corridors. An expedited, fair, and impartial process for resolving disputes over Amtrak's operation of additional trains is essential to making that happen.

Additional STB Improvements

In addition to the nuanced policy matters discussed earlier in my testimony, there are a number of practical measures Congress can take that will help to maximize the effectiveness of the STB in ensuring a thriving passenger rail system that meets the needs of the American public. The STB requested a total of $37.5 million for FY 2021 in furtherance of its statutory responsibilities and in support of its efforts to continue investing in personnel and modernizing workflow processes and data capabilities. Amtrak supports this request and urges Congress to make every effort to meet the Board's desired funding level, and in fact, Amtrak supports additional resources for the STB to allow it to acquire staff with specific expertise in passenger rail issues in recognition of the central role the Board plays in various matters involving passenger railroads, despite the Board's more common focus on freight rail issues.

Adequate staffing—in terms of both staff-size and dedicated passenger rail staff—would also increase the Board's capacity to handle disputes between Amtrak and freight railroads in the investigatory manner Congress intended, as noted in PRIIA 213. When Congress passed PRIIA, it recognized that additional STB staff would be required to carry out its new role in investigating poor on time performance and preference violations, and provided that 15 additional staff members should be added for this purpose. Yet to date, sufficient funding has not been provided for this additional passenger rail staff, and we believe this has seriously hampered the Board's ability to carry out the robust statutory role envisioned for it by Congress.

For example, when Amtrak brought two proceedings under PRIIA 213, the Board declined to carry out any investigatory functions—even though the statute explicitly provides for the Board to investigate—and instead treated the proceeding as an adversary adjudication, complete with the private discovery efforts and the disputes and delays that process typically entails. The STB should be adequately staffed so that it can effectively perform its fact-finding role and ensure that actions to resolve on time performance issues can proceed in an efficient and focused manner. In light of these considerations, we ask that Congress's FY 2021 funding for the STB include the resources required to hire the 15 additional staff members identified in PRIIA and include funding that is specifically dedicated to the acquisition and retention of passenger rail staff.

[15] See Statement of Ian Jefferies, President & Chief Executive Officer, Association of American Railroads Before the Senate Committee on Commerce, Science & Transportation, "Hearing on Amtrak: Next Steps for Passenger Rail," June 26, 2019, p. 4 ("[M]any freight corridors lack spare capacity . . . When existing or potential future freight traffic levels are so high that there is no spare capacity for passenger trains, new infrastructure might be needed . . .").

Of course, there was another factor that paralyzed the Board's ability to investigate properly poor on time performance, and that was the series of legal challenges brought by the AAR and several freight railroads to insulate themselves effectively from the Board's scrutiny under PRIIA 213.

Despite these challenges and decade-long delays, the PRIIA 207 final rule has now been finalized with OMB, which would serve as the basis for the STB to investigate poor on time performance. Strong congressional funding and a dedicated passenger rail staff will ensure that the STB is well-equipped to step into this much needed function in order to protect your constituents and our customers from host railroad delays. As I noted earlier, the aims of ensuring a world class freight rail network and promoting a modern intercity passenger rail service are not mutually exclusive. We strongly support our freight railroad partners and believe that both passenger and freight rail service have a bigger role to play in meeting the mobility needs of our nation. Amtrak looks forward to collaborating with this subcommittee and the organizations present on today's panel to continue working toward that goal.

I thank you again for inviting me to speak here today. I appreciate your time and your support of Amtrak, and I look forward to your questions.

APPENDIX

ADDITIONAL TRAINS PROVISION AS MODIFIED BY INVEST ACT (WITH AMTRAK PROPOSED CHANGES IN REDLINE)

SEC. 9205. USE OF FACILITIES AND PROVIDING SERVICES TO AMTRAK.

Section 24308(e) of title 49, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1)(A) When a rail carrier does not agree to allow Amtrak to operate additional trains in accordance with proposed schedules over any rail line of the carrier on which Amtrak is operating or seeks to operate, Amtrak may submit an application to the Board for an order requiring the carrier to allow for the operation of the requested trains. Within 90 days of receipt of such application, the Board shall determine whether the additional trains would unreasonably impair freight transportation and—

"(i) ~~for~~ upon a determination that such trains do not unreasonably impair freight transportation, order the rail carrier to allow for the operation of such trains on a schedule established by the Board; or

"(ii) ~~for~~ upon a determination that such trains do unreasonably impair freight transportation, initiate a proceeding to determine ~~any~~ a remedy for such impairment, such as additional infrastructure investments ~~required~~ to be made by, or on behalf of, Amtrak~~.~~ or operational or scheduling changes, as a condition for permitting the operation of such additional Amtrak trains,

"(B) If Amtrak seeks to resume operation of a train that Amtrak operated during the 5-year period preceding an application described in subparagraph (A), the Board shall apply a presumption that the resumed operation of such train will not unreasonably impair freight transportation ~~unless the Board finds that there are substantially changed circumstances~~.";

(2) in paragraph (2)—

(A) by striking "The Board shall consider" and inserting "The Board shall";

(B) by striking subparagraph (A) and inserting the following:

"(A) in making the determination under paragraph (1), take into account any infrastructure investments previously made by, or on behalf of, Amtrak or proposed in Amtrak's application, with the rail carrier having the burden of demonstrating that the additional trains will unreasonably impair the freight transportation; and"; and

(C) in subparagraph (B) by inserting "consider investments described in subparagraph (A) and" after "times,"; and

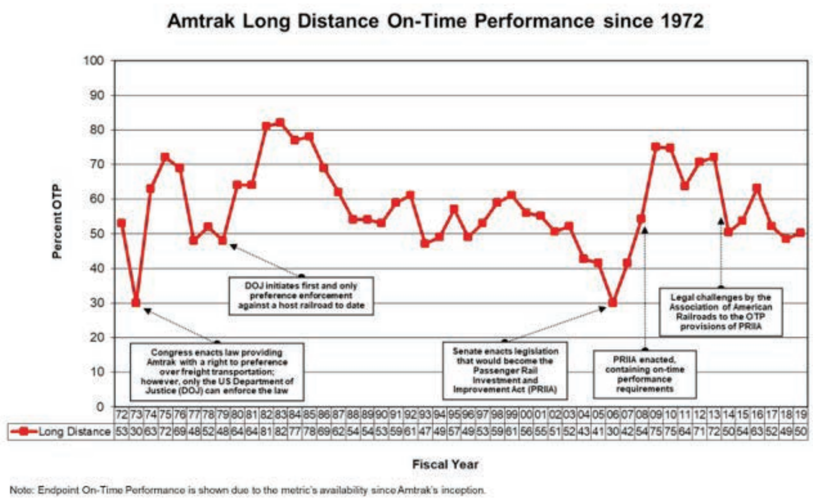
(3) by adding at the end the following:

"(4) In a proceeding initiated by the Board under paragraph (1)(~~B~~A)(ii), the Board shall solicit the views of the parties and require the parties to provide any necessary data or information. Not later than 180 days after the date on which the Board makes a determination under paragraph (1)(~~B~~A)(ii), the Board shall issue an order requiring the rail carrier to allow for the operation of the requested trains conditioned upon additional infrastructure or other investments needed to mitigate the unreasonable interference. In determining the necessary level of any additional infrastructure

~~or other~~ investments, the Board shall use any reasonable criteria, assumptions, and processes it considers appropriate.

"(5) The provisions of this subsection shall be in addition to any other statutory or contractual rights or remedies Amtrak may have ~~to obtain the right~~ with respect to operating~~e~~ the additional trains."

HISTORICAL ON TIME PERFORMANCE OF LONG DISTANCE TRAINS



FY 2019 Customer On-Time Performance by Service

Service	FY 2019 Customer OTP
Amtrak System	74%
Northeast Corridor	83%
Acela Express	83%
Northeast Regional	83%
On Spine Northeast Regional	89%
Richmond / Newport News / Norfolk	75%
Roanoke	70%
Springfield Shuttles	89%
State Supported	75%
Capitol Corridor	87%
Carolinian	56%
Cascades	58%
Downeaster	81%
Empire	79%
Adirondack	69%
Ethan Allen Express	85%
Maple Leaf	67%
New York–Albany	90%
New York–Niagara Falls	66%
Heartland Flyer	47%
Hiawatha	92%
Hoosier	77%
Illinois	61%
Carl Sandburg / Illinois Zephyr	78%
Illini / Saluki	26%
Lincoln Service	71%
Keystone	93%
Michigan	40%
Blue Water	45%
Pere Marquette	64%
Wolverine	34%
Missouri River Runner	67%
Pacific Surfliner	71%
Pennsylvanian	66%
Piedmont	71%
San Joaquins	61%
Vermonter	83%
Long Distance	42%
Auto Train	59%
California Zephyr	34%
Capitol Limited	28%
Cardinal	53%
City Of New Orleans	70%
Coast Starlight	50%
Crescent	29%
Empire Builder	46%
Lake Shore Limited	44%
Palmetto	62%
Silver Meteor	42%
Silver Star	29%
Southwest Chief	32%
Sunset Limited	20%
Texas Eagle	25%

AMTRAK HOST RAILROAD REPORT CARD 2019

Amtrak Host Railroad Report Card 2019

Who delays passengers?

The Host Railroad Report Card grades each of the six Class I freight host railroads based on delays caused to Amtrak trains in 2019.

1	Canadian Pacific	A
2	CSX	B+
3	BNSF	B
4	Union Pacific	B-
5	Canadian National	D
6	Norfolk Southern	F

Average grade for all host railroads: **C**

Grades reflect the passenger experience

A	Most passengers are on-time
B	Passengers on some routes are late
C	Many passengers are very late
D	Most passengers are very late
F	Majority of passengers are severely late

AMTRAK

Mr. LIPINSKI. Thank you, Mr. Gardner.

Mr. Jefferies, you may proceed.

Mr. JEFFERIES. Thank you.

Chairman Lipinski, Chairman DeFazio, and Ranking Member Crawford, members of the committee, thank you for the opportunity to be here today representing America's freight railroads.

As America continues to navigate the ongoing challenges related to the COVID–19 pandemic, railroads are diligently focused on the task at hand, safely and reliably delivering essential goods to businesses and communities across the U.S.

While the railroad value proposition to the American public has many sides, I want to highlight three specific areas.

First, railroads have taken extensive steps to protect their employees from coronavirus throughout the pandemic, which required PPE use, strict social distancing policies, and rigorous cleaning procedures. Our industry is fortunate to have employees whose adherence to myriad safety measures is a constant, and they deserve our gratitude for their dedication.

Second, railroads continue to provide safe and reliable service for customers across the economy. As a result of sustained investment and nimble operations, railroad service levels have remained strong this year, a reality that has been highlighted by Federal officials and prominent customers alike, and broad safety measures are also encouraging, with the overall employee injury rate down 12 percent so far from 2019, while the train accident rate is down 11 percent.

Third, railroads are playing a key role in helping support the Nation's economic recovery. As businesses and consumer behavior have seen dramatic swings this year, such as the booming e-commerce or the aggressive ramp up in auto manufacturing or even the strong uptick in grain shipments, railroads have flexed operations to meet these challenges.

Turning to passenger rail, freight railroads continued to work closely with Amtrak and other passenger partners, adjusting to meet changing needs in the face of unprecedented ridership challenges. While some passenger service offerings have been suspended in recent months, freight railroads stand ready to work with their partners to restore preexisting service when appropriate.

Looking ahead, discussions regarding expansion of passenger rail must recognize Amtrak's unique position and not confuse growth of commuter rail with any perception of access rights. Voluntary agreements with privately owned freight railroads govern such arrangements and have proven extremely successful.

Regarding on-time performance, the Federal Railroad Administration's final rule recognizes that schedules must be updated and aligned. Even regardless of the rule, though, host railroads have been engaged and remain committed to working towards scheduled modernization with Amtrak. If agreed upon schedules are in place and true causes of delay are accurately identified by transparent data, OTP metrics can be a meaningful tool.

As an independent subject matter expert that adjudicates disputes between Amtrak and its hosts, the Surface Transportation Board does have a productive role to play in this process. But, more broadly, the STB has been active on numerous fronts regarding economic regulation of freight rail, many of which you heard about with our prior witness. Regardless of the specifics of any regulatory proposal, it is critical that the Board proceed in a manner that is data driven and fully grounded in sound economic principles. A regulatory environment that promotes investment versus one that dissuades is at stake.

In closing, while our Nation is currently facing complex challenges, freight railroads stand ready to work towards solutions. From helping drive economic recovery, fostering infrastructure investment, or addressing environmental concerns, railroads will play a central role, and public policy set forth by Congress and Federal regulators plays an important role in the continuity of robust rail operations throughout the country.

As this committee reexamines surface transportation reauthorization next Congress, divisive policy measures should be cast aside, and the laser focus should be robust investment into the Nation's integrated infrastructure network that all stakeholders can support.

Thank you. And I am happy to address any questions that you may have.

[Mr. Jefferies' prepared statement follows:]

Prepared Statement of Ian N. Jefferies, President and Chief Executive Officer, Association of American Railroads

INTRODUCTION

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to testify. The AAR's freight railroad members account for the vast majority of U.S. freight rail mileage, employees, and traffic. The AAR's passenger railroad members, which include Amtrak and various commuter railroads, account for more than 80 percent of U.S. passenger railroad trips.

The U.S. freight transportation market is intensely competitive, and shippers choose to use rail because of the superior value that railroads offer. Railroads know they must continue to earn their customers' business. For railroads, this takes many forms, including:

- *Focusing on safety*. Railroads are a safe way to move people and freight, and the past decade has been the safest in rail history. Railroads are working with policymakers, their employees, suppliers, and customers to identify new technologies, operational enhancements, training techniques, and other ways to make railroads even safer.
- *Recognizing capacity is key*. The U.S. freight rail network today is in its best condition ever. Unlike trucks, barges, and airlines, America's privately-owned freight railroads operate overwhelmingly on infrastructure that they own, build, maintain, and pay for themselves. Railroads have poured more than $710 billion back into their networks since 1980, including an average of more than $26 billion per year over the past five years. These investments will help ensure America's freight rail infrastructure remains world-class and that adequate rail capacity exists to meet our freight transportation needs.
- *Emphasizing customer service*. Railroads know their customers operate in intensely competitive markets and demand fast, reliable, and cost-effective service. In response, railroads are continually launching new initiatives to improve customer service.
- *Enhancing sustainability*. Freight railroads have a much smaller carbon footprint than other modes of transportation. Freight railroads today account for only 2.1 percent of transportation-related greenhouse gas emissions while accounting for 40 percent or more of long-distance freight volume. Today's railroads continue to leverage technology and modernize their operations to further improve their sustainability.
- *Advocating for sound public policy*. Key policies that are essential for maintaining and enhancing the safe, reliable service that freight railroads provide include:
  1. Maintaining the existing balanced regulatory structure covering rail rates and service;
  2. Replacing the outdated regulatory framework regarding the incorporation of new technologies with one that continues to protect the public but also fosters innovation and does not "lock in" inferior technologies and processes;
  3. Addressing modal equity, so that the marketplace—not the government—picks winners and losers among transportation modes and so that infrastructure financing is equitable across transportation modes; and
  4. Undertaking more rail-related public-private partnerships.

RAILROADS AND COVID–19

When I testified to this committee on March 4 of this year, none of us knew how profoundly COVID–19 would impact our nation and the world.

I am proud of the men and women of the railroads and other transportation industries who have been working tirelessly with skill and determination, day-in and day-out, behind the scenes. It is remarkable how well our supply chains have functioned over the past eight months, maintaining the flow of goods needed to preserve public health, sustain families, and keep essential businesses in operation.

Early on, America's freight railroads established three main goals in their response to the pandemic. First and foremost: keep their employees safe. Teleworking is now widely available for employees able to work remotely, while social distancing, rigorous cleaning protocols, and the use of protective devices are now ubiquitous to protect employees who work on-site. My understanding is that the number of COVID–19 cases among rail employees has remained relatively low.

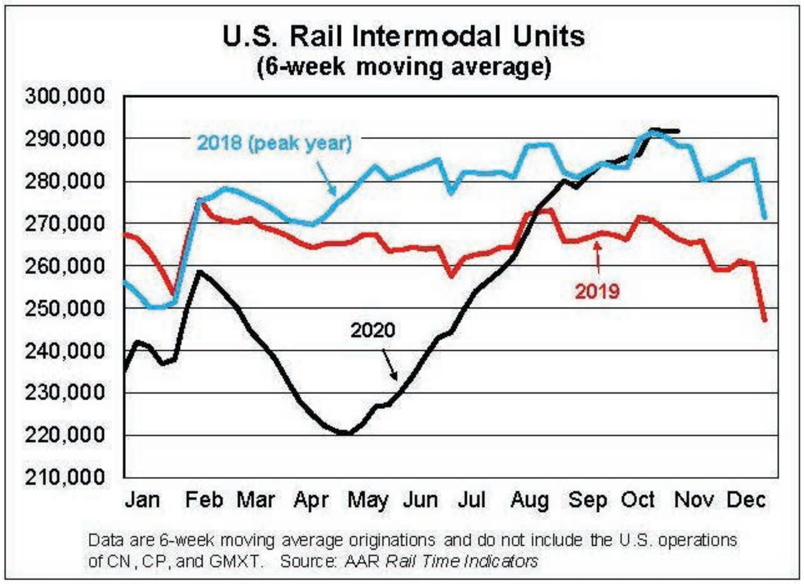
The railroads' second imperative has been to continue to provide high levels of safe, reliable service. I am aware of no instances in which Class I railroads have had meaningful business interruptions due to pandemic-related crew shortages. Railroads' efforts have not gone unnoticed. For example, in a joint letter from the Federal Railroad Administration (FRA) and Surface Transportation Board (STB) to each Class I railroad, the agencies noted that "[w]e . . . appreciate efforts to provide reliable service and enhanced communication to rail shippers and note that . . . we have received many positive reports from across the country." [1]

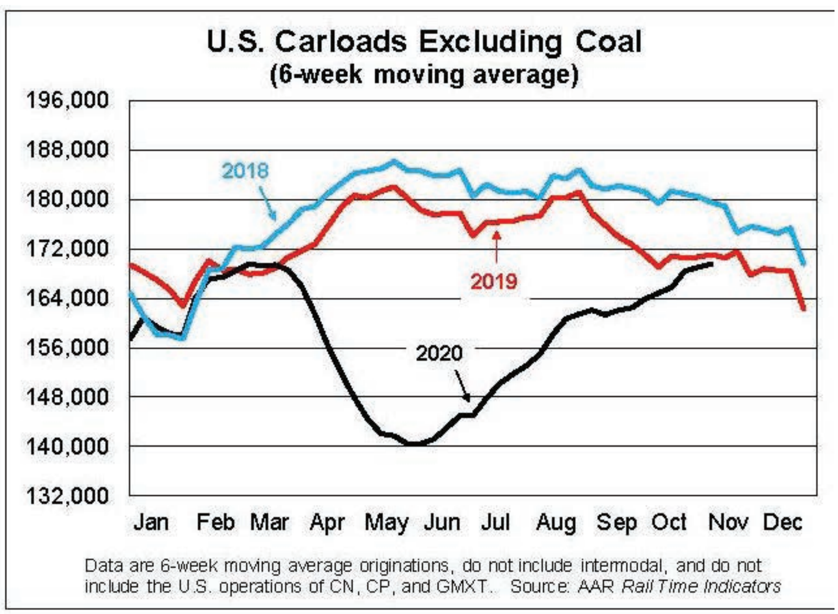
Railroads' third imperative is to continue to preserve their financial stability so they are able to meet our nation's freight transportation demands into the future. One way railroads have done this, starting before the pandemic, has been to re-examine and continually focus on improving their operating practices. The result has been a more resilient rail network that is better able to adapt to market changes. This is one reason why Class I freight railroads have neither requested, nor received, pandemic-related financial assistance from Congress.

When much of the economy shut down during the second half of March 2020, U.S. GDP, consumer spending, and industrial output all plunged. U.S. rail volumes followed suit. Total U.S. rail carloads fell 25 percent in the second quarter of 2020 compared to the same quarter in 2019, the biggest quarterly decline on record. Rail intermodal volume fell 13 percent.

However, rail volumes have been improving in recent months as the economy has reopened. On the intermodal side, volumes are now well above pre-pandemic levels, thanks to surging activity at ports and robust consumer spending on goods. On the carload side, rail volumes are significantly higher than they were in the second quarter and in many cases are close to, or even above, where they were prior to the pandemic.

[1] Letter dated Aug. 24, 2020, from Ronald Batory, Administrator, Federal Railroad Administration, et al., to Jean-Jacques Ruest, President and Chief Executive Officer, Canadian National Railway Company. The same letter was sent to each Class I railroad.





Freight and Passenger Rail Partnerships

Today, freight railroads provide the infrastructure over which many of our nation's passenger railroads operate. The vast majority of the nearly 22,000 miles on which Amtrak operates are on track owned by freight railroads. In addition, hundreds of millions of trips occur each year on commuter rail systems that operate at least partially over tracks or right-of-way owned by freight railroads.

Freight railroads want passenger railroads to succeed. This is more likely to happen if four overarching principles are followed.

First and foremost, safety is always most important. Railroads are an extremely safe way to move people and freight, and we must keep it that way.

Second, passenger rail use of freight rail corridors must be balanced with freight railroads' need to provide safe, reliable service to present and future customers. Current as well as future capacity needs of freight railroads must be protected.

Third, policymakers should provide passenger railroads with the dedicated funding they need to operate safely and effectively, and to pay for expanded capacity when required. Freight railroads should not be expected to subsidize passenger operations.

Fourth, preference for Amtrak's trains does not mean there will never be delays to Amtrak trains. We all know that when we set out driving somewhere or book an airline flight, delays might happen because of congestion, weather, accidents, or other reasons. It's no different for passenger trains on freight rail tracks. Transparency and good data shared by Amtrak with the host freight railroad can help identify causation and potentially assist in avoiding a similar situation in the future. This is discussed in further detail below.

On-Time Performance Metrics

As members of this committee know, Section 207 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) requires FRA and Amtrak to jointly develop metrics and minimum standards to measure performance, including on-time performance (OTP), of Amtrak's intercity passenger trains. Section 213 of PRIIA authorizes interested parties to initiate an investigation at the STB if the average OTP of a train is less than 80 percent for two consecutive calendar quarters. The FRA first issued its metrics and standards rule in 2009, but numerous courts, including the Supreme Court, found it to be unconstitutional or otherwise problematic. The administrative process to finalize a new ruling on metrics and standards is near completion, given that the Office of Management and Budget last week completed its review.

Keeping both Amtrak and freight trains running on time is a tremendously complex issue, but bringing finality to the statutory mandate with an appropriate metric measured against accurate and attainable schedules will create certainty for Amtrak, the host railroads, and, most importantly, the traveling public. The AAR, on behalf of its freight railroad members, has been participating in the FRA rulemaking process since its inception to help ensure this desirable outcome is achieved.

While the proposed rule uses published schedules to measure the customer on-time performance of an Amtrak train, unless the schedules are updated to reflect current conditions and the new metric proposed by FRA, they will give rise to misleading OTP measurements, create unrealistic expectations, and lead to unnecessary litigation at the STB—something the STB expressed concern about in its comments on the proposed rule. More broadly, none of the Amtrak schedules in use today were designed around FRA's proposed metric, something FRA acknowledged in its proposed rule. If underperforming trains (from an on-time point of view) are to be identified based on an OTP metric, their schedules—against which the metric is measured—must be revised and updated as necessary to ensure the metric is reasonably achievable. This may require a modest lengthening of total Amtrak schedules, but that would result in greater certainty for the traveling public and improved OTP for Amtrak. Several passenger rail advocates, including the Southern Rail Commission and Transportation for America, have noted that "many riders would accept slight schedule adjustments if it meant their train could run on time more often." We hope Amtrak will work with our host freight railroad members to do so where needed.

The proposed rule also fails to adequately assess the performance of each individual host railroad on a route with multiple hosts. Therefore, if one host continually delivers a train late to another host, the OTP metric would not be satisfied, and the receiving host could be subject to an STB investigation. Indeed, the FRA acknowledges in the rule that any individual Amtrak customer may travel over the lines of multiple individual host railroads, and that "the customer OTP metric does not easily distinguish performance on individual host railroads." Although the proposed rule includes other metrics that more directly focus on host-specific performance, such as measuring minutes of delay, it is the OTP standard that determines when hosts may be subjected to an STB investigation. Other factors come into play too in evaluating proposed OTP metrics. For example, when track conditions require it, freight railroads temporarily reduce allowable operating speeds for safety reasons. These "slow orders" can delay trains of all types, but safety must take precedence over everything else. Similarly, railroads must devote sufficient time to track and signal maintenance. This often produces unavoidable delays in the short term for freight and passenger trains, but enhances safety and improves reliability in the long term. Freight railroads should not be penalized for making sure their tracks are safe. Put another way, delays caused by what in one way or another are safety enhancements should not count against host freight railroads under an OTP metric. In addition, Amtrak delays are often caused by factors completely outside freight railroad control, including delays caused by Amtrak's own actions. Freight railroads should not be penalized for delays they did not cause and cannot alleviate.

Finally, for host railroads to monitor their performance against an OTP metric, identify improvement opportunities, and take corresponding corrective action, they need a close-to-real-time electronic feed of recent, current, and forecasted station-specific ridership data, as well as historical data for analyzing schedules.

Freight railroads will continue to work cooperatively with the FRA, Amtrak, and others in the rulemaking process to ensure that the new metrics and standards are appropriate, realistic, and fair to all parties.

Amtrak and Private Right to Action

Amtrak's relationship with host railroads is governed, first and foremost, by bilateral operating agreements that are negotiated between Amtrak and a host freight railroad. Key terms, such as train schedules, metrics for evaluating performance, and related incentives and penalties, are included in those agreements. Some of the bilateral agreements are decades old and are showing their age, as the schedule issue discussed above makes clear.

When Amtrak and a host freight railroad are unable to agree on terms for a new operating agreement, either railroad can ask the STB to resolve the matter. Furthermore, if there are disagreements about the operation of additional trains by Amtrak over the hosts' rail line, the statute provides that the STB may resolve that dispute. This is consistent with the intent of Congress that disputes in this area be resolved by the agency with relevant expertise.

Once an operating agreement between a host railroad and Amtrak is in place, disagreements over the interpretation and application of those terms are resolved through binding arbitration before a standing panel of qualified arbitrators. The process works: nearly 100 of these disputes have been filed and resolved by arbitrators in the 50 years since Amtrak was created.

Congress has granted Amtrak additional enforcement rights related specifically to OTP. As noted, if OTP falls below a certain statutory threshold, Amtrak has the right to file a complaint at the STB against the host railroad and to seek relief. Moreover, if the STB determines that poor OTP was due to the freight railroad's failure to give Amtrak trains preference, damages can be awarded to Amtrak. In recent years, Amtrak has filed two such cases against three host railroads. Congress's choice of the STB, rather than the courts, to resolve such questions was intentional. The STB's broad understanding of how the freight rail network operates gives it a unique ability to understand and properly weigh the operational and other evidence each railroad presents.

In addition to being able to pursue relief from the STB, Amtrak, like other government entities, can also bring complaints to the Department of Justice (DOJ) when Amtrak thinks freight railroads are not affording it proper preference. In its history, only one such case has been brought by DOJ.

Amtrak believes it should have a third means of redress beyond the STB and DOJ: a private right of action—that is, filing suit against a host freight railroad in a court of law.

Freight railroads strongly oppose granting Amtrak a private right of action, for several reasons. First, as discussed above, Amtrak already has other options to enforce its rights. Second, it would be premature, given that the metrics and standards rulemaking has not yet been completed by the FRA and ample time has not been provided to allow for implantation and operation of the new standard. Third, it would give Amtrak the freedom to ignore the terms of its negotiated contracts and evade the expert eye of the STB.

Fourth, granting Amtrak a private right of action would open the door to wildly inconsistent decisions by district courts (which, unlike the STB, are not experts on rail transportation policy), as each court would apply its own assessment of how freight and passenger interests should be balanced. The result would likely be an unworkable patchwork of differing standards across different judicial districts and host railroad obligations that varied by jurisdiction. Such a confusing outcome would harm passenger and freight railroads alike.

Amtrak, the host railroads, and the public all have the same goals: efficient, on-time passenger service coupled with efficient, reliable freight service. The best way to achieve these goals is not by creating a third option for legal enforcement, but to focus on enforcement of negotiated service obligations with the option for expert rail agency review as a backstop, and, when needed, access to courts through the Department of Justice.

CURRENT STB RULEMAKINGS

The global superiority of U.S. freight railroads is the direct result of a balanced regulatory system that emanates from the Staggers Act, a bill passed with overwhelming bipartisan support by Congress and signed by President Carter 40 years ago. Today, thanks to the Staggers Act, railroads are able to base nearly all of their rates and service offerings on the dictates of the market and are far more responsive to customer needs than they were previously permitted to be.

Importantly, the Staggers Act did not completely deregulate railroads. The STB has the authority to set maximum rates if a railroad is found to have "market dominance" over a particular movement and the rate is determined to be unreasonable. The STB also retains the ability to take other actions if a railroad engages in anti-competitive behavior.

The success of the Staggers Act was reaffirmed a few weeks ago when more than 1,000 people, of all political persuasions, signed a letter in support of protecting the current balanced regulatory framework. Signatories include eight former U.S. Secretaries of Transportation, more than 550 state and local officials, more than 200 business leaders, representatives of nearly 90 think tanks, and 25 former administration officials and congressional leaders. (The letter is included with this testimony as a separate document.)

The freight rail industry is not complacent, though. Looking ahead, our nation's recovery from the pandemic in the short term and our economic prosperity in the long term will depend on the viability and effectiveness of our freight railroads.

That's why freight railroads are troubled by several proceedings underway at the STB that could derail many of the tremendous gains that have accrued to railroads, rail customers, and the broader economy since Staggers was passed.

First, decades ago, as part of a Staggers-inspired effort to reinvigorate railroads, rail regulators exempted certain rail commodities from rate regulation on the grounds that, because these commodities could easily move by truck or barges, railroads would always face pervasive competition for their movement.

Unfortunately, the STB is considering revoking existing exemptions for some of these products. The STB instituted this proceeding on its own—not because Congress asked it to, but because firms producing or using these commodities asked the STB for it, despite the fact that there's no evidence that railroads even possess meaningful market power, much less have abused such power, in their transportation of these commodities. Revoking the exemptions would conflict with the clear directive from Congress that rail regulators should regulate railroad rates and service only when market forces are not up to the task.

Another second proceeding before the STB involves what the STB calls "final offer rate review" (FORR). It's complicated, but in a nutshell the STB is proposing a new rate-resolution process for small cases in which both a railroad and a low-volume rail customer would submit a rail rate—a "final offer"—to the STB, which would then choose one of the two offers. Railroads are sensitive to the desire to make the STB more accessible to rail customers, but FORR is not an appropriate way to accomplish that goal. To our knowledge, no other regulatory agency uses an arbitration process similar to what the STB proposes, and FORR conflicts in numerous serious ways with statutes that govern the STB. The AAR has offered the STB ideas regarding ways to ensure small shippers have access to the existing rate reasonableness processes in ways that are practical and consistent with existing law.

A third STB proceeding currently underway involves railroad revenue adequacy. A railroad is deemed "revenue adequate" by the STB when the railroad's rate of return on net investment (ROI) equals or exceeds the rail industry's cost of capital (COC). The concept of revenue adequacy is consistent with the unassailable point that, in our economy, firms and industries must produce sufficient earnings over the long term or capital will not flow to them. The subject of the STB proceeding is what, if anything, revenue adequacy means in terms of rail rates.

Some rail industry critics say that a finding of revenue adequacy is evidence that the railroad is already earning as much revenue as it needs. According to this view, when a rail customer challenges a railroad's rate as too high, if the railroad is revenue adequate, the railroad's rates should be subject to more stringent regulation than they otherwise would be, possibly up to and including a hard cap. Put another way, this view says that once a railroad is revenue adequate, it can longer raise rates and may have to lower them.

That's wrong. Revenue adequacy should not be seen as a ceiling for rail earnings; if anything, it's better seen as a floor. The statute's plain meaning intends for the STB to assist railroads in achieving revenue adequacy, not to cap their revenues or more aggressively regulate rates once the railroads become revenue adequate.

Finally, a fourth proceeding underway at the STB involves "mandated switching." Mandated switching is when a railroad that can carry freight all the way from origin to destination by itself is ordered to switch, or interchange, traffic with another railroad that has replaced the incumbent for part of the move. Under established law and regulatory policy, the STB must first find that a railroad engaged in anti-competitive conduct before the STB can order the railroad to switch traffic to another railroad. However, the proposal being considered by the STB would allow it to order mandated switching without showing that the incumbent railroad did anything anti-competitive at all.

Mandated switching is a short-sighted attempt to obtain lower rail rates for a group of favored rail customers at the expense of all other rail customers. It would lead to sharp reductions in rail operational efficiency and in the quality of rail service. It would mean an incumbent railroad that invested in infrastructure and other assets needed to serve a customer could be forced to use those assets for the benefit of another railroad who is taking the customer away—like forcing UPS to use its fleet of local delivery trucks to deliver packages for FedEx. And it would likely mean sharply lower rail revenue caused not by fair competition in the marketplace but by unpredictable and arbitrary regulatory dictates.

MOVING FORWARD ACT

Back on July 1 of this year, the U.S. House of Representatives passed H.R. 2, the "Moving Forward Act." The railroad industry wants to help find solutions to genuine problems that are out there. Regrettably, H.R. 2 includes many provisions that would undermine freight railroads' ability to offer the safe, reliable, and environmentally-friendly service that their tens of thousands of customers require—and in so doing would also negatively affect passenger rail service.

For example, the bill mandates two-person railroad crews in most rail operations. Yet FRA data show no correlation between train safety and the number of crew members in a locomotive cab. A two-person crew mandate would stifle the adoption of new technologies that would enhance safety and reduce the need for a second crew member in many circumstances. Railroads and rail unions should have the option—as they always have in the past—to negotiate crew sizes as part of the collective bargaining process.

Another provision of H.R. 2 that freight railroads oppose would mandate STB mediation when a commuter railroad wants access to a freight railroad's right of way and the two parties cannot come to terms on that access.

Many existing and proposed commuter railroads in the United States operate (or hope to operate) at least partially on tracks or corridors owned by freight railroads. Before it can operate on freight-owned property though, a commuter railroad must first reach voluntary agreement with the freight railroad on various issues, such as hours of passenger operations, the number of commuter trains, access fees, liability protections, track modifications, and more. These issues can often be resolved, as the significant growth in commuter rail over the years shows. Sometimes, though, an agreement is not reached.

Mandated STB mediation in these cases creates the misperception that there is mandated commuter rail access to freight rail facilities. Absent voluntary agreement, private freight railroads should not be forced to allow commuter trains to use freight rail assets any more than any other private business should be forced to grant another company use of its assets without its consent and without just compensation. That said, freight railroads will continue to engage in good faith with commuter railroads whenever there is a credible proposal that involves commuter rail access to freight facilities.

The recently-passed one-year extension of the FAST Act provides Congress with time to forge a longer-term reauthorization addressing critical transportation issues. With total freight traffic expected to grow by close to 40 percent by 2045, the challenges of operating a rail system capable of meeting future needs is daunting and will require the benefit of effective public policy. We believe it's possible to craft a bill that meets Congress's objective without compromising the safe and reliable freight railroad network our nation depends on. Freight railroads look forward to working with this committee and others in Congress to develop a surface transportation reauthorization which best meets this country's transportation needs.

POSITIVE TRAIN CONTROL (PTC) UPDATE

Finally, I'm proud to say that each Class I freight railroad has 100 percent of required PTC route-miles in operation, 100 percent of required PTC-related hardware installed, 100 percent of their PTC-related spectrum in place, and 100 percent of required employee training completed. They are continuing to work to ensure full interoperability by the end of this year.

ATTACHMENT

GORAIL,
425 3RD ST. SW, STE. 940,
Washington, DC 20024, October 14, 2020.

ANN D. BEGEMAN, Chairman,
MARTIN J. OBERMAN, Vice Chairman,
PATRICK J. FUCHS, Board Member,
Surface Transportation Board,
395 E Street SW, Washington, DC 20423.

DEAR CHAIRMAN BEGEMAN, VICE CHAIRMAN OBERMAN AND BOARD MEMBER FUCHS:

This year marks the 40th anniversary of the enactment of the Staggers Rail Act. We write to urge the Board to maintain the balanced underlying economic framework that has been the bedrock of your decisions and ensure that no actions you take undermine the ability of freight railroads to reinvest in the rail network.

Any action inhibiting freight rail investment would threaten economic development and quality of life in our communities, precipitate job losses in the rail supply and contracting sectors, and undercut safety, efficiency and productivity across the rail network, affecting all railroads, small and large.

As you know, the Staggers Act established a visionary approach to regulation that sparked a freight rail renaissance and continues to provide measurable benefits to businesses, consumers, taxpayers and our economy.

This landmark, bipartisan legislation was necessary because decades of rigidly prescriptive federal overregulation had decimated the U.S. freight rail network. Bankruptcies were commonplace, rail rates were rising, safety was deteriorating, and rail infrastructure and equipment were in increasingly poor condition because railroads simply could not earn enough to pay for basic upkeep, let alone innovation and improvements.

Since the implementation of a balanced system of economic regulation under the Staggers Act, which protects rail customers while allowing railroads to manage their assets and pricing, U.S. freight railroads have invested hundreds of billions of dollars in the rail network. Rail traffic has doubled, rail productivity has more than doubled, rail rates are down more than 40 percent, and recent years have been the safest on record.

Freight railroads' massive, post-Staggers investments in infrastructure, equipment and technology transformed a failing rail system into a high-tech, highly efficient, interconnected network that links American communities, businesses and consumers to markets across the country and around the world.

This is important to us and to our country. Every ton of freight moved by rail promotes economic development, mitigates pollution, eases worsening highway congestion and saves taxpayers money. Railroads are four times as fuel efficient as other modes of transport and emit 75 percent fewer greenhouse gases. Additionally, railroads do not require the significant public spending that subsidizes other modes.

Railroads are in the midst of revolutionary technological innovation as they adapt to meet changing customer demands and maintain their status as the safest, most efficient way to move freight over land.

We implore the Surface Transportation Board to preserve the delicate regulatory balance created by the Staggers Act, allowing freight railroads to innovate, adapt and reinvest in the rail network. Our communities, our businesses and our employees depend on it.

Sincerely,

[Editor's note: The 57-page list of 1,000+ signatures is retained in committee files and is also available online at https://gorail.org/content/uploads/Staggers-Anniversay-Letter-to-STB.pdf.]

Mr. LIPINSKI. Thank you, Mr. Jefferies.

We now move on to Mr. O'Toole.

Mr. O'Toole, you may proceed.

Mr. O'TOOLE. Good morning, Mr. Chairman and members of the committee.

Chairman Lipinski, I appreciate the picture behind you, which I am sure Chairman DeFazio knows is the Southern Pacific Railroad's Shasta Daylight passing Odell Lake in the Oregon Cascades. I once rode that train when I was a boy and more recently have been on the Amtrak Coast Starlight past that very same lake.

Now, last year the average American traveled more than 15,000 miles by automobile, flew more than 2,000 miles, rode several hundred miles on buses, walked more than 100 miles, rode 100 miles by urban rail transit and bicycled 26 miles. Meanwhile, Amtrak carried the average American just 19 miles. Of course, a few people rode Amtrak a lot more than 19 miles, and most didn't ride it at all. In contrast, almost everyone relies on the railroads for deliveries of freight.

When considering the role of the Federal Government in general and the Surface Transportation Board in particular in supporting Amtrak, we should remember that one-third of freight ton-miles go by train, but only one-tenth of 1 percent of passenger travel rides Amtrak.

Now, I love passenger trains, but I say Amtrak's creation was a mistake based on erroneous assumptions about the value of passenger trains and the problems faced by the private railroads. In 1970, the railroads' main problem was not money-losing passenger trains, but overregulation by the Federal and State governments. Regulation or not, passenger trains are unable to compete against airlines and automobiles.

A 1958 Interstate Commerce Commission report concluded there was no way to make passenger trains profitable. Yet, some passenger train advocates believe that passenger train losses were imaginary and the railroads simply preferred freight trains over passenger trains. In fact, in the 1960s, railroads had a huge surplus in capacity and would have welcomed any kind of train that covered its basic operating costs.

In 1969, Anthony Haswell, founder of the National Association of Railroad Passengers, made it clear in a congressional hearing that he believed passenger trains could be profitable, and he specifically objected to Government subsidies to passenger train operations, noting that such subsidies would protect inefficiencies in the rail industry and give operators little or no incentive to reduce expenses or increase revenues on their own initiative. He predicted that such subsidies have the risk of becoming permanent drains on Government revenues without commensurate public benefits.

The 1970 collapse of Penn Central shook the industry. Congress should have responded by eliminating the overregulation that was stifling the railroads. Instead, it created Amtrak with the expectation that it would be a for-profit corporation and that taking passenger trains off the railroads' hands would save them from bankruptcy.

Fifty years and more than $50 billion in operating subsidies later, we know that Amtrak isn't and never will be profitable. Anthony Haswell is sometimes called the father of Amtrak, yet he has called Amtrak a legendary boondoggle and admitted that he is personally embarrassed by the organization he helped created. His prediction that operating subsidies to passenger trains would eliminate any incentive to reduce expenses or increase revenues has proven correct.

When Amtrak was created, average rail fares per passenger-mile were two-thirds of average airfares. Thanks to airline deregulation since then, inflation-adjusted airfares have fallen by 60 percent, even as Amtrak fares per passenger-mile have doubled. Average Amtrak fares had exceeded airfares by the 1990s despite huge operating subsidies or perhaps, as Haswell predicted, because those subsidies encouraged inefficiencies.

Today, counting all subsidies to both Amtrak and the airlines, Amtrak spends more than four times as much as the airlines moving someone a passenger-mile. The airlines have made themselves so efficient that they attract well over 100 times as much domestic travel as Amtrak.

The creation of Amtrak didn't particularly help railroads, such as the Milwaukee Road, which went out of business after Amtrak took over. Instead, railroads revived only when Congress passed the Staggers Act in 1980.

One of the effects of deregulation was that railroads shed the surplus capacity that they once had that would have been available to passenger trains. Today, thanks to more efficient operations, railroads that once saw only a handful of trains per day support 60, 70, or 80 or more freight trains a day. This sometimes leaves little room for Amtrak.

Displacing a moneymaking freight train with a money-losing passenger train is especially unfair considering that so few people use the passenger trains while so many rely on freight. Passenger trains are pretty, but they are an obsolete form of transportation. Efforts to give passenger trains preferences over freight will harm more people than it will help.

I believe the Federal Government should end its support of Amtrak and allow passenger trains to operate unhindered where they are viable and disappear where they are not.

Thank you very much.

[Mr. O'Toole's prepared statement follows:]

Prepared Statement of Randal O'Toole, Senior Fellow, Cato Institute

Amtrak is the gnat's eyelash of American transportation. Americans travel an average of more than 15,000 miles per year by automobile. They fly an average of more than 2,000 miles a year. They travel an average of several hundred miles a year by bus, a hundred miles a year on foot, and 26 miles a year by bicycle. They travel an average of just 19 miles a year by Amtrak.

Yes, we bicycle more than we ride intercity passenger trains. But this travel isn't evenly distributed. Just as a few people ride bicycles a lot and most not at all, a few people ride Amtrak a lot, a few more occasionally, and most never ride it at all. Given Amtrak s irrelevance from a transportation viewpoint, it receives undue attention and subsidies from both the federal and state governments.

At the same time, everyone relies on railroads for delivery of freight. Railroads send fuels to electrical power plants, deliver automobiles to auto dealers, produce to markets, and consumer goods to people all across the country. At least a third of all freight ton-miles in the United States are carried by rail while just one-tenth of one percent of passenger-miles are on intercity passenger trains.

James J. Hill, the founder and builder of the rail empire that is today known as BNSF, made this point more than 130 years ago. Contrary to popular belief, there is no evidence that he thought that passenger trains were "neither useful nor ornamental." Why would he when those trains produced 20 percent of his railroads' revenues, a percentage that steadily increased during his lifetime?

He did note, however, that "the so-called [rail] travelling public forms in reality but a small, and the more fortuitous class of the community" whereas those who depend on freight, "direct and indirect, include all. Hence," he continued, "justice requires that railway systems should be cautious not to favor passenger traffic at the necessary expense of freight payers."

We should remember this when considering the role of the Surface Transportation Board in supporting Amtrak. Those who argue that the Surface Transportation Board or any part of the federal government should give Amtrak any kind of special priority should remember these two numbers: only one-tenth of one percent of passenger travel but one-third of freight goes by train.

Personally, I love passenger trains. I once purchased five railroad passenger cars and have written several articles about the history of passenger rail for various journals including *Minnesota History*.

Yet when I look closely at the history of Amtrak, I realize that its creation was a mistake. That mistake was based on erroneous beliefs about the potential value of passenger trains and problems faced by the private railroads.

From the 1910s to the 1960s, the government heavily overregulated the railroad industry. The rates railroads could charge, the services they could provide, and where they could provide them were all ruled by the federal government and most state governments. This regulation stifled innovation and prevented the railroads from effectively competing with other forms of transportation.

Both Greyhound and Trailways were essentially the creation of the railroads, but by 1960 the railroads were no longer allowed to invest in potentially profitable services such as buses or airlines. Yet at the same time they were required to operate money-losing services including most passenger trains.

In 1958, a report issued by the Interstate Commerce Commission concluded that passenger trains lost money and there was no way to make them profitable. The report predicted that private intercity passenger trains would disappear by 1970. It was off by only one year.

Yet a small number of passenger train advocates disagreed with this conclusion. They believed that passenger train losses were imaginary and that the railroads simply preferred freight trains over passenger trains. Transportation economist George Hilton demolished this argument, pointing out that the railroads in the 1960s had a huge surplus in capacity and that they would have welcomed any kind of train that covered its basic operating costs. Still, true believers led by Anthony Haswell, founder of the National Association of Railroad Passengers, persuaded Congress to hold hearings in 1969 on proposals for the federal government to rescue passenger trains.

Haswell's testimony in that hearing made it clear that he believed passenger trains could and should be profitable. In fact, he specifically objected to government subsidies to passenger train operations, noting that such subsidies would protect inefficiencies in the railroad industry and give operators "little or no incentive to reduce expenses or increase revenues on their own initiative." He accurately predicted that such subsidies "have the risk of becoming permanent drains on Government revenues without commensurate public benefits."

The 1970 collapse of Penn Central, which up to that point was the largest bankruptcy in American history, shook the industry and forced Congress to take action. The action Congress should have taken would have been to eliminate the overregulation that was stifling railroad innovation and profitability. Instead, it created the National Railroad Passenger Corporation—Amtrak—with the expectation that it would be a "for-profit corporation."

Fifty years and more than $50 billion in operating subsidies later, we know that Amtrak isn't and never will be profitable. Anthony Haswell is sometimes called the father of Amtrak, yet he calls Amtrak a "legendary boondoggle" and admits that he is "personally embarrassed" by the organization he helped create.

If Haswell was wrong about the potential profitability of passenger trains, he was absolutely correct that operating subsidies to those trains would eliminate any incentive to reduce expenses or increase revenues. When Amtrak was created, average rail fares per passenger-mile were two-thirds of average air fares. By 1990, Amtrak fares had grown to be more than air fares despite huge operating subsidies—or because those operating subsidies encouraged inefficiencies, as Haswell predicted.

Today, roughly half of Amtrak's costs are subsidized by federal and state governments. Amtrak fares per passenger-mile are double average air fares and, counting all subsidies to both Amtrak and the airlines, Amtrak spends more than four times as much moving a passenger-mile than the airlines. Since deregulation, the airlines have made themselves so efficient that they attract well over 100 times as much domestic travel as Amtrak.

The creation of Amtrak didn't particularly help the railroads, which languished under heavy regulatory burdens for another ten years until the Staggers Act was passed in 1980. Conrail, the company that replaced Penn Central, became profitable only after passage of the Staggers Act, proving that deregulation, not Amtrak, was what the railroads needed in 1970.

One of the effects of the Staggers Act was that the railroads shed the surplus capacity that in the 1960s would have allowed passenger trains to survive so long as they covered their basic operating costs. Reducing that capacity has allowed the railroads to reduce their costs and attract more business at reasonable rates. Today, thanks to more efficient operations, rail routes that once saw only a handful of trains per day are now supporting 60, 70, 80, or more freight trains per day.

This sometimes leaves little room for Amtrak. Displacing a single money-making freight train with a money-losing passenger train is especially unfair considering that so few people use the passenger trains while so many rely on the freight trains.

Passenger train advocates want the railroads to give preference to passenger trains or government spending to increase rail capacities. The 2009 stimulus bill, which provided $8 billion in high-speed rail funds (plus another $1.4 billion the next year) showed what happens when the government gets involved in railroads.

Those funds, along with $7 billion in state funds, were spent on ten rail corridors with the intention of increasing the frequencies and speeds of passenger trains in those corridors as well as increasing capacities for freight. Ten years later, in 2019, passenger train frequencies were increased in just one of those corridors and very minor speed increases—typically 1 or 2 miles per hour—were gained in three corridors while speeds actually declined in three other corridors. In essence, this money was entirely wasted.

For example, federal and state taxpayers spent almost $1.4 billion increasing the capacity of a Union Pacific corridor between Chicago and St. Louis. Ostensibly, the purpose was to speed up and increase the frequency of passenger trains. In fact, the increase in speeds would have been small and as of 2019 there had been no increase in either passenger train speeds or frequencies. I am sure Union Pacific appreciates the fact that it can run more freight trains in the corridor, but it should have paid for those improvements itself.

Another corridor was the Northeast Corridor, where Amtrak proudly claims to carry more passengers than the airlines. Yet it admits that it carries only 6 percent of intercity travel in the corridor while highways carry almost 90 percent. Amtrak claims that its Northeast Corridor trains earn an operating profit, but when it calculates those profits it neglects to include depreciation even though depreciation is Amtrak's second-largest operating cost on its annual financial statements.

Depreciation is not just an accounting fiction but a real cost reflecting the amount that needs to be spent to keep infrastructure in a state of good repair. Amtrak's fantasy that depreciation doesn't count reflects its failure to maintain the Northeast Corridor, which now has around a $50 billion maintenance backlog. More than $1.6 billion of stimulus funds were given to Amtrak for the Northeast Corridor, but this wasn't enough to restore the lines and the average speed of trains actually declined. In fact, Amtrak's fastest New York-Washington trains today are slower than Penn Central trains on the same route in 1969.

Amtrak also uses accounting tricks when it claims that fell just $29 million short of making a profit in 2019 and would have made a profit in 2020 were it not for the pandemic. To make that claim, Amtrak not only ignored depreciation, it counted state subsidies to Amtrak trains as "passenger revenues." After correcting these two fictions, Amtrak actually lost well over $1 billion in 2019.

The lessons for the Surface Transportation Board and the federal government in general are clear.

- Railroads and other transportation industries are healthiest when government gets out of their way.
- Passenger trains, while pretty, are an obsolete form of transportation that are not even viable in the Northeast Corridor, much less elsewhere.
- Efforts to give passenger trains preferences over freight trains will harm more people than it will help.
- The federal government should end its support of Amtrak and allow passenger trains to operate unhindered where they are viable and to disappear where they are not.

Mr. LIPINSKI. Thank you, Mr. O'Toole.

Mr. Skoutelas, you may proceed.

Mr. SKOUTELAS. Chairman Lipinski, Ranking Member Crawford, Chairman DeFazio, Ranking Member Graves, and members of the subcommittee, thank you for the opportunity to testify today. I am Paul Skoutelas, president and CEO of the American Public Transportation Association, also known as APTA.

At the outset, I want to thank you, Chairman Lipinski, and express APTA's deep gratitude for all that you have done for passenger rail during your time in Congress. I do not remember a previous time when commuter rail issues have been at the forefront of the Transportation and Infrastructure Committee's agenda than during your tenure, and for that, we thank you.

Commuter rail is critical to our economy, creating and supporting more than 200,000 jobs. Prior to the COVID–19 pandemic, 32 agencies operating as commuter railroads safely carried more than 500 million passenger trips a year, and ridership had grown over 9 percent over the last decade. Commuter railroads' success in advancing their reaches depended, in part, on the Surface Transportation Board and its ability to adjudicate service disputes that come before it. Commuter rail connects people to jobs and to opportunity each and every day.

For passenger railroads, including commuter rail, higher speed rail as well, access to freight railroad rights-of-way is essential to expand existing, or to initiate new, service.

Commuter railroads are often at a disadvantage when seeking to utilize freight rail rights-of-way as they have no statutory priority for such access. As the committee considers the surface transportation bill in the 117th Congress, APTA would like to work with you and our rail partners to explore the best opportunities to ensure equitable access for all passenger rail on freight rail lines.

That said, APTAis grateful for the inclusion of provisions in H.R. 2, the INVEST in America Act, to enhance the STB's mediation authority to ensure that commuter rail operators have a fair and equitable process for negotiating passenger rail access on freight rail lines. In addition, as part of a fair and equitable process, we believe that the STB must ensure that any unused capacity on freight rail lines is defined, that the railroad owner is fairly compensated for available capacity, and a process be established to enhance capacity on freight railroad lines where there is insufficient capacity.

To that end, APTA recommends that the STB hold a capacity summit to discuss how best to allow for the efficient allocation and use of capacity on freight rail lines for passenger rail operations.

Last, we note that the STB is operating without a full complement of Board Members, and are hopeful that the Senate will approve the pending nominations to the STB without delay.

Let me turn to safety for a moment. For commuter rail operators and the entire public transportation industry, safety is a core value. It is a nonnegotiable operating principle and a promise to our riders. I am pleased to report that commuter railroads are on track to meet the December 2020 deadline for installing and implementing Positive Train Control. Our commuter rail agencies have devoted tremendous time and resources to ensuring the safety of riders through PTC implementation, and we are grateful for the support of this committee in getting us to the finish line.

Another issue that I would like to touch upon is commuter rail liability insurance. Agencies are facing rapidly escalating costs to procure necessary liability insurance for their operations with the number of insurers dramatically decreasing over the past several years. Despite commuter railroads' exceptional safety record, a recent survey about these commuter rail agencies reveal that there has been a 60-percent increase in premium costs for the last 3 years, which is impacting agency operating budgets.

There are a number of instances where Federal law provides a backstop to cover losses above liability limits, or allows for Federal intervention in a constrained insurance marketplace. APTA plans to propose a Federal liability insurance framework for commuter rail in advance of the next surface transportation authorization for this committee to consider.

I also want to take this opportunity to discuss public transportation's continuing need for additional COVID–19 emergency relief. The $25 billion in CARES Act funding provided a critical lifeline to enable our agencies to serve first responders, hospital workers, and grocery store clerks every day. According to the Federal Transit Administration, public transit agencies have obligated 94 percent of CARES Act funds, $23.4 billion of the $25 billion appropriated. APTA estimates that the additional need for emergency funds is now at least $32 billion. Without additional emergency funding, many commuter rail agencies and transit agencies will need to consider cutting services, routes, and furloughing workers.

Federal support is critical to ensure that operating agencies, including our commuter rail operators, can reposition themselves to survive and to move forward to serve their communities. Time is of the essence in securing this additional emergency funding. To that end, APTA strongly supports H.R. 925, the Heroes Act, which provides $32 billion of emergency transit funding. We stand ready to work with this committee and Congress to ensure that COVID–19 emergency funding for public transportation is passed before the end of the year.

Lastly, APTA is grateful for the robust funding for public transportation and passenger rail in the INVEST in America Act, and the focus on investing in commuter rail through the Consolidated Rail Infrastructure and Safety Improvement program known as CRISI. APTA encourages the committee to continue this robust funding as it considers the surface transportation authorization bill in the 117th Congress.

On behalf of APTA, thank you for giving me the opportunity to testify and to share our thoughts on the Surface Transportation Board. I look forward to answering any of your questions.

[Mr. Skoutelas' prepared testimony follows:]

Prepared Statement of Paul P. Skoutelas, President and Chief Executive Officer, American Public Transportation Association

INTRODUCTION

Chairman Lipinski, Ranking Member Crawford, and Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials, on behalf of the American Public Transportation Association (APTA) and its 1,500 public- and private-sector member organizations, thank you for the opportunity to testify on "Examining the Surface Transportation Board's Role in Ensuring a Robust Passenger Rail System".

My name is Paul Skoutelas, and I am the President and Chief Executive Officer (CEO) of APTA, an international association representing a $74 billion industry that employs 435,000 people and supports millions of private-sector jobs. We are the only association in North America that represents all modes of public transportation—bus, paratransit, light rail, commuter rail, subways, waterborne services, and high-performance intercity passenger rail.[1]

Prior to joining APTA in January 2018, I served as national director of WSP USA's Transit & Rail Technical Excellence Center where I provided strategic direction on public transit and rail projects. Earlier in my career, I was CEO at two major public transportation agencies: the Port Authority of Allegheny County in Pittsburgh, Pennsylvania, and the Central Florida Regional Transportation Authority (LYNX) in Orlando, Florida.

Commuter Rail and The Surface Transportation Board

Nearly 40 years ago, Congress enacted the Northeast Rail Services Act of 1981 (P.L. 97–35) to salvage commuter rail operations from Conrail and created six commuter rail authorities.[2] The state of commuter rail at that time suffered from low and declining ridership and equipment long beyond its useful life. These agencies and the many others across the nation that existed then or have started anew have transformed commuter rail into an essential, reliable, growing, safe, and affordable mobility option carrying hundreds of millions of travelers each year.

Today, there are 32 agencies operating commuter railroads.[3] Commuter rail services are higher speed, higher capacity trains with less frequent stops. They are traditionally used to connect people from suburban areas to city centers. Prior to the coronavirus pandemic, 32 agencies operating commuter railroads, safely carried passengers on more than *500 million* trips each year.

In the last decade, nine new commuter rail systems[4] have begun operation, with the latest—TexRail in Fort Worth, Texas—starting up last year. Before the COVID–19 pandemic, commuter rail enjoyed nearly constant annual ridership growth—growing by more than 42 million passenger trips (9.2 percent) over the last decade. Commuter rail also increased fare recovery (fare revenue as a percent of operating costs) in the last decade. On average, fares recovered more than one-half (52 percent) of the operating costs of commuter railroads.

Commuter railroads' success in advancing their reach is dependent, in part, on the Surface Transportation Board (STB) ensuring a robust passenger rail system. While the majority of the agency's jurisdiction revolves around freight rail, the STB is charged with adjudicating service disputes that may arise between commuter rail, freight railroads, and Amtrak.

Commuter Rail Access to Freight Railroad Rights of Way

Commuter rail connects people to jobs and opportunity each and every day. For commuter railroads to expand existing service or initiate new service, access to freight railroad rights of way is essential. Commuter railroads are often at a disadvantage when seeking to utilize freight rail rights of way, as they have no statutory priority for such access. Federal policies should encourage the growth of both passenger rail and freight rail operations on existing rail lines.

Currently, Amtrak has the statutory right to access the rail lines or facilities of a rail carrier or regional transportation authority and has preferential use rights over freight railroads when conducting intercity or commuter rail passenger transportation.[5] However, other passenger rail services (including commuter rail and

[1] APTA members include public transportation systems; planning, design, construction, and finance firms; product and service providers; academic institutions; state transit associations; and state departments of transportation.

[2] The six commuter rail authorities are the: Metropolitan Transportation Authority; Connecticut Department of Transportation; Maryland Department of Transportation; Southeastern Pennsylvania Transportation Authority; New Jersey Transit Corporation; and Massachusetts Bay Transportation Authority.

[3] A list of commuter railroad agencies can be found in Appendix A. APTA's list includes all commuter and hybrid rail agencies that receive funding from the Federal Transit Administration (FTA) and report data to the National Transit Database.

[4] The nine new systems are Portland, OR (Westside Express, 2009); Minneapolis, MN (Northstar, 2009); Austin, TX (Capital MetroRail, 2010); Denton, TX (A Train, 2011); Orlando, FL (SunRail, 2014); Denver, CO (A Line, 2016); Marin County, CA (SMART, 2017); Antioch, CA (eBART, 2018); and Fort Worth, TX (TEXRail, 2019).

[5] *See* 49 U.S.C. §§ 24308 (a) and (c).

high-speed rail) do not have the same right of access or preference. As the Committee considers the surface transportation authorization bill in the 117th Congress, APTA would like to work with you and our rail partners, including Amtrak and the freight railroads, to explore the best opportunities to ensure equitable access for all passenger rail on freight rail lines. A robust passenger rail system is critical to ensure our post-pandemic economic recovery.

APTA is grateful for the Committee's recognition that commuter rail authorities need to have an equitable and fair process for negotiating passenger rail operational access on freight railroad trackage and rights-of-way. H.R. 2, the INVEST in America Act, included two provisions to enhance the STB's role in mediating disputes.[6] Sections 9401 and 9402 of H.R. 2 address the STB's authority to mediate disputes involving commuter rail track usage and service requests as well as rights-of-way usage requests for the construction and operation of a segregated fixed guideway facility. Importantly, both provisions in H.R. 2 require a rail carrier to provide *good faith consideration* to reasonable access and usage requests. If an agreement cannot be reached between the public transportation authority and the rail carrier, either party can apply to the STB for nonbinding mediation. If this language is passed into law, APTA encourages the STB to ensure that rail carriers provide full and fair consideration to commuter rail requests for track and right-of-way access and usage.

The STB could also be instrumental in ensuring that any unused capacity on freight rail lines is defined and the railroad owner is fairly compensated for available capacity and, where there is insufficient capacity, a fair and equitable process is created to enhance capacity. We strongly encourage the STB to conduct a summit on capacity to discuss the appropriate parameters to allow for the efficient allocation and use of capacity on freight rail lines for passenger rail operations. One outcome of the summit could be an agreed-upon tool to define capacity. APTA notes that after positive train control is fully implemented, additional capacity may become available and provide opportunities for passenger rail service expansion.

In addition, after the Federal Railroad Administration (FRA) completes its rulemaking on *Metrics and Minimum Standards for Intercity Passenger Rail Service*,[7] the STB will play a very important role in investigating and resolving any disputes that arise after the standards are finalized.[8] It is critically important that any implementation of the final rule take into account the individual performance of rail carriers, including commuter railroads, on multi-carrier routes so as not to unduly subject such carriers to the costs and burdens of associated investigations that are unrelated to their service delivery.

Finally, APTA notes that the STB is currently operating without a full complement of Board members. The Board has three confirmed members and the Chair's term expires in December 2020. Two nominees are pending in the Senate. If the nominations are not approved before the end of this Congress, the STB's ability to conduct routine business may be impacted. Commuter and passenger railroads need certainty and a strong regulatory structure to ensure quick resolution of disputes by the STB. APTA is hopeful that the Senate will approve these pending nominations to the STB without delay to ensure that the Board is able to conduct its business at the beginning of next year.

Commuter Rail Liability Insurance

Commuter rail agencies are facing rapidly escalating costs to procure necessary liability insurance for their operations. Railroad liability insurance is considered a specialty product by the insurance industry. Only a handful of insurers offer this coverage, and a significant percentage of the railroad liability insurance marketplace is provided by foreign companies. The federally mandated minimum liability insurance coverage for commuter railroads is $295 million. In addition, some commuter railroads are required to buy additional insurance coverage as a result of contractual obligations with the freight railroads to operate on their tracks or by state law.

The number of insurers in the excess market willing to even offer potential capacity for this coverage has drastically decreased over the past several years. Regardless of cost, it is becoming extremely difficult to obtain the needed coverage up to the required limits. Each policy is custom-made for the particular commuter rail agency, with negotiated terms and premiums. Premiums for these policies, which must be paid annually, range from $1 million to $4 million. Given the fact that only

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[6] 49 U.S.C. § 28502 and § 28503 currently provide the STB with the authority to mediate disputes between commuter rail authorities and the freight railroads.

[7] *See* 85 Fed. Reg. 17835, Docket Number FRA–2019–0069 (March 31, 2020).

[8] *See* 49 U.S.C. § 24308(f).

a small number of insurers provide commuter rail insurance, the negotiating power of commuter rail agencies is more limited than it would be in the traditional insurance marketplace.

Despite commuter railroads' exceptional safety record, a recent survey of APTA's commuter rail agencies revealed that there has been a 60 percent increase in premium costs over the last three years and the cost of liability insurance is severely impacting the operating budgets of many commuter rail agencies. The increase in premiums are largely due to factors outside the control of the commuter rail industry, including losses in the commercial trucking sector, major forest fires, hurricanes, increased jury awards, and insurers exiting the market.

In advance of the next surface transportation authorization bill, APTA is undertaking research to illustrate how liability costs have increased for the commuter rail industry and identify the reasons for the increases. There are a number of instances where federal law provides a backstop to cover losses above liability limits or allows for federal intervention where the insurance marketplace has become noncompetitive and premiums unaffordable. APTA is developing a proposed legislative framework to reduce liability insurance premium costs for commuter railroads for the Committee to consider in the next Congress.

COMMUTER RAIL'S ESSENTIAL ROLE DURING THE PANDEMIC

Commuter rail is essential to our nation's economy. America's commuter railroads create and support more than 200,000 public- and private-sector jobs. The COVID–19 pandemic has illustrated the essential lifeline that transit, including commuter rail, plays in our communities—bringing healthcare professionals to the frontlines, delivering groceries and medicine to at-risk populations, and connecting essential workers to their places of work.

Public Transportation is Safe

Public transportation continues to provide the safest and most sustainable way to connect people to jobs and opportunity each day. COVID–19 and the concomitant shelter-in-place orders, business closures, suspension of tourism, and increasing unemployment significantly decreased public transit and commuter rail ridership. Our commuter rail agencies adapted quickly to protect employees and the public through increased cleaning and disinfecting procedures at significant direct costs. Combating the public perception that public transportation spreads COVID–19 remains a significant barrier as transit agencies work to increase ridership.

APTA recently commissioned a study to compile the latest global research on COVID–19 transmission and transit, and successful mitigation strategies to protect both employees and the public.[9] The study found that *there has been no direct correlation between use of urban transit and transmission or contraction of the coronavirus. Thus, there is minimal risk from using transit provided specific safeguards are in place*, such as face coverings, well-functioning ventilation systems, and minimal talking by riders.[10]

Transit Agencies Need Additional COVID Relief Funding

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funding of $25 billion provided a critical lifeline to enable our agencies to serve first responders, hospital workers, and grocery store clerks each and every day. We are extremely thankful to Congress for recognizing the vital role that public transportation has played throughout the pandemic.

According to the Federal Transit Administration (FTA), as of November 11, 2020, public transit agencies have obligated 94 percent of CARES Act transit funds through 760 grants totaling nearly $23.4 billion of the $25 billion appropriated; more than one-half (57 percent) of these funds have been fully expended. Moreover, FTA is currently processing an additional 92 grants, totaling $265 million, of CARES Act funds.

Over the past several months, in many states, things have taken a turn for the worse—coronavirus cases are spiking, governors and mayors are renewing stay-at-home orders, and businesses are shutting down. Our railroads have faced ridership declines of close to 90 percent with a corresponding loss in farebox revenues. In addition, agencies across the country are gaining a clearer understanding of the impact that the pandemic is having on sales taxes, gas taxes, and other state and local revenue streams linked to the economy.

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[9] APTA, *Public Transit and COVID–19 Pandemic: Global Research and Best Practices* (Sam Schwartz Consulting, September 2020).

[10] *Id*. at 4.

APTA estimates that the shortfall of additional transit COVID–19 costs and revenue losses is now at least $32 billion. Without additional emergency funding, many transit agencies, including commuter rail agencies, will need to consider cutting transit services and routes and furloughing transit workers.[11] Transit systems, both large and small, are also predicting significant budget shortfalls due to declining revenues heading into fiscal year 2021 without additional federal support.

As our nation's commuter rail agencies work to maintain and restore essential services, federal support is critical to ensure that they can reposition themselves to survive and help our communities and nation recover from the economic fallout of the pandemic. *Time is of the essence in securing this additional emergency funding*.

APTA strongly supports H.R. 925, "The Heroes Act", which provides $32 billion of emergency transit funding. In addition, APTA supports Amtrak's request for $4.9 billion in COVID emergency relief. We stand ready to work with this Committee and Congress to ensure that additional COVID–19 emergency funding for public transportation and Amtrak is passed before the end of the year.

PASSENGER RAIL INVESTMENT

As commuter railroads begin to recover from the COVID–19 pandemic, we strongly urge Congress to increase federal funding for public transportation, including commuter rail. The INVEST in America Act includes a rail title, the Transforming Rail by Accelerating Investment Nationwide (TRAIN) Act, which authorizes $60 billion to address rail infrastructure needs, expand intercity passenger rail routes, and provides enhanced availability of funding to commuter rail agencies. APTA is grateful for the robust funding for passenger rail, and the focus on investing in commuter rail through the Consolidated Rail Infrastructure and Safety Improvement (CRISI) program. The INVEST Act authorized CRISI at $7 billion over five years, and explicitly made commuter rail agencies eligible to compete for CRISI funding.

In addition, the INVEST Act provides $105 billion for public transit. Commuter railroads also receive federal funding through FTA, namely Section 5307 Urbanized Area Formula grants and Section 5337 State of Good Repair grants. In addition, commuter railroads are eligible for FTA's Section 5309 Capital Investment Grants (CIG) program. Since 2000, 17 commuter rail projects have received Full Funding Grant Agreements under the CIG program. In addition, five commuter rail projects, requesting over $7.5 billion, are in the CIG pipeline.[12]

The economic benefits of these projects reach far beyond the railroad's specific region. For example, a commuter rail project in California may include parts, materials, or equipment from a supplier in Kansas, South Carolina, Utah or Wisconsin. These commuter rail projects also represent thousands of construction jobs, manufacturing jobs, and other jobs generated by multiplier effects associated with spending on parts and materials. Appendix C illustrates the jobs created across America in rail car manufacturing.

APTA strongly supports the funding levels in the INVEST Act and encourages the Committee to continue this robust funding for public transportation and passenger rail in the surface transportation authorization bill in the 117th Congress.

CONCLUSION

On behalf of APTA, thank you for giving me the opportunity to testify and share our thoughts on "Examining the Surface Transportation Board's Role in Ensuring a Robust Passenger Rail System". We look forward to continuing to work with the Committee on Transportation and Infrastructure as it pursues the INVEST in America Act in the next Congress. It is imperative that we make meaningful investments and enact policy in commuter rail to enable these critical services to continue to grow, serve our communities, and contribute to the national economy.

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[11] APTA Policy Brief, *COVID–19 Pandemic Threatens Public Transit Jobs and Service* (September 2020).

[12] A list of the CIG projects with Full Funding Grant Agreements and those in the CIG pipeline is in Appendix B.

APPENDIX A

32 Commuter Rail Agencies

State	Primary City Name	Urbanized Area	Agency	Year Opened	Ridership 2018 (Unlinked Passenger Trips)
Alaska	Anchorage	Anchorage	Alaska Railroad Corporation (ARRC)	1923	199,666
California	Los Angeles	Los Angeles	Southern California Regional Rail Authority (SCRRA) (Metrolink).	1991	12,523,337
California	San Diego	San Diego	North San Diego County Transit District (NCTD) (Coaster & Sprinter).	1995	3,838,002
California	San Francisco	San Francisco	Peninsula Corridor Joint Powers Board (PCJPB) (CalTrain).	1992	18,562,763
California	San Francisco	San Francisco	San Francisco Bay Area Rapid Transit District (Bart) (eBART).	2018	1,316,134
California	San Rafael	San Francisco	Sonoma Marin Area Rail Transit District (SMART).	2017	714,653
California	Stockton	San Jose	Altamont Commuter Express (ACE) (ACE Rail)	1998	1,479,150
Colorado	Denver	Denver	Regional Transportation District (Denver RTD)	2016	7,619,589
Connecticut	New Haven	New Haven	Connecticut Department of Transportation Shore Line East (SLE).	1990	597,616
Florida	Miami	Miami	South Florida Regional Transportation Authority (Tri-Rail).	1989	4,414,030
Florida	Orlando	Orlando	SunRail	2014	1,114,859
Illinois	Chicago	Chicago	Northeast Illinois Regional Commuter Railroad Corp (Metra).	1856	68,446,239
Indiana	Chicago	Chicago	Northern Indiana Commuter Transportation District (NICTD) (South Shore Line).	1908	3,400,197
Maine	Portland	Portland	Northern New England Passenger Rail Authority (NNEPRA).	2001	534,058
Maryland	Baltimore	Baltimore	Maryland Area Regional Commuter (MARC)	1830	9,387,801
Massachusetts	Boston	Boston	Massachusetts Bay Transportation Authority (MBTA).	1931	32,143,251
Minnesota	Minneapolis	Minneapolis	Metro Transit Northstar Commuter Rail (Northstar).	2009	787,327
New Jersey	New York	New York	New Jersey Transit Corporation (NJ TRANSIT) (Rail & River Line).	1839	91,170,160
New Mexico	Albuquerque	Albuquerque	New Mexico (Rail Runner)	2006	771,602
New York	New York	New York	Metro-North Commuter Railroad Company (Metro-North).	1832	91,873,366
New York	New York	New York	MTA Long Island Rail Road (LIRR)	1844	105,538,101
Oregon	Portland	Portland	Tri-County Metropolitan Transportation District of Oregon (TriMet) (Westside Express).	2009	394,708
Pennsylvania	Harrisburg	Philadelphia	Pennsylvania Department of Transportation Keystone Line (Keystone).	1980	1,533,055
Pennsylvania	Philadelphia	Philadelphia	Southeastern Pennsylvania Transportation Authority (SEPTA).	1834	33,318,746
Tennessee	Nashville	Nashville	Regional Transportation Authority (Music City Star).	2006	298,765
Texas	Austin	Austin	Capital Metropolitan Transportation Authority (Metro Rail).	2010	807,869
Texas	Dallas	Dallas	Trinity Railway Express (TRE)	1990	2,039,990
Texas	Denton	Denton	Denton County Transportation Authority (A Train).	2011	409,667
Texas	Fort Worth	Dallas	TEXRail	2019	N/A
Utah	Salt Lake City	Salt Lake City	Utah Transit Authority (Front Runner)	2008	5,082,168
Virginia	Washington	Washington	Virginia Railway Express (VRE)	1992	4,529,091
Washington	Seattle	Seattle	Central Puget Sound Regional Transit Authority (Sounder).	2000	4,631,525

APTA's list includes all commuter and hybrid rail agencies that receive funding from the Federal Transit Administration and report data to the National Transit Database.

NNEPRA and Keystone are operated by Amtrak and are counted in the FTA National Transit Database.

TexRail opened in 2019 and therefore does not have any 2018 ridership.

APPENDIX B

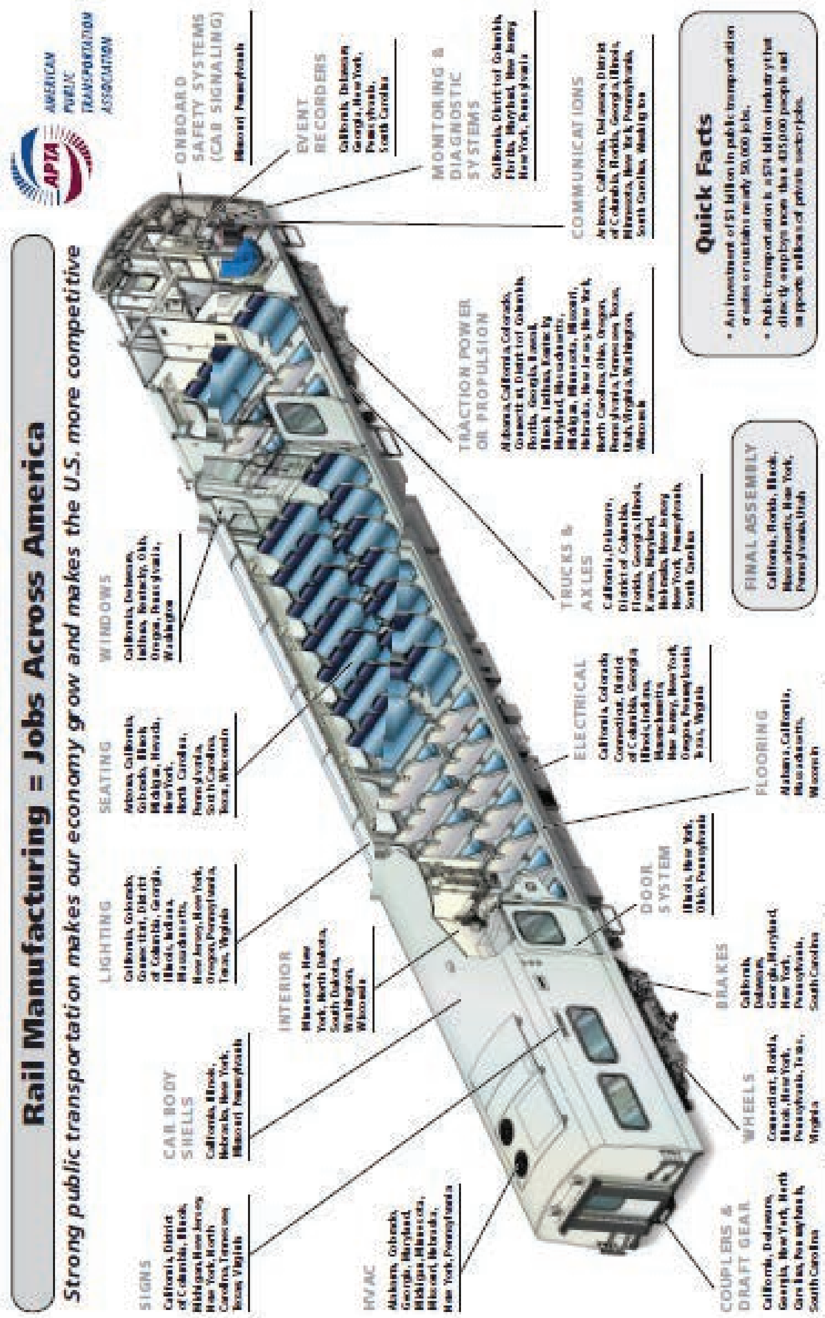
Commuter Rail Capital Investment Grant Projects (Since 2000)

(in millions)

State	Project Sponsor	Project	Total Project Cost	CIG Funding
Projects with FFGAs				
CA	Joint Powers Board (Caltrain)	Caltrain Peninsula Corridor Electrification Project.	$1,931	$647
CA	Riverside County Transportation Commission	Riverside-Perris Valley Line	$248	$75
CA	Sonoma-Marin Area Rail Transit District	SMART-San Raphael to Larkspur Regional Connection.	$55	$23
CO	Denver Regional Transportation District	Denver—RTD Eagle	$2,043	$1,030
FL	South Florida Regional Transportation Authority.	Fort Lauderdale-Tri-Rail Commuter Rail Upgrade.	$334	$111
FL	Florida Department of Transportation	Orlando, Central Florida Commuter Rail Transit.	$357	$179
FL	Florida Department of Transportation	Orlando, Central Florida Commuter Rail Transit Phase 2 South.	$187	$93
IL	Regional Transportation Authority	Chicago-Metra Southwest Corridor Commuter Rail.	$198	$103
IL	Regional Transportation Authority	Chicago-North Central	$226	$135
IL	Regional Transportation Authority	Chicago-UP West Line Extension	$135	$81
IL	Chicago Transit Authority	Chicago-Ravenswood	$530	$246
IN	Northern Indiana Commuter Transportation District.	West Lake Corridor	$945	$355
MN	Metropolitan Council	Minneapolis-Northstar Corridor Rail	$317	$156
NY	New York Metropolitan Transportation Authority.	New York-East Side Access (LIRR)	$7,386	$2,632
OR	Tri-County Metropolitan Transportation District of Oregon.	Wilsonville to Beaverton, Oregon Commuter Rail.	$117	$59
TX	Fort Worth Transportation Authority	Fort Worth TEXRail	$1,034	$499
UT	Utah Transit Authority	Salt Lake-Weber County to Salt Lake City	$612	$489
	Subtotal for Commuter Rail FFGA Projects		$16,655	$6,912
Projects in the CIG Pipeline				
FL	Florida Department of Transportation	SunRail Connector to the Orlando International Airport.	$175-$225	$75
FL	Florida Department of Transportation	SunRail Phase II North	$69	$34
IL	Northern Indiana Commuter Transportation District.	Double Track	$460	$173
NJ	Gateway Program Development Corporation	Portal North Bridge Project	$1,716	$811
NY/NJ	Gateway Program Development Corporation	Hudson Tunnel Project	$13,702	$6,769
	Subtotal for Commuter Rail CIG Pipeline Projects		$15,948	$7,787
	Total Funding for Commuter Rail CIG Projects		**$32,603**	**$14,700**

*These totals exclude the SunRail Connector to the Orlando Airport project because amounts have yet to be finalized.

APPENDIX C


Rail Manufacturing = Jobs Across America
Strong public transportation makes our economy grow and makes the U.S. more competitive
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
SIGNS
CAR BODY SHELLS
LIGHTING
SEATING
WINDOWS
ONBOARD SAFETY SYSTEMS (CAB SIGNALING)
EVENT RECORDERS
MONITORING & DIAGNOSTIC SYSTEMS
COMMUNICATIONS
TRACTION POWER OR PROPULSION
TRUCKS & AXLES
ELECTRICAL
FLOORING
DOOR SYSTEM
BRAKES
WHEELS
COUPLERS & DRAFT GEAR
HVAC
INTERIOR
FINAL ASSEMBLY
Quick Facts

Mr. LIPINSKI. Thank you, Mr. Skoutelas.

At this time, before we begin questions, I would like to ask unanimous consent to enter into the record statements from the Rail Passengers Association and the States for Passenger Rail Coalition. Without objection, so ordered. Those will be entered into the record.

[The information follows:]

Statement of Jim Mathews, President and Chief Executive Officer, Rail Passengers Association, Submitted for the Record by Hon. Daniel Lipinski

INTRODUCTION

The Rail Passengers Association would like to thank Chairman Lipinski, Ranking Member Crawford, and all of the members of this Committee for holding this very important and timely hearing to focus attention on the role of the Surface Transportation Board in protecting the essential passenger rail service supplied to the Nation's rail passengers principally, though not exclusively, by Amtrak.

A passenger railroad is judged primarily on two key metrics: safety and on-time performance. Any railroad unable to satisfactorily meet these two criteria will not be able to attract and keep passengers. For this reason, we can say without hyperbole that the rampant delays affecting Amtrak's trains threaten the railroad's growth and even its long-term viability as an operator.

The Surface Transportation Board is a vitally important forum for resolving OTP and access issues that face our country's passenger train network. While little known to the traveling public, the STB's actions and decisions can have important and lasting impact for millions of Americans who rely on rail to travel for work, school or family.

Just as important are efforts to thwart STB's ability to act, a fact that the Association of American Railroads has clearly recognized. Unfortunately, millions of Americans have found themselves stranded for hours at a time on sidings all across our country. They have had to wait for freight trains to pass that have been given priority improperly, by railroads who feel free to thumb their noses at a preference law that has been on the books for nearly half a century. The traveling public sought relief through their representatives in Congress, and in 2008 Congress acted by giving Amtrak tools it needed to vindicate passengers' right to be on time. The AAR's response was to turn to the courts to block any real relief, a fight which dragged on for a decade. Meanwhile, our members and the traveling public had to sit and watch the freight trains pass while they missed weddings, funerals, visits home with deployed servicemen and women, or even medical appointments.

Rail offers solutions to some of our Nation's most pressing problems: pandemic-driven economic upheaval, bridging the rural-urban divide, mobility for the elderly and disabled and greener ways to move a growing population around the country to spur prosperity and a better life for Americans everywhere. Resolving the thorny complexities around shared-use, schedule and timetable design, preference and on-time performance will be vital to unlocking billions of dollars of annual economic benefits from expanded passenger rail. And this is why the STB's role deserves closer examination as we look to build back better in the coming years.

AN ESSENTIAL SERVICE FOR 500+ U.S. CITIES AND TOWNS

Amtrak's National Network, with its 15 long-distance routes connecting a series of state-supported services, is an essential transportation service to the 40 percent of the nation's small and rural communities that it serves, establishing a vital link between Small Town and Big City America. 62 million people live in this so-called "Flyover Country," a quarter of whom are veterans, another quarter are senior citizens over the age 65. With few alternatives, driving plays an outsized role, and it does so at a cost: despite making up only 19% of the population, accidents on rural road networks account for 49% of the total number of traffic fatalities nationwide.

In the era of coronavirus, Amtrak has proven itself to be more relevant than ever. The combination of clean indoor air, greater space for social-distancing, outdoor platforms and waiting areas and the potential on some trains to upgrade to a private compartment has made Amtrak an essential travel option for millions of Americans—particularly senior citizens and those with compromised immune systems.

More generally, Amtrak trains are well used and fiercely fought-for by the communities served. Millions of Americans rely on passenger rail, and millions more have discovered passenger rail during pandemic-driven travel disruptions. Before the coronavirus crisis took hold, Amtrak enjoyed more than a decade of year-over-year record ridership. And that figure has been constrained as much by capacity as it has been by demand. In fact, even as overall travel demand in the U.S. has remained low during the coronavirus pandemic, many Amtrak trains are operating at the equivalent of 80% of capacity or more. There are today National Network trains that are sold out weeks in advance.

Intercity rail plays an important role in these communities; almost one-fifth of Amtrak's passengers travel to or from a rural station with no access to air service. As the term "Flyover Country" suggests, private-sector airlines have long ago moved away from these towns, if they ever served them to begin with. While this may have been the right business decision for those profit-driven companies to make, it has come at a cost to the residents of these communities.

For some rural, elderly and disabled passengers, Amtrak is the only plausible or affordable choice. Just consider Fargo to Minneapolis, a $37 Amtrak coach fare compared with a $403 flight. Or Cut Bank, Montana, to Spokane? Yes, it's a three-hour flight versus an eight-hour train ride, but that doesn't include the 88-mile drive from Cut Bank to Glacier's airport. And the fares are not even close: $64 for Amtrak, $252 to drive and then fly. And that's assuming Grandma can even drive on those treacherous roads in the snowy dark winter.

This isolation from air service is only expected to worsen for hundreds of American towns in a post-coronavirus operational environment. In an October 8th interview with CNBC, American Airlines CEO Doug Parker warned "there will absolutely be discontinuation of service to small communities, and there will be much less service to larger communities."

Amtrak will continue to serve these towns because its Congressionally mandated mission to connect Americans is driven by statute, and not by profit.

The argument that there is not enough demand in small towns and rural communities to justify this mandate falls away quickly when you look more closely. Just consider the comparison between simply measuring the total ridership and looking at the number of riders per departure [Fig. 2]—i.e., if the train only runs three days a week, normalize the ridership figure to account for the four days that it doesn't run. The map included is one I use a lot to tell that story when I present to elected and appointed officials.

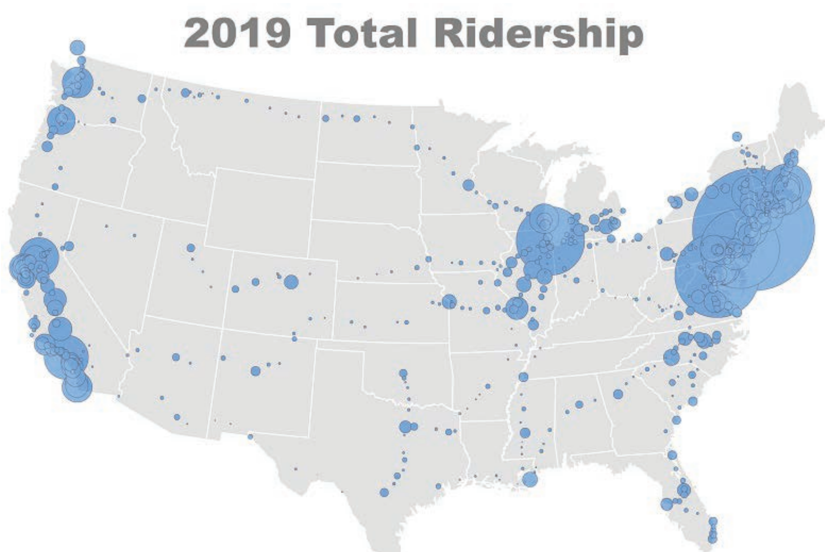


Fig. 1

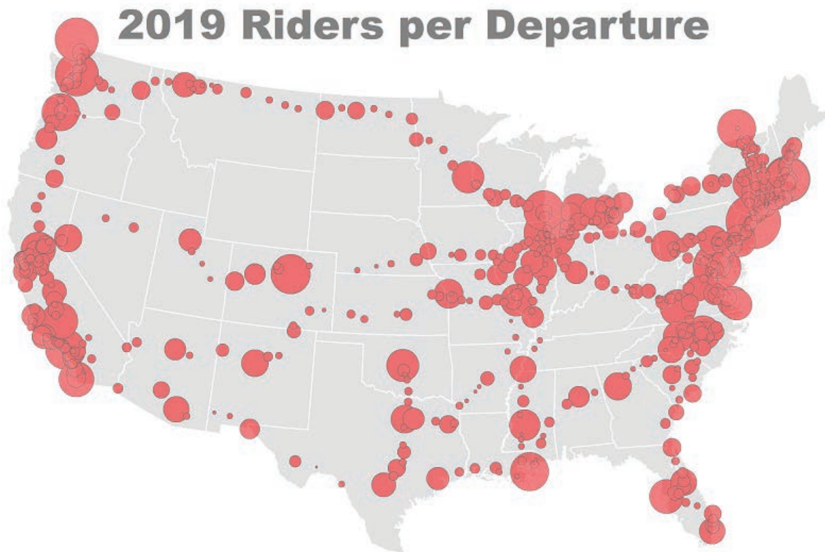


Fig. 2

This picture is worth more than a thousand words—you could say it's worth between $7 billion and $8 billion per year. The *Rail Passengers Association* team estimates that the existence of Amtrak contributes about that much to the U.S. economy year in and year out, and this map helps to show why that is. Correcting for the number of departures, you can clearly see a National Network that is well-used and vital to towns across the country.

Moreover, Amtrak's inherent energy efficiency makes it an environmentally responsible alternative as our Nation looks for ways to support travel and mobility for an ever-growing population while taking the climate crisis seriously. Amtrak's existing network will play an important role as the foundation for new service and increased frequencies, expanding access to modern passenger rail service to new cities and tens of millions of Americans.

While there are many prerequisites for upgrading and expanding the passenger rail network in the U.S.—notably dedicated and predictable funding for Amtrak and passenger rail, similar to what virtually every other transportation mode receives from the government—an STB that is able to quickly and fairly adjudicate passenger train access to host railroad infrastructure tops the list.

AMTRAK IS A PUBLICLY FUNDED GOOD DESERVING OF REGULATORY SAFEGUARDS

Congress understood the value of a passenger rail that serves all Americans when it passed legislation in 1970 that established Amtrak. Congress has repeatedly reaffirmed its commitment to supporting Amtrak over the years. As recently as this month, the U.S. Senate Committee on Appropriations passed language in the Fiscal Year 2020 Transportation, Housing and Urban Affairs Department funding bill the stated:

> It is the sense of Congress that—
> (1) long-distance passenger rail routes provide much-needed transportation access for 4,700,000 riders in 325 communities in 40 States and are particularly important in rural areas; and
> (2) long-distance passenger rail routes and services should be sustained to ensure connectivity throughout the National Network (as defined in section 24102 of title 49, United States Code).

This language replicates that of an amendment attached to the FY2018 THUD funding bill passed in July of 2018 on the Senate floor—by an overwhelming vote of 95–4.

Given Amtrak's status as a publicly funded service, our Association believes that it does a deep disservice to taxpayers when host railroads undermine Amtrak's mission to provide a reliable, on-time transportation service to the hundreds of communities across its network. We also believe any argument that questions Amtrak's right to receive this public funding is both dishonest and ahistorical.

Since 1978, Congress has not required Amtrak to earn a profit. The Amtrak Improvement Act of 1978 amended Section 301 of the Rail Passenger Service Act to insert the words "operated and managed as" in front of the words "for-profit corporation." Report language accompanying that measure explains why (H.R. Rep. No. 1182, 95th Congress, Second Session, 15): "Section 9 amends Section 301 of the RPSA . . . to conform the law to reality, providing that Amtrak shall be 'operated and managed as' a for-profit corporation. This amendment recognizes that Amtrak is not a for-profit corporation."

A. Daniel O'Neal, who was at the time majority counsel for the Senate Transportation Subcommittee, offered this blunt recollection: "We added the 'for-profit' clause because we thought this new entity should have high aspirations," O'Neal is quoted as saying in a 2002 Congressional Research Service report (http://research.policyarchive.org/1446.pdf). "It would be wonderful if such service could be self-sustaining, but nowhere in the world has any nation been able to avoid subsidizing rail passengers."

In fact, all travel modes are subsidized. Gas taxes pay for less than half of what it takes to build and maintain highways. General tax revenues pay for the rest. Air travelers' fares have no relation to the cost of air-traffic control and weather services supplied to our Nation's airlines—as many as 26 air-traffic controllers earning a median salary in the six figures touch a single flight between Los Angeles and Baltimore. FAA receives generous, and appropriate, appropriations to ensure our safety.

These are not anomalies. They reflect the reality that policymakers and the taxpayers they serve have consistently made the judgment that it is worthwhile to spend tax dollars to create the preconditions for economic growth and the private-sector's success. There are certain things that we've just agreed we want to pay for, together, so that we can have a community, a state, a Nation. During the past few months of hurricane season, families living in the southeastern U.S. have been made safer because we have a National Weather Service. The coronavirus crisis has put into sharp relief why we have a Centers for Disease Control and Prevention. We all benefit from a CDC to fight pandemic diseases, as well as from modern roads, safe bridges, air traffic control, a strong military, and passenger rail and public transportation. We don't demand that those things produce a profit because what they produce instead is a public benefit.

Research by our Association demonstrates the economic value of intercity passenger service, which helps our country achieve crucial national goals—enabling mobility in increasingly crowded "megaregions" of metropolitan areas, ensuring mobility and access for America's booming senior population and setting at least a base level of prosperity for our rural areas by linking them to the larger economy. As we've said elsewhere, our Association conservatively estimates that the overall value of our roughly $2 billion annual Amtrak investment comes to at least $8 billion a year.

It's not about whether a given route is profitable. It's about who the route is profitable for.

Earlier this Fall, we examined six National Network services—the *City of New Orleans*, the *Empire Builder*, the combined *Silver* services, the *Southwest Chief*, the *Texas Eagle* and the *Crescent*. Together, these six intercity passenger rail routes serve 30 states plus the District of Columbia, and *Rail Passengers* estimates that they produce $2.4 billion every year in economic benefit. In fact, Amtrak's existing group of daily long-distance trains (excluding the Auto Train) collectively produce some $4.7 billion in economic benefits which are widely distributed throughout America's heartland. That's twice as much as Amtrak's entire annual appropriation and an impressive return on equity for the taxpayers who invest a little less than a billion dollars every year to sustain that service.

The profit argument for Amtrak is not only legally specious, it's bad policy. This is because it misstates the purpose of federal investment and overlooks the significant value that Amtrak creates for the entire country, cities and rural towns alike. The correct lens for assessing our Amtrak investment is not profit, but *value*. Amtrak's routes create value in every community they serve. That they create value in the Northeast Corridor is unchallenged. Indeed, with 20% of the country's GDP flowing along that corridor, it's fair to describe the NEC as the Nation's aorta. But these services also create enormous value in smaller communities, places that may not deliver a profit to Amtrak but which derive incredible support from the existence of their route.

STB PLAYS A NECESSARY ROLE IN MAINTAINING AN EFFICIENT, SUSTAINABLE U.S. PASSENGER RAIL SYSTEM

Of course, Amtrak already enjoys a statutory right of preference, and has for over 45 years. Unfortunately, many host railroads choose to not recognize this legal right, subjecting millions of Amtrak passengers to excruciating delays. Because while Amtrak has a legal right to not have its trains stuck behind slow-moving freight trains for hundreds of miles, only the Department of Justice can enforce it—which it has done precisely one time since 1979.

There are, however, key instances demonstrating that in the right circumstances regulators can provide effective protections for America's passengers. The period between the summer of 2013 and late 2014 offers the closest thing available to a laboratory experiment to demonstrate the practical effect of neutralizing legal preference on host railroad behavior. That intervening period began with the DC Court of Appeals reversing a lower court ruling and invalidating preference, and ended with the Supreme Court restoring it while sending the case back down for further review. Host railroad behavior then was unmistakable—by the summer of 2014, Amtrak's on-time performance (OTP) had dropped by half.

Under the metrics and standards implemented by the 2008 rail reauthorization law, Amtrak was able to achieve a 2012 on-time performance rate of 83 percent nationwide, and 71 percent for long distance trains. This level of on-time performance played a key part in allowing Amtrak to sustain its explosive ridership growth, which has led to ridership records in 10 of the past 11 years.

When the metrics were struck down by the Court of Appeals, reported freight interference incidents nearly tripled, and Amtrak's on-time performance plummeted to only 42 percent. The long-distance trains were hit hardest; in a particularly extreme case, the on-time performance of the Capitol Limited plummeted to 1.6% in July of 2014. Amtrak reported in April 2014 that, in response to these skyrocketing delays, ridership and revenue had fallen by 15% year over year to date.

It was no coincidence that these delays followed hard on the heels of the DC Appeals Court ruling, and it was also no coincidence that the result unraveled a decade of record ridership. Our Association found it ironic at the time that these delays hurt Amtrak's bottom line and increased its dependence on public subsidies, given that those who publicly backed the Appeals Court ruling usually cite Amtrak's business performance as a reason to argue against intercity passenger rail service.

Equally telling was the rebound that on-time performance enjoyed within just days or weeks of the Supreme Court's ruling sending the case back to the lower court for review while reversing the Appeals court's action. We recognize that there are parts of the U.S. rail network where an increased federal role in capacity investment would increase network fluidity for passengers and freight, but the dramatic change in OTP data during this period suggests that dispatching decisions play an outsize role in many of the delays we have seen.

We've also seen instances of railroads actively trying to undermine oversight. In 2016, at the urging of freight railroad representatives, the Surface Transportation Board briefly considered issuing a policy statement that would have weakened the preference requirement now in law for passenger-train dispatching. Under pressure from lawmakers and the riding public, STB withdrew that proposed policy statement. It never carried the force of regulatory interpretation, was never put into practice, and has not guided any decision-making in any adjudication before the Board since then.

Had it gone through, it would have amounted to the STB and its staff effectively trying to rewrite legislation by regulatory fiat. Behind closed doors, regulators would have fundamentally changed the rules of the game for how Amtrak can press host railroads to honor their legal obligations, going around the intent of Congress as expressed some 30 years ago and consistently reaffirmed in law and court rulings.

Withdrawing that policy statement was both sensible and correct. It should not underpin any current discussion of policy.

Bluntly, experience and actual on-the-rails performance demonstrate that passenger trains CAN run on time when the host railroad wants them to, or, at least, when the host railroad faces consequences for excessive delays. Congress could easily provide effective protections for passengers by allowing Amtrak to bring an action in federal court to enforce the law.

THE TRUE COST OF INADEQUATE ENFORCEMENT OF AMTRAK'S STATUTORY RIGHTS

The decision by host railroads to ignore Amtrak's right of preference has quantifiable costs. Reports released by Amtrak this month reveal that freight trains caused more than one million minutes of delay to Amtrak trains last year—that's the equivalent of being stuck behind a freight train for two full years.

Lost in the statistics, however, is the personal toll on our members who rely on—and pay for—timely and regular service on routes delayed by freight interference. Many irreplaceable personal moments have been disrupted by these 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 just one month during the deliberations over preference and OTP—add up to more than mere temporary inconvenience and in many cases impose real dollar costs on vulnerable travelers.

Delays can cause real emotional pain to those who may already be travelling for somber reasons. Joanna Roe, a Washington state resident, boarded the Empire Builder at a small station about 45 minutes east of Vancouver, Wash., travelling to Boston to attend a funeral, "so I really had to be there," Roe told us. After crossing into Montana and North Dakota, "We were pulled off the main line so many times I lost count. It kept getting longer and longer. . . . We were delayed so often that we had to have two separate crew changes, which delayed us EVEN MORE as we waited for the new crews to arrive." Joanna ultimately missed a connecting train in Chicago, was put up in a hotel in Chicago with only $10 food money for the day, cancelled the next day's train leg and booked a new, expensive flight from Chicago O'Hare in order to attend the funeral.

Delays impose additional costs on fare-paying passengers. Kathleen Newell of Detroit, Mich., points out that freight delays in North Dakota make even the short trip from Minneapolis, Minn., to Ann Arbor, Mich., impossible to complete in one day as was once possible. "This delay causes a missed Chicago, Ill., to Ann Arbor, Mich., connection. In addition I have to stay overnight in Chicago, pay for a hotel and shorten my stay in Michigan as a result," Newell writes.

Consider the anger of Walter Dunn, of North Port, Fla., an elderly man who had to travel unexpectedly from Florida to New York because his 91-year-old mother had been admitted to the hospital in critical condition. Dunn explains, "Several times we sat on a siding waiting for a freight train, whose schedule I am sure is not critical, to go by. When we started getting later and later into stations the general comment amongst passengers was 'that [is] Amtrak never on time.' I think this is disgrace to our country. The trains in some third world countries keep a better schedule than those in this country." Older Americans often find air travel difficult and driving long distances impossible, so train travel is a true lifeline for these citizens, who deserve better.

Freight interference delays disrupt business being conducted by our members. Elliot Adams of Sharon Springs, N.Y., left Utica for a meeting in Detroit. Because the train schedule put Mr. Adams in Detroit early in the morning, he planned to arrive at the conference center early and scheduled a series of one-on-one meetings in preparation for the larger conference. "But my train was over nine hours late," Adams wrote. "I missed all those very important one-on-one meetings and the daytime meetings, only arriving in time for an evening meeting."

Those with serious health conditions and the disabled are disproportionate users of the long-distance network, because of the difficulties they have managing air travel and driving. Delays cause inhumane problems for patients and impose additional suffering on people who are already ill. "In December of 2013 my wife and I rode the Empire Builder from Chicago to Winona, Minn., for an appointment at Mayo Clinic," explains Gary Lutes of Chicago, Ill. "Unfortunately, the train was so late that we missed our shuttle to Rochester. We were fortunate that another shuttle service happened to arrive to take us to Rochester. We checked into our hotel at 3:00 a.m. with an 8:00 a.m. appointment at Mayo."

Coming at a time of record ridership, these delays on freight railroads nationwide may well permanently discourage new and first-time riders from exercising their choice to travel by rail, a choice more Americans each year say that they want. Chronic delays not only hurt our members and the rail-riding public but diminish Amtrak's ability to generate annual revenue improvements that reduce the amount of subsidy that is provided by taxpayers—both a statutory requirement and a policy goal at both ends of the political spectrum.

Accountability Is a Double Track Railroad

In many ways, despite all of its challenges and missteps—and there have been many—Amtrak has been a public-policy triumph. In 1971, Amtrak took the emaciated bones of passenger services battered by subsidized air and road competition and slowly breathed life into those routes. Some did better than others, and some didn't survive. But today even our skeletal and perfunctory Network of intercity passenger trains has spent more than a decade setting ridership records, connecting

America's heartland to its cities, and returning four dollars to the economy for every dollar spent. And in recent years Amtrak has done all this while recovering some 90% of its costs at the farebox.

Are rail advocates angry at Amtrak? Yes, often. For all of its pleasures and efficiencies, Amtrak can often seem indifferent to the needs of its customers. There's Grandma trying to book a ticket over the phone without a printed timetable or to find a meal on board that she can eat without aggravating her blood pressure or diabetes. Or a group of wheelchair-bound Illinois travelers suddenly asked to pay $20,000 for a Coach-class ride of less than an hour just for the sake of Amtrak's balance sheet. It also includes Amtrak's government customers, like a state Department of Transportation trying to understand how it's being billed for services Amtrak is supplying within its borders or asking to modify its services to better meet the needs of its residents.

These are real issues at Amtrak, and they demand action. This is why our Association and others worked closely with you and your colleagues to secure improvements at Amtrak addressing the many ways that Amtrak still falls short of meeting the public-policy mission in which taxpayers are investing. We applaud the hard work this Subcommittee and the full T&I Committee did on the bill that eventually became the Moving America Forward Act, H.R. 2, which wrote in important reforms to Amtrak's Board, the statement of Amtrak's mission, the need for preference, food and beverage issues, and many other changes.

CONCLUSION

The 2015 STB Reauthorization represented the first substantive reform of the Board in nearly 20 years. In a bipartisan and uncontroversial fashion, Congress made many important and welcome changes to the way STB did business in that measure—expanding the Board to five members, setting rate-review timelines, expanding voluntary arbitration provisions, granting STB the authority to initiate investigations of "national or regional significance," and mandating publication of reports and databases to create greater transparency for railroads, shippers and the public alike.

With our country now poised to make substantial investments in rail transportation and passenger rail emerging as an important part of economic recovery, Rail Passengers believes it is appropriate to use this upcoming reauthorization to consider extending and expanding these reforms. There are several outcomes our Association would favor.

We recommend explicit expansion of oversight to other forms of passenger rail such as commuter and regional operations. This would permit application of the expertise of the STB's members and staff to rail-specific challenges that will undoubtedly arise as policymakers begin to embrace innovations like regional rail operating authorities and central dispatching authorities.

Rail Passengers would also propose to create clear and explicit triggers to let Amtrak and other railroads to seek regulatory relief, consistent with the metrics and standards recently published by the Federal Railroad Administration.

Although the 2015 reauthorization made major strides in cutting the time required for certain STB actions, we believe more could be done. Provisions allowing for a timely resolution of STB mediation and broadening those deadlines beyond rate cases to other kinds of adjudication would help create certainty as states, regional authorities and others begin to rely more on rail as a policy tool to address pollution, congestion and economic equity.

Rail Passengers believes it is absolutely vital to increase protections for Amtrak's 45-year-old statutory right of preference—including allowing Amtrak to bring an action in federal court to enforce the law—and to remove barriers that may inhibit STB from protecting this right. Moreover, as growth and expansion plans take shape, Rail Passengers believes it is important to revise the Surface Transportation Board provisions that govern when Amtrak seeks to operate additional trains over rail lines owned by another carrier by establishing a process for the STB to determine whether those additional trains unreasonably impair freight transportation. STB should be permitted to initiate a proceeding to independently evaluate what additional investments are required.

Statement of Arun Rao, Chair, States for Passenger Rail Coalition, Inc., Submitted for the Record by Hon. Daniel Lipinski

The States for Passenger Rail Coalition (SPRC) is an alliance of 23 State and Regional Transportation Officials and Passenger Rail Authorities across the United States. SPRC's mission is to promote the development, implementation, and expansion of Intercity Passenger Rail as part of an integrated national transportation network.

SPRC members sponsor a combined 29 intercity passenger rail routes serving 296 communities across America. In the year leading up to the pandemic, the State Supported trains carried over 15 million passengers, representing over 47% of Amtrak's total ridership, the largest source of ridership among the three Amtrak business lines. They also contributed nearly $750 million to Amtrak, through a combination of $521 million in passenger revenue plus $225 million in contract payments. We are poised to return to these pre-pandemic levels as the Nation's health and economy improve, and the traveling public returns to take advantage of the beneficial economic, health, and safety aspects of traveling by passenger rail.

SPRC appreciates this opportunity to provide comments as the House Transportation and Infrastructure Committee's Railroads, Pipelines, and Hazardous Materials Subcommittee examines the Surface Transportation Board's (STB) role in ensuring a robust passenger rail system. The STB has regulatory authority that involves multiple Amtrak matters, including the authority to ensure that Amtrak may operate over tracks owned by other railroads, addressing disputes and setting the terms and conditions of shared use if Amtrak and railroads (or regional transportation authorities) fail to reach voluntary agreements.

Additionally, in Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Congress gave STB the authority to investigate the reasons for persistent Amtrak train delays if either the On Time Performance (OTP) on a route dips below a certain level, or if specific metrics and standards, (to be developed jointly by the Federal Railroad Administration (FRA) and Amtrak), are not met.

SPRC members have long recognized that a high degree of reliable passenger train OTP is tantamount toward the growth and expansion of this essential transportation mode. Although it is written in law that "Amtrak has preference over freight transportation in using a rail line, junction, or crossing" [49 U.S. Code § 24308(c)], intercity passenger rail (unfortunately) continues to suffer from freight rail interference delays. To return intercity passenger rail to pre-COVID ridership levels will require a safe environment and traveler assurances of on-time arrivals and departures.

With the November 16th issuance of the FRA's Final Rule on "Metrics and Minimum Standards for Intercity Passenger Rail Service" the STB's investigative authority under PRIIA Section 213 has been affirmed and validated. We envision that the STB will continue to fill its critical role in monitoring Amtrak's performance issues and has the authority to elicit positive change for the passenger rail customer through the hearing of cases that involves the statute's preference provision.

Finally, both freight and passenger rail have been well documented as energy-efficient and environmentally sustainable transportation modes. With the one-year extension of the FAST Act, we encourage Congress to take advantage of this additional time to consider further steps to advance rails' enhanced role in our Nation's environmental and transportation future.

Thank you for this opportunity and know that we stand ready to respond to any questions you may have or to elaborate further on our testimony, as you work through the development of long-term surface transportation authorization legislation.

Mr. LIPINSKI. We are now going to move on to Member questions. Each Member will be recognized for 5 minutes, and I am going to begin by recognizing the chairman of the full committee, Mr. DeFazio, for 5 minutes.

Mr. DEFAZIO. Thank you, Mr. Chairman. I have to be at another modal briefing in 5 minutes, regarding the 737 MAX, so I appreciate the opportunity to go first.

I will just ask one question in the interest of time. Mr. Gardner, it has been presented that essentially, it is freight or passenger. It is a zero-sum game. In recently conversing with you, I found out something I didn't know, that you have a history doing dispatch. Would you please give your perspective? I mean, is there a way to both have an efficient rail system for passengers and not impinge upon the freight industry? Mr. Gardner, could you unmute and answer if you are still there?

Mr. GARDNER. Thank you, Chairman DeFazio. Yes. Yeah. Can you hear me?

Mr. DEFAZIO. Now I can.

Mr. GARDNER. Can you hear me——

Mr. DEFAZIO. Yeah.

Mr. GARDNER [continuing]. Chairman DeFazio?

Mr. DEFAZIO. Go ahead. Uh-oh.

Mr. GARDNER. Chairman DeFazio, can you hear me?

Mr. DEFAZIO. Off and on.

Mr. GARDNER. OK. Thank you. Yes. Absolutely. We can find [inaudible].

Mr. DEFAZIO. I don't what kind of Wi-Fi or connectivity you have got down there, but it is not too good.

Mr. GARDNER. I am sorry, Chairman DeFazio. Can you hear me well?

Mr. DEFAZIO. On and off. Try again. You know, the House has approved Zoom now, haven't they? [Aside.]

Mr. GARDNER. OK. Mr. DeFazio, thank you for the question, and we can absolutely make passenger and freight trains work together.

Mr. DEFAZIO. OK. All right. I guess we will take that as an answer to be expanded upon at some future time when you are here in person, so thank you.

Thank you, Mr. Chairman. I have got to go to this other briefing.

Mr. LIPINSKI. The Chair will now recognize the ranking member for 5 minutes. Ranking Member Crawford.

Mr. CRAWFORD. Thank you, Mr. Chairman. And, again, we see what a rousing success these hybrid hearings are with regard to their technical efficiency and all those other things. So I am going to go to Mr. Gardner again and see if we can possibly work around this technology glitch.

Despite Amtrak's huge losses and potentially slow climb back to normal operations, it was reported last month that Amtrak was circulating a map showing plans to expand at a reported cost of at least $25 billion. Can you please explain these plans, including the funding sources and whether Amtrak assessed rider demand and the need for these new routes?

That question is for Mr. Gardner.

Mr. GARDNER. Thank you. Can you hear me OK?

Mr. CRAWFORD. Again, no. I could hear better if you were sitting here in the committee room, but we are doing what we can.

Mr. GARDNER. [Inaudible.]

Mr. CRAWFORD. I am going—I am afraid—in the interest of—actually, I am going to ask you, if you would, to please suspend. I am going to ask you to submit your comments for the record because we can't hear a word you are saying. And, again, a stellar example of the efficiency of these hybrid proceedings.

Let me go to Mr. O'Toole. Mr. O'Toole, Amtrak suffered record losses this year as a result of the COVID–19 pandemic. What are your recommendations for how Amtrak should rebuild or restructure to be profitable and attract riders? And, again——

Mr. O'TOOLE. I have unmuted now. I think the COVID–19 pandemic has given us an opportunity to sit back and reevaluate our transportation choices. We know, based from this pandemic and from past natural disasters and recessions and terrorist attacks, that the most resilient form of transportation we have is motor vehicles and highways. And, yet, our government policy in many States, and to some degree at the Federal level, is to deemphasize highways and to emphasize mass transportation, particularly rail transit and urban bus transit.

And the problem is, that these forms of transportation are not resilient against natural disasters; they are not resilient against recessions; they are not resilient against terrorist attacks; they are not resilient against pandemics. And because of this, we are essentially digging our own hole here when we emphasize these kinds of transportation instead of emphasizing motor vehicles and highways.

Personally, I don't like to drive. I prefer to bicycle or take a train, but the fact is, most Americans have made their choice; 85 to 90 percent of our travel is by automobile. Almost all the rest is by airlines. And Amtrak and urban transit are insignificant quantities, and they are not resilient. So we need to be resilient, and that means emphasizing kinds of transportation that are resilient.

Mr. CRAWFORD. Thank you, Mr. O'Toole.

I have—I am going to attempt to get—at least get a question on the record. I don't have any faith that it will be answered due to technical difficulties, but I am going to attempt it again to Mr. Gardner.

While you are here, I want to follow up on an RFI that Congressmen Gibbs, Perry, Smucker, and I sent you several weeks ago. Thank you for the response regarding my concerns about operating the Biden campaign charter train despite Amtrak's severe cutbacks due to the pandemic. I am still concerned, however, that you did not answer my question about the total cost to Amtrak of providing this service, which is very important, given Amtrak's extremely limited resources and historic demands for taxpayer money right now.

I am hopeful, at some point, that you can tell me the total cost, which you haven't provided yet, to Amtrak and whether Amtrak actually even broke even. I won't expect that Amtrak will have made money on that.

So I am concerned that Amtrak is asking for record amounts of taxpayer funding while cutting jobs and services, but not being transparent with Americans about its cost and whether its service to the Biden campaign cost Amtrak money.

And so, I have 55 seconds remaining. Let me add this: It concerns me that I had to follow up with you to get a straightforward answer at this hearing, that you didn't provide me that information when I and three of my colleagues on this committee asked you in writing. If you expect taxpayers to give you record amounts of money to bail you out of the pandemic, we should expect full transparency about Amtrak's costs and spending.

Also, if you can make a profit on a specially ordered charter train, you should be able to make a profit on your normal routes and services. And I would point out that it has been brought to my attention that there are two privately run metro services in Japan that somehow manage to make a profit. So the statement that all public metro rail is subsidized around the world is not accurate. I will leave those comments for you and expect those answers in writing.

Thank you, and I yield back.

Mr. LIPINSKI. I now will recognize myself for 5 minutes, and I want to start with, very quickly, a non-STB question, but it was in the news this morning. MTA in New York announced what cuts they will have to make if there is not more funding in the COVID relief bill for public transit.

So I want to ask Ms. Brown, Chairwoman Brown, what would be the consequences for Metra if there is no further Federal relief for Metra?

Ms. BROWN. Thank you, Chairman, for your question. The current ridership [inaudible] currently between 8 to 15 percent, depending on which of the 11 lines that you are riding on due to prepandemic ridership. We saw increased [inaudible] numbers prior to the latest spike in positivity, and we continue to [inaudible] provide service to all lines and have put out additional trains and services [inaudible] reduction of service in March for social distancing.

Our employees remain the core of success, including the employees of the Union Pacific and the BNSF, operating 4 of the 11 lines. A testament to our dedicated employees is the fact that we have not had to cancel any of our scheduled service due to the pandemic. I hope that answers your question.

Mr. LIPINSKI. Do you have plans for what you would have to do if you do not receive any further funding?

Ms. BROWN. We do have a plan that we are currently exploring on what it will cost if we do have to expand our service further for the pandemic, and we can get back with you in writing with those answers.

Mr. LIPINSKI. Thank you very much.

Mr. SKOUTELAS. Mr. Chairman, may I make a comment on that to address your question as well? This is Paul Skoutelas at APTA.

Mr. LIPINSKI. Yes. Do it quickly because I have another question I want to come back to you on, so——

Mr. SKOUTELAS. Thank you. We have conducted at APTA a survey of our membership across the board, all commuter rail agencies, bus agencies, multimodal, and determined about 60 days ago that about half of all of the agencies were proposing to reduce services, cut back their routes, and lay off employees, if no additional resources were made available to them.

Now, on the business side, it is also true that the businesses supporting the industry are very much hurt by this and impacted with one-third of them, in fact, likely to go out of business altogether unless there is some intervention to provide some additional resource.

Thank you for my ability to answer that.

Mr. LIPINSKI. Thank you. And I'm going to go quickly. I am going to give Mr. Jefferies 1 minute and then Mr. Skoutelas 1 minute.

First, Mr. Jefferies, I assume you don't agree with Mr. Skoutelas about giving commuter rail any more leverage in terms of expanded service on freight rail lines. I can give you 1 minute and then Mr. Skoutelas 1 minute to respond to you, so—I know that is not enough time, but have at it.

Mr. JEFFERIES. I will keep it quick. Thank you for the question. So, as I mentioned in my opening statement, Amtrak is wholly unique in the access rights that it has with regard to freight rail lines, and commuters do not have those rights inherently. And so, thus, these arrangements have been made through voluntary agreements between privately owned freight railroads and public commuter railroads.

We believe that strikes the right balance, and we believe the dramatic growth we have seen in commuter rail throughout the country since the formation of Amtrak, I think one to well over 30, has demonstrated that. And certainly, there are challenges that come along, but we have found that when new services approach in a proper manner, where both sides get together, have skin in the game, identify clear, articulated goals from day one, and appropriate resources are made available, that often agreements are put in place, and successful outcomes emerge. So a very quick answer, but that is our position. Thanks.

Mr. LIPINSKI. Thank you.

Mr. Skoutelas.

Mr. SKOUTELAS. Yes. I would say, first of all, we all want a healthy rail system supporting the freight railroads, but we also want to be able to support the needs of our communities and the people who rely on these services. We can't be a one-dimensional society. Everyone does not want to own and operate an automobile. That is a recipe for disaster. We need a multimodal network that really looks to the rights of people, to their ability to move around with social equity, addressing the climate issues, environmental issues that we have. I believe that we must look for win-win solutions. Sure, there are divergent interests on all sides. We need to get together to find out how we can balance those needs and provide for the public.

Mr. LIPINSKI. Thank you.

And a very quick question for Chairwoman Begeman and Vice Chair Oberman. I take it we now have three members of the Board, and Ms. Begeman, your term is ending at the end of the year. What does it mean to not have a full complement of five members on the Board? How does that hurt?

Ms. BEGEMAN. The Board is certainly still able to conduct business. We do not have a quorum requirement in the statute. In fact, years ago, it came down to one serving member, business did go on. Now, I will say that there also has not been litigation to determine that someone else wanted to have a different thought process on that, but at the moment, we don't have a quorum requirement, and if we are three, with two, with one, business has continued.

I will say that my colleagues and I have worked very effectively together, and I appreciate their collaboration to try to be a productive Board. Some of us, and I think Congress, are probably disappointed that there still isn't a full complement of five members. If that were to happen, the Sunshine Act would no longer be preventing a majority from speaking to one another and, perhaps deciding certain outcomes. But at the moment, the Sunshine Act prohibits members from speaking directly in a nonpublic format because you could have an outcome-oriented decision, and so, that is not currently allowed. Again, I am hopeful that one day there will be five, but I am not sure that it will happen on my watch.

Mr. LIPINSKI. Mr. Oberman, do you have anything very quickly, because I am way over time.

Mr. OBERMAN. I would just like to add and echo what Chairman Begeman said about the productivity we have with three members, but I would also underscore not only the ability to interchange with individual Board Members under the Sunshine Act [inaudible], but I very much value the contribution that each additional person makes, each person brings additional insight, additional intelligence, and experience. I think all of us at the Board and the industry will benefit from that full complement, and I hope we get there. Thank you.

Mr. LIPINSKI. Thank you. My time has expired. I will recognize, for 5 minutes, Mr. Perry.

Mr. PERRY. Well, thank you, Mr. Chairman. It has been a privilege to serve with you.

My question will be for Mr. O'Toole, and I am going to provide some context. So if you can get unmuted while I do that, we will be ready to go. Your testimony, supported by Amtrak's audited financial reports, directly contradicts what many see as a carefully manicured narrative spun by Amtrak's leadership that the railroad was "nearly profitable," and I put that in quotes, in 2019, and would have been profitable in 2020 but for the pandemic.

Now, in September, newly appointed Amtrak CEO and president William Flynn testified before this very subcommittee projecting what many say is a false narrative that profitability was within Amtrak's grasp prior to the pandemic. When I confronted him with the concerns similar to those you have raised about Amtrak's unusual accounting practices, excluding depreciation from expenses, and including State subsidies as revenues, he dismissed the concerns.

According to Mr. Flynn, excluding depreciation from the total is merely a result of the decision to report on an adjusted operating income basis, rather than on a GAAP basis, and counting State subsidies as passenger revenues is an acceptable practice because it is a payment for services provided by Amtrak.

However, it is due to the exclusion of depreciation that reporting on an adjusted operating income basis is particularly misguided for capital-intensive industries such as railroads. This concern is amplified by the fact that much of Amtrak's fleet is near or beyond its useful life, and as you highlighted, that depreciation is the second largest operating cost reported in Amtrak's annual financial statement.

Moreover, Amtrak is still providing the service to the States without payment of these subsidies; instead, requesting $500 million in Federal money to make up for the lost, and I quote, "revenue," which I think is hardly in line with the payment for services arrangement described by Mr. Flynn.

With that, can you expand on the impact of these accounting tricks on the public's perception of Amtrak's profitability and financial viability, and if there is, what, if anything, can be done to force Amtrak to be more transparent with the American people that pay for nearly half of every Amtrak cost with their Federal and State tax dollars?

Mr. O'TOOLE. Yes. Thank you. It is a surprise to me that so many people believe that Amtrak's Northeast Corridor actually makes a profit, or that it even makes an operating profit. The way that Amtrak claims that it makes an operating profit is that it doesn't allocate depreciation to the various trains in its system. And as a result, most of the depreciation would fall in the Northeast Corridor, because that is where Amtrak owns most of the infrastructure that it owns. So by failing to account for depreciation, they are exaggerating the profitability of the Northeast Corridor.

If, when I sit down and take a look at all the trains in the system, State-supported trains, the long-distance trains, the Northeast Corridor trains, and I try to allocate depreciation, I find all the trains lose about the same amount of money per passenger-mile, and I am not the only one. The Rail Passengers Association is also critical of Amtrak accounting and believes that that accounting is biased towards the Northeast Corridor for one reason or another.

So, I think the biggest effect of Amtrak's accounting tricks, as we both call them, is that it makes the Northeast Corridor appear more valuable than it really is when, in fact, Amtrak only carries about 6 percent of intercity passenger travel in that corridor. The vast majority of intercity passenger travel is carried on highways in that corridor and in every other corridor in the United States.

Mr. PERRY. Thank you, sir.

One followup. This is for the APTA rep, Paul, if you can be prepared. Public transit agencies received $25 billion in CARES Act funding, approximately $10 billion more than the annual fare box revenue for all transit agencies combined, in addition to the $12.8 billion allocated for fiscal year 2020. Despite this massive amount of spending, you claim public transit agencies need an additional $32 billion in Federal spending. Otherwise, they will begin cutting routes and furloughing employees. If this request is met, the combined spending between the requested amount fiscal year 2020, fiscal year 2021 in CARES will exceed $82 billion over 2 fiscal years. That amount vastly exceeds the 5-year total under the FAST Act, $61.1 billion.

This alleged need cannot be explained by the impact of the pandemic, as far as I can tell, nor can COVID explain the 8-percent drop in nationwide ridership from 2014 to 2019 and the $106 billion in state-of-good-repair backlog that predated the pandemic. These demands are a transparent attempt to force the taxpayer to bail out the transit sector from a crisis, quite honestly, of their own making.

Do you believe—this is a question—do you believe it creates a moral hazard to reward decades of financial irresponsibility and mismanagement with over $80 billion in taxpayer subsidies? And how can you reassure my constituents, my bosses, that transit agencies could be good stewards of taxpayer money moving forward when they have failed to do so in the past?

Mr. SKOUTELAS. Well, thank you for the question. Let me begin by sharing with you, first of all, with regards to ridership nationally, just leading up to the pandemic, the two quarters preceding, national ridership on transit had been up, and that was in contrast to the decline that you recognized.

I will say as well, you have got to really look at the finances of how transit organizations function. You mentioned the fare box revenue, which is a significant portion of their revenue. However, every transit agency also depends on local support of some kind, State or local support, for funding their operations. In many cases, it is 50 percent or higher. And so, what the pandemic has done is not only take away the fare box return from ridership, as we saw ridership decline as high as 90 percent on rail systems and 70 percent overall for bus systems, but it also took away the notion that we would continue to see increases in sales taxes, payroll taxes, property taxes, and the like, which are some of the means of which support public transit agencies, and they vary by financial structure across the country. It just depends on the local circumstances.

So the need for those funding is not simply the loss of fare box revenue; it is the loss of other revenue sources for the agencies as well.

Mr. PERRY. Thank you, Mr. Chairman. I yield the balance.

Mr. LIPINSKI. Thank you.

The Chair will now recognize Mr. Payne for 5 minutes.

Mr. PAYNE. Thank you, Chairman Lipinski. And let me just say that it has been a real honor and a privilege to work with you. And your leadership on this committee will sorely be missed, but we will try to continue on in the manner in which you have led us so ably in the past.

Let me ask Mr. Skoutelas: The Northeast Corridor rail network is critically important to passenger and freight transportation. In 2019, Amtrak recorded approximately 12.5 million passenger trips, the most on record. The Bureau of Economic Analysis estimates that the States alone, rail net worth produced 20 percent of U.S. GDP. Can you share with the committee the national importance of a Northeast Corridor network to our passenger rail system?

Mr. SKOUTELAS. Mr. Payne, you are directing that to me as APTA?

Mr. PAYNE. Yes. Mr. Skoutelas.

Mr. SKOUTELAS. Yes. Well, certainly it is a critical piece of our transportation work, both in terms of mobility, giving people the options to travel in that corridor, and as you well cited, the economic impact that it has both in that region, and, really, across the country. What is not often recognized is the business aspects of those services.

Certainly, the people who ride them every day are of top concern, but the benefits derived from many businesses across the country who are not located in the corridor derive benefit from the economic impact of having that generation of new business and income, so it is critically important. It is part of an integrated network of services. Urban transit as well as the inner-city transit is something that we are strong advocates for, and believe that our people and our communities need options today. They need mobility options, and mobility is a basic freedom that people need to conduct their lives.

Mr. PAYNE. Thank you. And to follow up with respect to post-COVID. Ridership across the country has been at historic lows because of the pandemic. When the pandemic is over, we could see a massive uptick in rail ridership with minimal lead time.

Now is the time really to make the necessary investments now in the rail infrastructure to prepare for expected levels of demand. What investments are needed in our rail network to meet this demand, and what is standing in the way of these investments?

Mr. SKOUTELAS. Well, I would tell you that by the U.S. DOT's own accounting, there is over $100 billion of state-of-good-repair needs to modernize our urban transit systems that has not been addressed. And we would be looking in the next authorization that that be addressed in large measure, because we need to provide modernized services for people. That takes investment in new facilities and rolling stock and expansion of service. There is no question in my mind that rail services will come back as the economy opens back up again. It should not be a surprise to any of us that while we have seen the economic downturn and the shelter-in-place orders, that chokes off economic activity. Transit, urban transit, intercity rail and the like, really are dependent on moving people, and it is a function of economic activity.

So, we need to make these investments now to prepare for that time very soon when this economy will begin to be back open and running.

Mr. PAYNE. Thank you, sir.

Mr. Gardner, it is no secret that I am a strong proponent of the Gateway Program along the Northeast Corridor project, ranging from the Portal North Bridge replacement to building a new tunnel under the Hudson River, which would bring desperately needed upgrades to ensure that passenger operations are not impacted by the decaying infrastructure in those tunnels. How would Amtrak's nationwide passenger rail operations benefit from a full completion of the Gateway project?

Mr. GARDNER. Thank you, Congressman Payne. It is a great question. People generally know our Gateway Program as an improvement program between Newark, New Jersey, and New York's Penn Station. But as you point out, it has vast impact across our whole network. Roughly, 17 million of the 32 million passengers Amtrak had pre-COVID ride somewhere on the Northeast Corridor, and two out of every three trips begin or end at Penn Station.

All the routes to the Southeast, of course, begin at Penn Station for our long-distance trains and head through this area. Loss of mobility underneath the Hudson through our North River tunnels would have catastrophic impacts. We don't need to wonder about this. We saw it after Sandy, and we see it when we do have infrastructure problems that render our current crossing disrupted.

So there is a massive impact across our entire Northeast Corridor, because New York really is the epicenter of the rail system for passengers. New York's Penn Station is the largest and busiest transportation facility in North America and 450,000 or so riders a day, and they all rely on 1910 era infrastructure to deliver, essentially, full-capacity service. And we, through the Gateway Program with our partnerships with the two States, and with the Department of Transportation, aim to upgrade this infrastructure, to make it reliable, to put it in a state of good repair, and then begin an expansion program so that rail can continue to grow as an important means of transportation in the corridor.

Mr. PAYNE. Thank you. Absolutely. People don't understand if that North Portal Bridge fails, traffic stops between Boston and Washington, DC, so it is crucial in the tunnel as well. So it is very vital that people understand what that project means to the Northeast Corridor vis-a-vis and also the country. Thank you, and I yield back.

Mr. LIPINSKI. The Chair now recognizes Mr. Davis for 5 minutes.

Mr. DAVIS. Thank you, Chairman Lipinski.

Dan, it has been great to be on your subcommittee. It has been great to serve with you in this great institution. You are somebody who just gets things done, and this committee and all of us on it from both sides of the aisle are going to miss you. I am going to miss you here because you are one of my good friends. And to know that you are not going to be a voice I can go to on rail issues on a regular basis is difficult, but I know that I can still pick up the phone and give you a ring.

I just appreciate you, and I wanted to make sure that I got a chance to say that at this hearing. Also, you have made countless friends, some of them sitting at the table, Mr. Oberman, unfortunately for both of us, Mr. Jefferies, also, but you know, you have made a difference, too. Look at what happened with CREATE in Chicago. I see the benefits of that in my district downstate, what you have done over your time here in this institution.

You are going to leave a legacy of success when it comes to transportation, but you are also going to be leaving a lot of friendships that will never go away because you are such a good friend, and I thank you for that, sir.

I do want to say thanks to the witnesses. I appreciate the opportunity to talk about issues that affect my district, especially with Amtrak, and I wanted to go to Mr. Gardner with the time that I have left in regards to the Illini-Saluki Service in central Illinois. I spoke with your CEO just a few months ago, and I want to know what has been done to further address the possible short shunting issues that are causing some delays on that line that are just unfathomable, and really, impacting my constituents' ability to use your service. What can we do? What can we learn from you as to how that is being addressed right now, sir?

Mr. GARDNER. Thank you very much for the question, Congressman. As you reference, we have a unique condition on that line with the Canadian National Railway, where we have had some issues with switch shunting. This is shunting of the circuits for grade-crossing protection. We have been doing cooperative work with CN to try and identify and rectify this issue. It is a complicated set of circumstances to try and figure out.

In the immediate period, we have addressed the issue by having additional fleet that allows us to operate through this section, and current performance with Canadian National has actually become quite good. We think they have made dispatching improvements, and we are at roughly 80 percent on-time performance for the current route as a result of improvements that CN has made.

We continue to work with CN on looking at some technological solutions. We have some new technology that is coming, a little bit delayed by COVID, and being able to get both some equipment and expertise from overseas, relative to some technology we are looking at, but we are working cooperatively with CN. We have a good relationship there and are seeing, in the immediate period, better performance.

We still aim to adjust the schedules there and get better performance as we see today on a current schedule. We think there is more to achieve, and we think with the new metrics and standards rule and being able to redistribute the schedule time for customer OTP, we can get further better performance.

But right now, we continue to work with CN, and we are going to be trying out some new technology here shortly, and we are dealing with the immediate issue by having lengthened trains. Thank you.

Mr. DAVIS. Well, I appreciate that. And as I said, my previous questions for your CEO, Mr. Flynn, that we are—now is the best time, when ridership is down, to address these technological issues. Do you know if the Illinois Department of Transportation has been able to place any orders on the technology that could be helpful in addressing this short shunt issue on that route, since it doesn't seem to affect any other Illinois routes?

Mr. GARDNER. As far as I understand it, Amtrak and CN are looking at this, and we are out to procure some additional equipment here to test this technology in the environment. As you say, it is a unique circumstance to this one area, and so, we have worked together, and FRA has been part of our conversations, to understand what is driving this condition. But we are going to test this new technology, and we are hopeful that we will find a good solution other than the blanket contest we have today.

And as you pointed out, now is the exact time we want to solve this. But as we recover from a pandemic and envision serving more passengers, we can do so reliably to your district, and with better performance over that route.

Mr. DAVIS. Well, as you can tell, until we see some solutions, I am going to continue to ask you to address this issue, and probably with a little more impatience each and every time. I certainly hope we can continue to work together, and I appreciate the information, and, also, being here today, to answer our questions.

And with that, Chairman Lipinski, probably for the first time ever, I am actually yielding back some time.

Mr. LIPINSKI. Well, it looks like you are yielding back time, but actually, the clock started late. So thank you for the extra time you were given there, but thank you for your kind words, and good luck with everything moving forward.

The Chair will now recognize Mr. Malinowski for 5 minutes.

Mr. MALINOWSKI. Thank you so much, Mr. Chairman, and thank you for your continuing service. It has been such a pleasure for me to work with you and learn from you in the last couple of years.

I have a couple of questions, but I first want to respond to a point that was made just a little while back. It was a question that somehow there is a moral hazard created by the Federal Government subsidizing, or investing in, our Nation's passenger rail and rail infrastructure. It is a very, very strange comment to make, recognizing that, in fact, taxpayers subsidize every form of transportation in the United States, including all of us who drive cars on our Nation's highways, which, after all, are not built or maintained by the private sector. And we do it because—not just as a public service, but because we recognize that transit of all kinds is absolutely critical to keeping our economy moving. I wish that didn't have to be said, but here we are.

I had a couple of questions for Mr. Gardner, building on some of the points that my colleague, Mr. Payne, made. Last September, we had a hearing with the CEO, Mr. Flynn. And in an exchange with me, he told me that he was hopeful that the Portal North Bridge, which is a key part of this Northeast Corridor work that we have to do, would—the construction on the Portal North Bridge could begin as soon as early 2021. And Mr. Gardner, I wanted to just ask if you have any updates for us on that, any more definitive estimates of when we will see work actually beginning on that critical bridge?

Mr. GARDNER. Thank you, Congressman Malinowski. We are making good progress on the Portal North Bridge program. As you know, the critical next step is to achieve a full funding grant agreement between the Federal Transit Administration and New Jersey Transit. And, so, I know that New Jersey Transit is working very hard with FTA to accomplish that with the goal of completing that certainly this year, near the end of this year.

We have a role in that arrangement by just cementing our agreements with New Jersey Transit on their execution of the program, and that is going well. If we are able to complete that work, then New Jersey Transit, I think, will begin the process early next year of going out to market and looking at ways to start the full construction next year, so that is the critical last piece of the puzzle.

Amtrak has received additional funding from the FRA through a grant program. Amtrak has its dollars in place. New Jersey Transit has its dollars in place. And this last piece of the Federal Transit Administration CIG program is really the final remaining element and we can begin on this project, which we have been in planning for and hoping to develop for well over a decade at this point.

Mr. MALINOWSKI. Great. Well, that is good to hear. And then, of course, there is the Hudson River Tunnel. And, you know, I trust you agree it is promising that on January 20, we will be swearing in a guy whose nickname is "Amtrak Joe" to be President of the United States.

There have been a number of blockages to proceeding with this next critical stage of the Gateway project, and I wonder if you could talk a little bit about some of the procedural levers that a new administration could pull to allow this project to go forward? Specifically, what are some of the early steps a new administration committed to completing this project could take, should take, to let it get started?

Mr. GARDNER. Thank you. Well, there are really three, I think, core steps that immediately need to be taken in order to advance the program. First, like the other witnesses here today, Amtrak is in dire need of additional support financially to get through the COVID pandemic, and we have requested $2.9 billion in additional funding to be able to fully restore our service, recall employees who are furloughed, and keep our capital program going. That is important because if we don't do that, we don't have the capital dollars at Amtrak that would be necessary to undertake some of the elements of the Gateway Program, so that is essential.

Number two. We need the record of decision to be finalized for the Hudson Tunnel EIS, Environmental Impact Statement. The Department has been reviewing that for several years now, and that record decision, final EIS needs to be issued. With that, we can begin a whole series of activities to advance the program right away.

Next, we need support from the administration recommending that the Hudson Tunnel program be funded through the budget process for the CIG program to start to build the financial capacity to undertake the project.

So those are all important early steps, and we are ready to go at Amtrak. Even in these very difficult times, just to put that in context, we had 13,000 passengers yesterday on the Amtrak system instead of the normal 100,000 we would have in a day. So very challenging times, but we are continuing to keep our capacity to advance an essential project like Gateway, so that when we come out of this pandemic, we are there to serve America and increase rail's role in the region.

Mr. MALINOWSKI. Thank you so much. I yield back.

Mr. LIPINSKI. The Chair will now recognize Mr. Babin for 5 minutes.

Dr. BABIN. Thank you, Mr. Chairman. I appreciate it.

Good morning to you all, and thank you for participating in this hearing today.

As you may all know, the Texas high-speed rail project is fairly controversial. Costs have tripled, even though construction has not started. There is opposition from local officials and landowners, and the company in charge of the project, Texas Central, has reneged on their original promise that the project would be privately financed.

Most recently, House Democrats included an earmark for the company in their partisan infrastructure package, H.R. 2, that would alter the credit risk premium, and make it easier for the Texas high-speed railway to get Federal RRIF loans, leaving the taxpayers across the country on the hook if the project fails.

To that, Texas Central claims that they are unable to pay for the risk premium upfront for this project, and have requested legislators to change Federal law in order to help them qualify for a loan that they otherwise would not be able to receive under the standard rules. To be frank, I believe these decisions should be made at the State and local level, but I do have a few questions on the subject.

Chairwoman Begeman, it is my understanding that Texas Central must file, and the Board must approve, a full application in order for the company to have the authority to construct. Is that correct?

Ms. BEGEMAN. That is correct, sir.

Dr. BABIN. OK. Thank you. And, again, to you, Chairwoman, what role does the financial feasibility play into the Board's decision to grant or to deny a full application to the Board for construction and operational permits?

Ms. BEGEMAN. I would say it will have an important role. I don't want to prejudge an outcome, so I am going to sort of give you more of a historical viewpoint. A few years ago, the Board considered a case on an entity that actually wanted to develop a very large freight network around the Chicago area. As you can imagine, it had quite a bit of attention, and I would say controversy, from many communities and leaders and, of course, also a lot of proponents. And one of the things that the Board asked the applicant to do, or the advocate to do, was to disclose what their finance availability was in order to complete the project. And we learned roughly that they had $113, and that was really all the Board needed to say no.

Dr. BABIN. OK. Thank you very much.

Mr. O'Toole, does it worry you that Texas Central's project costs continue to skyrocket, lacks the necessary land to build the train, and that some transportation experts, like the Reason Foundation, have noted that the company's ridership projections are inflated?

Mr. O'TOOLE. Well, even if we accept the ridership projections of the Texas Central, at their current estimated construction costs, they would have to charge every single rider $255 per one-way trip to just cover construction costs amortized over 30 years.

In addition, they would have to charge enough to cover operating costs. So the tickets would start at $300. You compare that with the cost of flying the same corridor, which would be faster. Currently, Southwest and American and other airlines are charging about $100 a ticket. There is no way that Texas Central can be competitive.

And the whole problem with high-speed rail is that it requires a huge amount of expensive-to-build and expensive-to-maintain infrastructure that the airlines don't need. Basically, the airlines' infrastructure is the air, so they don't need a lot of infrastructure, and so they can be extremely competitive.

The whole idea that airlines are only competitive above 500-mile, or above 600-mile distances is belied by the fact that there are 35 to 45 flights a day in between Dallas and Houston. There are [inaudible] flights a day between Portland and Seattle, which are only 160 miles apart. There are a lot of places where there are a lot of flights that are much shorter than 600 miles, and most of the people on those flights are just going from point A to point B. They are not using it to connect to other places.

Dr. BABIN. OK. Thank you very much. Just a few seconds left. Back to Chairwoman Begeman.

What steps will be taken by the Board to address that the serious financial concerns raised by the local landowners and officials are adequately addressed?

Ms. BEGEMAN. Sir, we have a process where anyone is allowed to participate in our proceedings, particularly our [inaudible] situation involving a proposed high-speed rail project or, you know, a [inaudible] freight project. Communities, congresspeople, Senators, anyone can submit their views to the Board, and they will be posted. The Board will consider them. We read all of our filings, and we will certainly, you know, take everyone's views into account and try to make the most appropriate decision based on the law and the facts.

Dr. BABIN. Thank you very much. I thank both of you.

And I will yield back, Mr. Chairman.

Mr. LIPINSKI. All right. So who do we go to?

The Chair will now recognize Ms. Johnson for 5 minutes. Is Ms. Johnson there right now?

All right. The Chair will recognize Mr. García for 5 minutes.

Mr. GARCÍA OF ILLINOIS. Thank you, Mr. Chairman. And before I make my remarks, I also want to note that you will leave a great legacy, a second-generation legacy, during your time and service on this committee that will speak loudly for itself. I want to thank you for all of your service over all of these years, and I want to pretty much echo the sentiments expressed by my colleague from Illinois, Mr. Davis, earlier.

Thank you, Mr. Chairman and Ranking Member, for putting together this all-important hearing, and thanks to our distinguished witnesses. I am always delighted to welcome folks from Chicago, and I am glad to have Metra, our commuter rail in northeast Illinois, joining us today. A shoutout to both Chair Romayne Brown and Vice Chair Marty Oberman.

Commuter rail, like many of our critical transportation modes, like the aviation industry, transit, et cetera, have been hit particularly hard by the COVID pandemic. Each of you gave us a snapshot of how dire the situation is for your organization. Rising cases across the country and the reissuance of stay-at-home orders is devastating for the transportation sector.

Behind those numbers are the employees, our frontline essential workers, who are on the brink too. Mothers and fathers scared to bring COVID–19 home and expose their families, but still, they roll up their sleeves, and they head to work every day, keeping our economy and many of their essential workers, like doctors and nurses, on the move, whether it is commuter rail or our public transportation agency. We need to get it straight. Keeping our public transportation agencies, including commuter rail going, it is not just an option. It is a lifeline. It keeps our essential workforce going, and now, more than ever, Government must step up. That is why I fought hard to build support for $25 billion in the CARES Act and additional $32 billion in the Heroes Act. This aid cannot wait.

The chairman has asked questions about COVID and Metra's financial fiscal outlook. I want to ask a different question of Ms. Brown on the topic of the Surface Transportation Board. In your opinion, what role can they play in the short term and long term to ensure that we have a robust and thriving commuter rail system?

Ms. Brown?

Are you able to hear me, Ms. Brown?

Mr. LIPINSKI. Can Ms. Brown hear us?

Perhaps we are having technical difficulties.

Mr. GARCÍA OF ILLINOIS. Sorry to hear that.

Ms. BROWN. We are experiencing some technical difficulties on my end. Is it possible to get the question repeated, please?

Mr. GARCÍA OF ILLINOIS. Yes. My question, Ms. Brown, is on the topic of the Surface Transportation Board, in your opinion, what role can it play in the short term and long term to ensure we have a robust and thriving commuter rail system?

Ms. BROWN. [Inaudible.]

Mr. GARCÍA OF ILLINOIS. Is that audible?

Mr. LIPINSKI. If Ms. Brown maybe tries turning off the video and see if that works better.

Yeah, your video is going on and off, so if we could get Ms. Brown, of if Mr. García wants to decide he wants to move on or——

Mr. GARCÍA OF ILLINOIS. Yeah. Maybe if we can convey that question to Ms. Brown if she can get back to me in writing, that would be fine.

Let me proceed to a question for Vice Chair Oberman.

In the past years when Amtrak established new or expanded service, host railroads often sought levels of infrastructure investment that were vastly different from Amtrak's estimates. The process for resolving disputes around infrastructure improvements between Amtrak and its host railroads can take years and leads to unreasonably long delays in providing the public with passenger rail service they need.

What tools does the present Surface Transportation Board need to expedite the process of adjudicating disputes between Amtrak and various host railroads?

Mr. OBERMAN. That is an excellent question, Congressman, and it is great to see you today, and I am delighted to see so many members of the Chicago City Council and Metra representatives at this hearing at which I am, you and I are both graduates of at least one.

You know, as Chairman Begeman outlined at the beginning, the Board has limited jurisdiction currently over matters involving the freight railroads and Amtrak. Of course, there is the entirely new proposal that has just been issued by FRA on on-time performance which will then allow the Board to begin to investigate and adjudicate on-time performance matters. But, to my knowledge, we don't have jurisdiction to mandate infrastructure improvements by freight railroads in order to allow them to better serve Amtrak. If that is an authority that the Congress chose to enable the Board to deal with, we would then be in a position to investigate matters in that area.

I would note that presently when freight railroads have reduced infrastructure such as after 1970, such as including double tracking in certain places, the Commission, the ICC, and then the Board had no jurisdiction over regulating the freight railroads' decisions to remove that kind of infrastructure. So that happened without the Board's oversight in the past and still would. There are certain limited kinds of infrastructure, which we don't rule on.

So I don't know if that answers the question, but the current authority is very limited. And to the extent infrastructure is related to Amtrak's ability to have better performance, that would be something that Congress would have to deal with.

Mr. GARCÍA OF ILLINOIS. OK. Well, thank you for your answer.

Mr. Chairman, I yield back. Thank you for your consideration.

Mr. LIPINSKI. Thank you.

The Chair will now recognize Mr. Pence for 5 minutes.

Mr. PENCE. Thank you, Chairman Lipinski, and very good luck, God speed to you in your next endeavor, and thank Ranking Member Crawford for holding this hearing, and thank you to all of the witnesses for being here today.

As a national leader in both passthrough highways and rail track mileage, Indiana has earned our nickname as "the crossroads of America." With over 940,000 Amtrak riders annually and nearly 4,000 miles of total rail trackage, we are also significantly invested in the safety and efficiency of robust passenger rail systems.

Last month, Governor Eric Holcomb broke ground on the $945 million West Lake Corridor South Shore Line. This extension project will bring Hoosiers a streamlined connection to the Chicago economy. The State's new commuter rail will boost our accessibility and encourage prosperity for generations to come. We are growing jobs, private investment, and creating new opportunities for Hoosiers.

I was proud to advocate for FTA's CIG program in both the fiscal year 2020 and fiscal year 2021 appropriation process. I am especially honored to see $355 million in CIG funds awarded to the South Shore Lines West Lake Corridor. I applaud Governor Holcomb, my fellow Hoosiers in Congress, and all the local leaders on this monumental economic development win for my State, Indiana. For 30 years, leaders in Indiana have worked hand in hand with Washington to put together one of the largest bipartisan transit investments in our State.

I also and especially want to recognize my friend, Congressman Visclosky, who has worked tirelessly to see this project through over the last 30 years. I say to you, Congressman, well done, good and faithful servant. I look forward to our continued partnership in bringing infrastructure investment to Indiana.

I thank you, and I yield back.

Mr. LIPINSKI. The Chair will now recognize Ms. Norton for 5 minutes.

Ms. NORTON. Can they see me? I hope you can you hear me, Mr. Chairman. I very much appreciate this hearing and have some special questions for Amtrak because, of course, not only is Amtrak essential to our country, it has its hub here in the District of Columbia that I represent.

And so I have a question for Mr. Gardner. The committee had a hearing last September on Amtrak's response to COVID–19. Since then, not only has the virus continued, but is more vicious and now it is out of control we are told in our country.

Have there been any additional personnel or service changes since our last hearing because of your response to COVID–19?

Mr. GARDNER. Thank you, Congresswoman.

As you noted, the rate of infections have dramatically increased, and we are seeing impacts on our network. We have seen an increase in positive cases [inaudible] and the production [inaudible] in this district. We anticipate these problems will make it harder for us to withstand financially these next several months.

As you know, we were hoping that Congress would have enacted additional COVID funding and relief for Amtrak, and as well as our other partners, our State partners, our commuter partners. That has not yet happened. And we have taken a series of steps to try to maintain the financial footing of the company.

But the current rise in cases does give us concern about additional revenue that we had hoped for and anticipated over these next several months and, again, reinforces the really urgent need for Congress to provide supplemental support so that we can maintain proper [inaudible] and be prepared to [inaudible].

Ms. NORTON. Well, I am concerned because Congress itself invested in Amtrak when there was concern that we wouldn't have any Amtrak. So, in addition to whatever funds that other railroads may need, Amtrak is in a perhaps unique position with respect to Federal funding.

So I am very concerned, and hopefully you can keep us informed because Mr. O'Toole's testimony, as I have read, seemed to suggest that Amtrak's service was only for a small population. Of course, that caught my attention here in the district because the district has more than 47 million people a year pass through Union Station, many of whom, of course, use Amtrak.

Can you speak to the unique role that Amtrak plays in our transportation system? We know it's used heavily here on the east coast, but it's used around the country. Could you speak more generally to Amtrak's role in our transportation system on the east coast and nationwide?

Mr. GARDNER. Absolutely. Thank you for the question.

Mr. O'Toole's testimony seems to, in a way, prove our point, which is that Amtrak is an excellent addition to mobility in places like the Northeast Corridor where we have good infrastructure, multiple frequencies and competitive trip times. And we make [inaudible] who provide this, who take our service, as you know, and we provide significantly more trips between Washington and New York, for instance, than the airlines. And this infrastructure does far more than just support Amtrak.

To his point about depreciation, the depreciation associated with that infrastructure provides essentially over 2,000 daily trips pre-COVID of trains up and down the corridor, serves 750,000 passengers a day, 260 million trips a year, because it covers not only Amtrak but eight commuter users, four freight users. It is a national infrastructure that serves an entire region, and not any region, a region of more than 50 million people producing 20 percent of the GDP.

So that capital investment is one that the Federal Government has made through Amtrak and is there producing tremendous results. What we aim to do is take this successful prototype, and we have other examples in the Midwest and the Chicago hub, as the chairman well knows, in our California services supported by the State of California and Pacific Northwest, examples where passenger rail makes a real contribution, and it does so by offering trip-time competitive trips, multiple frequencies, and reliable service.

The reason we aren't doing more in the United States and aren't able to provide more value is because we don't have great access to the rest of this large network around America. There are many areas where passenger rail can provide the kind of meaningful service it does in the Northeast, but we need a fair and quick way to get access to the infrastructure to provide such trips and appropriate funding through both the States and the Federal Government.

Ms. NORTON. So when you say you don't have access to the rest of the country, what do you mean by that?

Mr. GARDNER. So, Congresswoman, under statute we are given the right to use freight railroad infrastructure across the network, but the process of doing so is very cumbersome and difficult. Not all but some of our freight colleagues really look to make it very difficult for us to use their infrastructure to add service or start new routes and——

Ms. NORTON. But is there anything that Congress can do about that?

Mr. GARDNER. Yes. In fact, already in the surface transportation reauthorization bill, you put forward in the committee and passed and you made some changes to the statute to help speed up our process and give us more rights, help us achieve the preference we should get under statute over freight transportation.

We need those provisions to be enacted into law, and we could use your support in terms of funding and resources for the STB so they can carry out their roles as well.

Ms. NORTON. I appreciate that. When we consider the concerns that we have about transportation, this is one of the cleanest forms of transportation in the United States or in the world.

If I have time, I have a question for Mr. Skoutelas because in his testimony he says that after a commission to study COVID transmission on transit, it found no direct correlation between the use of urban transit and transmission or contraction of the virus. I was impressed by that. And I wondered why so? Is it because there are so many rules, because of the enforcement of rules, because people are abiding by the rules?

Could you speak to that sir?

Mr. SKOUTELAS. Thank you so much for that question.

In the weeks following the outbreak of the pandemic, we saw quite a bit in the media about the genesis of where these contractions were occurring from the pandemic and the virus, and a lot was attributed to, I think inappropriately, to public transit use.

And so we looked around the world really to gain experience of what has transpired over these many months since the pandemic outbreak and have determined both in Asia and in Europe, and really here in the United States, the studies that have been done found that public transit is not the source of that. In fact, oftentimes it is the end points where people are starting, perhaps their homes, or some other place of destination.

People are on transit generally for a pretty short period of time. And our agencies have all adopted very rigorous disinfecting and cleansing protocols that they have put into place really since the very beginning of the outbreak in March, including——

Ms. NORTON. Excuse me. If there is no correlation—so if somebody is infected and they board transit, of course they are bringing that on the transit, are you saying that they are there for such a short period of time that the virus isn't transmitted while on the train?

Mr. SKOUTELAS. Well, I think what the studies have shown is that with all of the measures that transit has put in place, the wearing of face coverings by their own employees, the frontline workers, encouraging, if not mandating, et cetera, by riders and all of the cleaning provided at the stations and at rolling stocks, buses and trains, it really has diminished that possibility.

And, in addition to that, the social distancing that most of our agencies have done as well to keep people separated as much as possible. Those all have contributed to that. So we want to make sure that that message is out.

We recently convened and concluded a national task force looking specifically at these issues and have laid out a whole framework of practices that we think are to be followed and in large measure are being followed, which I think greatly diminishes that possibility.

Ms. NORTON. Well, that is very helpful to hear, and I thank you.

I yield back my time Mr. Chairman.

Mr. LIPINSKI. Thank you.

The Chair now recognizes Mr. LaMalfa for 5 minutes.

Mr. LAMALFA. Thank you, Chairman Lipinski. I just wanted to say it has been a pleasure. You are a true gentleman, and I have enjoyed the opportunity to serve with you. So thank you, sir.

Just a couple for Mr. Gardner and also for Mr. O'Toole of Cato here.

In my own district here, talking about Amtrak train service, we have a city called Dunsmuir in northern California. It is between Redding, on the north side of the northern part of California, and I believe the next two stops north of that in Oregon would be Medford and/or Klamath Falls, if I am not mistaken. Maybe Medford is a bus route, but the threat here is that the Dunsmuir stop is going to be closed down.

And there is, of course, great concern in the local community on that because it is, although a small town, it really does punch above its weight, so to speak, on its usage there. And with the challenges you have in Siskiyou County with weather where this location is, is that the train can go when the highway cannot. And this station is really the only nonroadway transportation link in the area, in that area of northern California. So loss of the station would be pretty devastating for passenger service and a lot of just local transportation concerns in the region.

So for Mr. Gardner, again, we have on several occasions this year because of—you know, during the CARES Act and COVID response, taxpayers were pretty generous with Amtrak and expect service from that or at least the availability of service. And $1.02 billion in March via CARES Act and then requests later for $1.475 billion and then—that was in May, and then in August a number of $2.05 billion and it got kicked up to $4.8 billion. So a lot of dollars being pushed around, and I am certainly not anti-rail service, but we have great concerns that are we getting the bang for the buck to our taxpayers in order to keep this alive and viable, especially with the closure of stations and the cutback of trains.

So is this right, Mr. Gardner, for us to be witnessing the possible cut back of even more service, especially what we are talking about in Dunsmuir, California, which is a really important link in a tough transportation situation?

Mr. GARDNER. Thank you very much for the question.

I have had the pleasure of being in Dunsmuir, a beautiful part of California. And, in fact, we fully intend to continue to serve Dunsmuir. I think what you—it is part of our Coast Starlight route, and probably what you are aware of is that we have had to reduce service to three times a week for our long-distance network.

That is actually because we were unable to achieve the additional funding we had requested from Congress in order to forestall those kind of cuts. And so we fully intend to restore that service back to 7 days a week and, of course, serve Dunsmuir.

So that is why we have asked for these additional dollars. We do want to continue to serve Dunsmuir and bring both long-distance network, including the Coast Starlight, back to its 7 days a week schedule.

Mr. LAMALFA. Let me ask a technical question on that then. Are the trains traveling through 7 days a week but they just don't stop each time, or is it that you are just not running trains at all through the entire region 7 days a week?

Mr. GARDNER. The latter, Congressman. So we are only running that train three times a week, so it is not running on the other 4 days, and we have done that in order to reduce expense because we have not been able to receive additional funds for fiscal year 2021.

As you noted, we did receive funds in fiscal year 2020 under the CARES Act, and that was essential to keeping the long-distance network operating at 7 days a week. But without additional funding, we have had to take these steps to reduce costs and service to meet the very, very low demands. Yesterday there were 2,500 passengers on our whole long-distance network. But we intend to fully restore that service as soon as we are financially able to or when demand returns to other levels.

Mr. LAMALFA. OK. I can certainly see that.

So is there a scenario where you would run trains through there that don't necessarily stop but keep going? If you are running the trains, will you continue to use each of the stations that you have in the past, including Dunsmuir?

Mr. GARDNER. Yes. Certainly I am aware of no plans that Amtrak has to not service Dunsmuir, and we are—the only reason the service is reduced is because the train frequency has been reduced. And as we increase that frequency, with Congress' support, we would be able to increase service again.

Mr. LAMALFA. OK. Because when you see service that way, then you see people go to other modes if at all possible, so you lose that market share, and I think we have seen that in the past with others. Once you reduce it, maybe they don't come back when they find other ways to do that. But that wouldn't necessarily apply to this region here.

So I wanted to also delve into another thought here too, and it was talked about earlier. I am sorry I had to go out of the room for yet another Zoom call.

How would giving Amtrak greater preference over freight trains affect Amtrak's ridership? We know freight is an extremely important and big part of rail usage, and if this was asked earlier, forgive me. But if Amtrak got greater preference in order to try and present a better saleability to passengers, what kind of payoff would you see in that, do you think, as far as greater usage by ridership?

Mr. GARDNER. Yeah, that is a great question.

We think that the poor on-time performance that many of our routes have is a significant impediment to ridership and revenue growth. It is quite apparent many of our passengers, particularly our other long-distance network that serves Dunsmuir, for instance, their routes frequently experience significant delays.

The number one cause of those delays is freight train interference. These are delays that Amtrak encounters when freight trains run in front of us or otherwise dispatching decisions are made that prioritize freight trains instead of Amtrak.

And the reduction in reliability is clearly a problem for passengers. We have many-hour delays. Often our whole long-distance network is operating at 50 percent or less on-time performance if you look at all over the many past years. Even right now through this period of COVID where freight traffic has been down, we are only at 60 percent over the last 12 months for on-time performance with the entire long-distance network.

So we see a very difficult struggle to market these trains to riders, particularly on the shorter distance because the——

Mr. LAMALFA. I have to economize my time here. I am sorry.

So what do you think, can you put your finger on how ridership would improve if you could improve those numbers?

Did we lose you on the link there, Mr. Gardner?

Let me jump to Mr. O'Toole while that spools back up hopefully. Same question, Mr. O'Toole at Cato, would it improve Amtrak's ridership, do you think, if we were able to somehow accomplish a greater preference over freight? Which isn't necessarily my position, but I want to ask the question.

Mr. O'TOOLE. Well——

Mr. LIPINSKI. Mr. O'Toole, if you could make this a brief answer.

Mr. O'TOOLE. OK. I am sorry I am longwinded.

As a resident of Chairman DeFazio's district, I have been to Dunsmuir many times, both by train and by automobile, and I can tell you fewer than 15 people a day get on or off an Amtrak train in Dunsmuir.

Now, I think it would be great if we had two trains a day between Seattle and Los Angeles and one of them was able to serve Dunsmuir in daylight and the other one at nighttime instead of just one at night as it is today. But, effectively, Amtrak's market share in that corridor is indistinguishable from zero.

So even if you had two trains a day, even if they ran on time every day, you might be able to double that from zero to zero. It is not going to be relevant. It is going to be extremely costly but not relevant.

Mr. LAMALFA. All right.

Mr. Gardner, are you back?

Mr. GARDNER. Thank you. I am, yes.

Mr. LIPINSKI. If you could make this quick.

Mr. LAMALFA. Yes, please.

Mr. GARDNER. We think there will be a significant increase in ridership. We have seen it. At every point of on-time performance, it equates to increased ridership and revenue, and our costs would significantly be reduced if we didn't incur as much delay because we take lots of costs as a result of delay.

Mr. LAMALFA. When do you anticipate going to four a week or five a week up from the three?

Mr. LIPINSKI. If we could have this be the last answer here.

Mr. LAMALFA. Thank you.

Mr. GARDNER. If we would receive the funding we have asked for, we would restore our service as soon as possible.

Mr. LAMALFA. Thank you.

Thank you, Mr. Chairman.

Mr. LIPINSKI. Thank you.

The Chair will now recognize Mr. Weber for 5 minutes.

Mr. WEBER. Thank you, Mr. Chairman.

Let me say, Dan, we are going to miss you. You are one heck of a standup guy. So I just appreciate having served with you.

I want to go first to Mr. O'Toole if I can.

Mr. O'Toole, one of our questions is, how does Amtrak compare to airlines and motor vehicles in terms of ridership and then also demand and profit?

And then I will expound on that a little bit. How does Amtrak compare to airlines and motor vehicles in terms of ridership and profit?

Mr. O'TOOLE. Well, motor vehicles effectively have 90 percent of the market share in this country. Airlines have 10 percent. Amtrak and urban rail transit have less—well, under 1 percent together. Amtrak's is one-tenth of 1 percent of all ridership.

Mr. WEBER. And I am going to be a little brief if I can. So, obviously, the profit is going to be way down. And in some sense, I think we would all agree that is really not—that is almost apples and oranges. It is not a fair comparison per se, but it does point out some interesting things.

The number of jobs, if you know, that Amtrak represents and then the freight rails, we are going to focus on just the freight companies themselves, what's the difference there in jobs? Does Cato know that?

Mr. O'TOOLE. I don't have those numbers offhand. Stephen Gardner might. But, obviously, the freight rails which move one-third of all of the freight moved in this country are going to have a lot more jobs; but the interesting thing is they are very high worker productivity, whereas Amtrak has extremely low worker productivity. For the number of passengers carried, it requires a lot of workers.

So in terms of passengers carried, Amtrak has a lot of jobs. Now, that doesn't mean they are actually doing productive work in this country.

Mr. WEBER. Right. I get it, and I appreciate that. I am trying to keep the answers with brevity as much as possible before the departing chairman, who is a standup guy, kicks me out, kicks me off.

So I do want to go to Mr. Gardner, do you know the answer to that question?

Mr. GARDNER. Well, Congressman, I believe the freight rail industry has about 150,000 employees. We are roughly, prepandemic, a little bit shy of 20,000.

Mr. WEBER. OK. Well, thank you for that.

And then let——

Mr. JEFFERIES. Congressman, if I could chime in on that, absolutely freight rail employs about 150,000 right now in salary and benefits totaling into six figures. When you look at the economic impact of freight rail, we are talking about 2.1 million jobs direct and indirect impact there.

Mr. WEBER. Right. And that is one of the major points in this discussion, in my opinion. What kind of money—and I will stay with you then, if I can.

What kind of money has the freight rail companies invested in the infrastructure? And then you have to ask the same question, what has Amtrak invested? Back to you.

Mr. JEFFERIES. Sure. So annually freight railroads are investing about $26 billion in private capital back into their networks, and then we chart that back to partial deregulation in 1980, it well exceeds $700 billion in private capital investments.

Mr. WEBER. And, Mr. Gardner, how about Amtrak?

Mr. GARDNER. Amtrak has been investing about $1.2 billion, $1.3 billion per year over these last several years in our network. Of course, we have a very different network than the freight railroads. We primarily only own our infrastructure in the Northeast Corridor, and then our rolling stock and some station assets.

So our capital program is very different. But our economic impact is quite substantial. We also have enormous multiplier effects that occur from our spending, both our payroll and our procurement, and from the benefits we create through mobility.

Mr. WEBER. Yeah, but primarily in the Northeast area, I would imagine, as you pointed out.

Interesting question, and I will throw this back to Mr. O'Toole, high-speed rail, and I have been overseas, seems to work in other countries, but it doesn't work here. Why?

Mr. O'TOOLE. Well, I would first of all, question the assertion that it works in other countries. It is not really working in France or China or even Japan, except for in the main corridor between Tokyo and Osaka.

One thing we have learned from high-speed rail in countries all over the world is that they have gone heavily, heavily into debt to build it, almost to the point where it creates serious problems for their country.

Japan's 10 years of stagnation, the lost decade in the 1990s, can be attributed to the debt of building high-speed rail. China has a debt of something like $750 billion building high-speed rail. There is no end in sight. I don't think it is working in those countries.

Mr. WEBER. OK. Well——

Mr. O'TOOLE. Its market share is small and not growing. Automobile share is growing rapidly in Asia. Airline share is growing rapidly in Europe. [Inaudible] is not.

Mr. WEBER. So very quickly, Mr. Gardner, back to you. So, according to Mr. O'Toole's response there, he doesn't think it is working because they are going in debt. And when passenger lines need more access to the rail that freight lines use, how do you suppose other countries make that work? Any insight there?

Mr. GARDNER. Yeah, absolutely, Congressman. Thank you for the question.

I would first say that, you know, Mr. O'Toole's assertion is sort of breathtaking. We have got the major developed nations of the world all investing at incredibly robust levels because they see passenger rail and high-speed in particular as a means of increasing mobility efficiently and addressing carbon emissions. So I would say that the broad consensus is actually that not only is it working, but it is working and worth more investment.

And the difference between the U.S. system and most of the international examples is that the infrastructure is publicly owned, publicly owned and developed in all of these nations, the nations that Mr. O'Toole mentioned. There is a rail infrastructure entity, and they are developing it for both passenger and freight, and some of those locations are optimized for passenger service primarily. That is for sure the case.

China is a great example of a nation that is investing for both, a massive freight system and an incredible amount of investment for passenger rail. And, again, they see high speed as a means of dealing with their very significant population in an efficient way.

Mr. WEBER. Well, thank you.

Mr. Chairman, I am going to yield back. And, once again, best wishes to you going forward into your future.

Thank you.

Mr. LIPINSKI. Thank you.

The Chair will now recognize Mr. Stauber for 5 minutes.

Mr. STAUBER. Thank you, Mr. Chair and Ranking Member Crawford and the witnesses for testifying today.

I do not have any questions, but I do want to make some comments of Chairman Lipinski. Chairman, I am a freshman Member on the Republican side and working with you on the Transportation and Infrastructure Committee. I just want to say it has been a pleasure for me as a freshman Member on the Republican side to watch you operate, your moderate views. You are going to be missed as a Member of Congress. You are going to be missed in the Illinois delegation. You are going to be missed in the District.

I so much appreciate the opportunity to have served these past 2 years with you. You are just an unbelievable person, and I appreciate everything that you have done, your moderate stances and others. And I just want to say thank you very much for your service to this Nation, and Congress is better off to have Dan Lipinski in it.

And I yield back.

Mr. LIPINSKI. Thank you very much, Mr. Stauber. You waited all that time just for that, so I appreciate it.

And thank you for all of your work and what you have done in trying to get some important things done for our country.

With that, we are going to wrap this up, wrap up this hearing. I thank our witnesses for their indulgence. It has been 2 hours and 40 minutes. It has been a pretty long hearing. I very much appreciate all of the testimony here today.

And before I finish up the hearing today, I want to make sure that I thank the staff of the subcommittee for all of their work this year: Andrea Wohleber, Alice Koethe, and Katherine Ambrose. We had Liz Hill here as the director until she moved on to greener pastures. And I want to thank very much Auke Mahar-Piersma. Auke stepped in when Liz left in the middle of the year and did an excellent job with the subcommittee. So I want to thank all of them for the work that they have done.

I just was listening to Al Franken's book about his career in the Senate, and he said how he learned he was never supposed to say that staff did anything, that it is all the Senator. And, unfortunately, that is oftentimes the way it is up here on the Hill that we, the Representatives and Senators, are supposed to take all of the credit for everything. But everyone really knows how things operate, knows that the staff does a tremendous amount of work and is responsible for most things that get done here.

And I also want to thank Alex Beckmann on my staff who does my committee work for the Transportation and Infrastructure Committee. I want to thank Alex for all of his great work that he did for me.

So, again, thank you to the witnesses for your testimony.

I would like to ask unanimous consent that the record for today's hearing remain open until such time that the witnesses have provided answers to any questions that may be submitted to them in writing.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

If no other Members have anything to add, everyone stay safe, and the subcommittee is now adjourned.

[Whereupon, at 12:43 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Prepared Statement of Hon. Sam Graves, a Representative in Congress from the State of Missouri, and Ranking Member, Committee on Transportation and Infrastructure

I want to thank Chair Lipinski for holding this hearing, and I want to thank our witnesses for attending. Today's hearing will focus on how the Surface Transportation Board supports our Nation's passenger rail system. This is especially important given the challenges the passenger railroads have faced this year due to the pandemic. As we start preparing for next year's surface transportation reauthorization, there are several important issues relevant to our witnesses today.

We must look at how best to fund Amtrak after their year of record losses. Encouraging private contracting and giving states and communities more control of their passenger services is a good place to start improving operations and saving taxpayer money. We also must consider the important role that freight railroads and their rail network play in moving goods throughout the country. Issues such as on-time performance, preference, and disputes between passenger and freight railroads should be addressed in ways that fully recognize the value and resiliency of freight railroads.

And finally, I want to add my thanks to Chair Lipinski for his leadership of this Subcommittee. I have appreciated your partnership and willingness to seek common ground. I know personally we have worked together on several bipartisan bills that have become law including small aircraft certification reform and aviation workforce training, just to name a few. You have a record of accomplishment that should bring you great pride and I wish you well as you begin your next chapter.

Thank you again to everyone.

Prepared Statement of Hon. Eddie Bernice Johnson, a Representative in Congress from the State of Texas

Mr. Chairman, please allow me to thank you and the subcommittee for focusing on issues surrounding ensuring a robust passenger rail system in the United States. Our passenger rail system is in serious need of improvement, development and expansion. As I travel to nations around the world and ride their national passenger rail lines, I am shocked at the advanced development, ease of use and overall satisfaction rates and services.

From Asian countries such as Japan, Mainland China, Taiwan, South Korea, and all over South East Asia, to European countries such as the U.K., France, Italy, Spain and Germany—all have made significant investments in passenger rail systems that have helped improve the lives of their people. We must do the same in the U.S. and grow our network of passenger rail services. That is where the Surface Transportation Board is indeed critical. Exercising proper jurisdiction over economic regulation of passenger rail services.

To assert jurisdiction over a particular interstate passenger rail project, STB must determine that the project has a sufficient nexus to the interstate rail network. I am pleased that the STB has applied this analysis to find that it has jurisdiction over projects such as a Los Angeles-to-Las Vegas rail connection, California's High-Speed Rail effort to link a number of cities from Los Angeles to San Francisco, and the Texas Central Railroad high speed rail project between Houston and Dallas. This was decided in the recent decision in *Texas Central Docket R.R. and Infrastructure, Inc. & Texas Central R.R., LLC—Petition for Exemption—Passenger Rail Line Between Dallas and Houston, Tex.*, Docket No. FD 36025 (STB Served July 16, 2020). Now that it is well settled that the STB has jurisdiction over Texas Central, we look forward to the speedy continuation and completion of this critical transportation project.

The Texas Central High-Speed Rail project will connect Dallas and Houston—two of the top five largest metropolitan regions in the nation. Unbelievably, these regions are not currently serviced by direct passenger rail service.

Once completed, this high-speed rail system will connect Dallas and Houston in less than 90 minutes and at speeds up to 205 mph. Currently, travel times along Interstate 45 between North Texas and Houston can exceed five hours, and is expected to exceed 6.5 hours by 2035. Texas High Speed Rail will provide a new travel option for travelers in this corridor and will be a major part of the future of transportation in Texas.

The project has made significant progress over the past few months, with the Federal Railroad Administration completing a safety regulation and the environmental review process. I want to thank the members and staff of the Surface Transportation Board who are with us today, for the Board's approval of Texas Central's petition that the STB assert jurisdiction over the project. These Federal actions demonstrated the U.S. government's commitment to advancing this project and bring this important project closer to becoming reality. Again, I want to urge that the Board to move expeditiously once Texas Central applies for construction and operation authority, which is the last major Federal regulatory approval that will be necessary before construction of this project can start.

I also want to thank Chairman DeFazio and Chairman Lipinski for working with Congressman Allred, Congresswoman Fletcher and myself to include a provision in H.R. 2 that will help advance Railroad Rehabilitation & Improvement Financing (RRIF) for projects like Texas High Speed Rail. I look forward to continuing to work with you in strengthening this provision as we work on the next surface transportation reauthorization next Congress. Thank you, Mr. Chairman.

Statement of the American Train Dispatchers Association et al., "On the 40th Anniversary of the Staggers Act, Congress Should Consider the Collateral Damage to the Rail Industry, and How To Fix It," Submitted for the Record by Hon. Daniel Lipinski

NOVEMBER 18, 2020.

ON THE 40TH ANNIVERSARY OF THE STAGGERS ACT, CONGRESS SHOULD CONSIDER THE COLLATERAL DAMAGE TO THE RAIL INDUSTRY, AND HOW TO FIX IT

The Act Had Substantial Adverse Effects on Rail Employees, and Has Facilitated the New Rail Business Model that Has Further Reduced Employment and Led to Deterioration of Service

This year is the 40th anniversary of the Staggers Rail Act. The major railroads are celebrating this anniversary. That is not surprising because deregulation of the railroad industry, along with post-Staggers government approval of mergers and control transactions that have produced a highly concentrated, but lightly regulated, industry, have combined to produce a 20 year run of historic profits for the railroads, and record returns for their shareholders. In the recent past, shippers had no complaints about Staggers because shipping rates declined in real dollars; but they now worry about the quality of service and railroad responsiveness to their needs; as a concentrated, but deregulated, industry has little need to answer to its customers.

This is a particularly inopportune time to celebrate passage of the Staggers Act because, in recent years, finance interests have led or pressured the railroads to exploit the deregulatory regime formulated when they were in economic distress to implement so-called "precision scheduled railroading" and other cost-cutting measures that have eroded service and eliminated tens of thousands of good paying railroad jobs.

One group of major industry stakeholders never celebrated the Staggers Act: railroad workers. Between the passage of the Act and completion of the major merger and control transactions, rail industry employment was substantially reduced (from about 500,000 in 1980 to about 250,000 in the early 2000s).

Among other things, the Staggers Act facilitated sales of rail lines to smaller railroads that employed fewer workers, paid less and had less beneficial work rules. Those sales were accomplished without traditional employee protections. At first, the Interstate Commerce Commission approved these types of sales after concluding that the lines to be sold were likely to be abandoned. But then it began to approve sales of what it called "marginally profitable" lines (which, by definition, were somewhat profitable). The major rail carriers protected their own interests in these transactions; they placed restrictions on the sales (physical or contractual) so that the purchaser railroads could interchange traffic only with the seller carriers; that way the major carriers divested themselves of less profitable lines which gathered local freight, while ensuring that they retained the long haul movement of the freight generated on those lines. Rail Labor characterized these as sham transactions, but the ICC approved them citing the Staggers Act and the deregulatory spirit of the Act. The ICC also allowed companies that owned existing rail carriers to acquire new lines that often connected with the lines of their existing subsidiaries without employee protections that were required when rail carriers acquired lines from other rail carriers by using the scheme of creation of new subsidiaries that the ICC treated as non-carriers since they were new corporations, even though they were commonly owned and controlled with existing carriers.

In approving the major merger and control transactions of the 1990s that reduced the number of Class I carriers to a mere handful, the ICC and Surface Transportation Board relied on Staggers Act amendments and the deregulatory mandate of the Staggers Act. Those transactions were approved based on the notion that shippers and the public would benefit from the consolidations. The railroads asserted, and the ICC and STB agreed, that mega-carriers would provide better and faster service through longer-end-to-end runs, reduced interchanges, and greater system velocity; that efficiencies would be achieved that would result in savings that would be passed along to shippers and the public in general; and that the economies of scale available to larger carriers would allow for increased investment in rail infrastructure.

During the same period that Congress and the ICC and STB deregulated the railroads and facilitated and approved consolidations as in the public interest, the agencies dramatically increased their regulation of Rail Labor by allowing the merging and commonly controlled rail carriers to use agency processes to gain dramatic changes in rates of pay, rules and working conditions outside the procedures of the Railway Labor Act. When the final big control transaction had been completed, railroad industry employment had been effectively halved, and rates of pay, rules and working conditions were forcibly and dramatically changed under the auspices of ICC and STB authorizations.

In the post-Staggers minimal regulation environment, after the big merger and control transactions were consummated, the profits of the new mega-carriers soared. And for a while, the railroads followed-through on their representations that service would improve, and infrastructure investments would increase. But several years ago, hedge funds and private equity interests took note of railroad profitability and the very light nature of the regulatory regime for such a concentrated industry. There were attempted hostile takeovers of major railroads, and so-called activist investors increased their stakes in railroads; these financial interests promised to institute practices to reduce operating ratios (costs relative to expenses) and increase profits by dramatically cutting costs and service, by focusing on easier to serve/high profit ratio customers, eliminating flexibility in pick-ups and deliveries of rail cars, requiring customers to conform to rigid schedules and lengthening trains (with some as long as 3 miles). This was accomplished through the so-called Precision Scheduled Railroading operating method. At the same time, capital infrastructure work was reduced to further improve operating ratios. As rail carriers that pursued this path saw their operating ratios decline, and their stock prices increased, other railroads adopted similar business models. Shipper complaints escalated. The STB held hearings and tinkered with complaint programs, but it generally was of the view that there was little it could do under the post-Staggers de-regulatory regime. In the meantime, rail employment again took a precipitous decline, from about 245,000 in 2015 to under 200,000 in January of 2020. The profits of the major railroads have skyrocketed over this several year period.

As the 40th anniversary of the Staggers Act approaches, Members of Congress, the STB and industry stakeholders should consider whether the current regulatory regime, that was developed when the railroads were in financial turmoil, and well before agency approval of the big merger and control transactions, makes sense today. Consolidation of the industry was approved because the transactions were deemed to be in the public interest. And with those approvals and the exclusivity that flows from holding an operating certificate comes the responsibility to provide adequate and responsive service. But the financial interests that are currently driving the industry have ignored those aspects of the approvals and the certificates. While a return to the heavy regulatory scheme developed before railroads had competition from aviation and trucking on the federal interstate highway system would not be appropriate, a regulatory approach recalibrated to recognize the reality of the industry as it is today is warranted. This recalibration is necessary to ensure that rail customers receive adequate and responsive service, and that the industry continues to provide good jobs for railroad workers.

American Train Dispatchers Association,
Brotherhood of Locomotive Engineers and Trainmen/IBT,
Brotherhood of Maintenance of Way Employes Division/IBT,
Brotherhood of Railroad Signalmen,
International Association of Machinists and Aerospace Workers District 19,
International Association of Sheet Metal, Air, Rail and Transportation Workers—Mechanical Division,
International Brotherhood of Boilermakers,
International Brotherhood of Electrical Workers,
International Association of Sheet Metal, Air, Rail and Transportation Workers—Transportation Division,
National Conference of Firemen and Oilers 32BJ/SEIU,
Transportation Communications Union (TCU/IAM),
Transport Workers Union of America.

APPENDIX

QUESTION FROM HON. PETER A. DEFAZIO TO CHAIRMAN ANN D. BEGEMAN AND VICE CHAIRMAN MARTIN J. OBERMAN, SURFACE TRANSPORTATION BOARD

Question 1. Please explain the STB's role with regard to access to freight railroad rights-of-way for passenger service operated by Amtrak or by other intercity operators.

ANSWER. Our written testimony provides an overview of the agency's jurisdiction regarding passenger rail. With respect to access to freight railroad rights-of-way, Amtrak has a statutory right to make agreements to use the facilities of, and have services provided by, freight rail carriers. *See* 49 U.S.C. § 24308(a)(1). Should Amtrak and a freight rail carrier be unable to agree on terms for such use and services, the STB may order that facilities be made available and service be provided to Amtrak, and may prescribe reasonable terms and compensation for the same. *See* 49 U.S.C. § 24308(a)(2)(A)(i)–(ii).

Rail passenger transportation provided by Amtrak must also be given preference over freight transportation in using a rail line, except in an emergency. 49 U.S.C. § 24308(c) (also providing that freight carriers can seek relief from the preference requirement from the STB). The STB has the authority to decide disputes between Amtrak and freight rail carriers concerning Amtrak's operation during emergencies, use of accelerated speeds, and addition of trains on a freight railroad's line. 49 U.S.C. § 24308(b), (d), (e).

Under 49 U.S.C. § 24903(6), Amtrak may make agreements with other carriers and commuter authorities to grant, acquire, or make arrangements for rail freight or commuter rail passenger transportation over rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. § 701 et seq.) and the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. § 801 et seq). If the parties to such an agreement cannot agree on terms for reimbursement of costs, § 24903(c)(2) gives the Board authority to determine compensation.

The Board generally does not have jurisdiction over public passenger transportation provided by local governments, which includes commuter rail passenger transportation and services, such as trolley, subway, and light rail lines. 49 U.S.C. § 10501(c)(2)(A). Under the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), however, the Board is authorized to mediate disputes involving commuter rail providers seeking access to freight railroad tracks and services. 49 U.S.C. §§ 28502–28503. The Board may also be called upon to establish appropriate compensation paid by commuter rail providers to Amtrak for use of its facilities if the parties cannot reach agreement among themselves. 49 U.S.C. § 24903(c)(2). Additionally, in limited situations, the Board has jurisdiction over transportation provided by a local government authority for purposes of use of terminal facilities and switch connections. 49 U.S.C. §§ 11102–11103.

QUESTIONS FROM HON. ERIC A. "RICK" CRAWFORD TO CHAIRMAN ANN D. BEGEMAN AND VICE CHAIRMAN MARTIN J. OBERMAN, SURFACE TRANSPORTATION BOARD

Question 1. Several members wrote to you in December 2019 regarding the incorporation of a thorough cost-benefit analysis into the STB rulemaking process. The STB still has not opened a proceeding to incorporate this good-government reform. When can we expect that proceeding to be instituted?

ANSWER. As you know, in March 2019, the Association of American Railroads (AAR) filed in Docket No. EP 752 a petition to institute a rulemaking, asking that the STB adopt procedural rules that would require cost-benefit analysis in some Board rulemaking proceedings and would set certain data requirements. By decision issued in November 2019, the Board sought input from stakeholders and the public on whether and how particular cost-benefit analysis approaches might be more formally integrated into its rulemaking process. Those comments and replies were submitted, and the Board is reviewing the record, giving full and fair consideration to all stakeholder views.

Question 2. The STB instituted a proceeding regarding the preemption of railcars in transit from the Clean Water Act regulations. Members of the Committee wrote to the STB about the importance of the Interstate Commerce Commission Termination Act of 1995 (ICCTA) preempting the applicability of the National Pollution Discharge Elimination System permitting program to rail cars in transit. That docket closed in May 2020. Given that proceeding is not listed on the Board's quarterly reports, when can we expect a decision?

ANSWER. In November 2019, the AAR filed in Docket No. FD 36369 a petition for declaratory order requesting the Board find that 49 U.S.C. § 10501(b) preempts the Clean Water Act's discharge prohibition and National Pollutant Discharge Elimination System permitting regime, as applied to discharges incidental to the normal operation of rail cars in transit. The Board instituted a declaratory order proceeding and established a procedural schedule, under which the record closed in May 2020. The proceeding is under active consideration at the Board, and we expect to issue a decision in the matter shortly.

QUESTION FROM HON. ELEANOR HOLMES NORTON TO CHAIRMAN ANN D. BEGEMAN AND VICE CHAIRMAN MARTIN J. OBERMAN, SURFACE TRANSPORTATION BOARD

Question 1. The FRA just published its final rule establishing metrics and a minimum standard to measure on-time performance and service quality for Amtrak trains as directed by Section 207 of PRIIA. Does the STB plan on issuing implementation guidance for this rule? If not, what role does STB plan on having in implementation?

ANSWER. The final rule recently issued by the FRA was a prerequisite to the STB's exercise of its investigative authority under PRIIA. Under section 213 of PRIIA, the Board may institute an investigation on its own initiative if (1) on-time performance of any intercity passenger train averages less than 80% for any two consecutive calendar quarters, or (2) the service quality of intercity passenger train operations for which minimum standards are established under section 207 fails to meet those standards for two consecutive calendar quarters. If a complaint is filed by Amtrak, an intercity passenger operator, a host freight railroad over which Amtrak operates, or an entity for which Amtrak operates intercity passenger rail service, section 213 directs the Board to initiate such an investigation. The purpose of a Board investigation is to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed either by the rail carrier over whose tracks the intercity passenger train operates or by Amtrak or other intercity passenger rail operators. As part of its investigation, the STB may award damages or other appropriate relief to Amtrak under certain circumstances.

At this time, the Board has not determined it necessary to issue implementation guidance. Amtrak had previously brought two on-time performance cases under PRIIA before the Board. *See Nat'l R.R. Passenger Corp.—Sec. 213 Investigation of Substandard Performance on Rail Lines of Canadian Nat'l Ry.*, Docket No. NOR 42134; *Nat'l R.R. Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd.*, Docket No. NOR 42141. Those cases were ultimately dismissed without prejudice at the unopposed request of the defendant carriers after the U.S. Court of Appeals for the D.C. Circuit initially found section 207 of PRIIA to be unconstitutional. The Board will take appropriate action to conduct section 213 investigations as warranted by future developments.

QUESTIONS FROM HON. PETER A. DEFAZIO TO STEPHEN J. GARDNER, SENIOR EXECUTIVE VICE PRESIDENT, CHIEF OPERATING AND COMMERCIAL OFFICER, NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Question 1. It has been presented that the system essentially works in the interest of either freight or passenger rail as a zero-sum game. As a former dispatcher yourself, please give your perspective. Is there a way to both have an efficient passenger rail system and not impinge upon the freight industry?

ANSWER. Absolutely. Passenger and freight trains have co-existed since railroads began. Trains—whether freight, passenger or both—perform well when solid operating plans, reliable infrastructure and well-trained staff are in place to support the operation. Today, our passenger trains account for only a small share of train operations on the vast majority of the freight railroad-owned lines over which Amtrak operates. It strains credibility to suggest that most of our operations, for instance, one round-trip over a modern, CTC-equipped, freight mainline with five to six trains per hour of capacity, have any material impact on freight operations or that it is difficult to keep such operations on-time. The only way that our highly scheduled and predictable operation could have any real impact on most routes is if freight operations are so variable, so erratic and so "unscheduled"—despite the buzzwords of today—that conflicts are allowed to regularly occur.

Such cases are fundamentally a train operations management problem. Freight railroads have an obligation to support our operation with the required discipline, focus and precision—all attributes they claim to possess for their freight operations—that are needed for us to produce a reliable service for the nation. For well over a century, the predecessors of our Class I railroads delivered this level of service, treating many passenger trains as "superior" trains that must be delivered on-time and never delayed. Today's freight railroad professionals are no less capable of this feat.

It is also important to note that on nearly all of Amtrak's routes over freight railroads, Amtrak, the federal government and/or our state partners have made significant investments, in some cases with financial contributions from our freight railroad hosts, that have provided increased capacity and upgraded infrastructure that are used by both freight and Amtrak trains.

There are numerous examples of successful collaboration between freight and passenger railroads. Descriptions of some of these examples can be found on the website of One Rail, the coalition of rail stakeholders of which Amtrak and the Association of American Railroads are members. (https://www.onerail.org/category/onerail-materials/rail-success-stories/) One of the examples described is Amtrak's Downeaster service between Boston and Portland, which has been highly successful due to a strong partnership among Amtrak, our state partner, the Northern New England Passenger Rail Authority and the freight railroad for which I was a train dispatcher, and has attracted significant federal funding for rehabilitation of an important freight rail line.

There are also many successful operational partnerships between freight and passenger railroads. The Chicago Integrated Rail Operations Center, established in 2015, brings together representatives of the Class 1 railroads operating in Chicago, Metra and Amtrak to monitor train performance throughout the Chicago area and coordinate actions to relieve operational and congestion issues. In South Florida, capacity and other infrastructure investments on an existing freight railroad-owned line between Miami and West Palm Beach that has heavy freight traffic comprised primarily of high-priority intermodal trains and the establishment of a joint dispatching center have allowed for the introduction and successful operation (pre COVID–19) of 34 passenger trains a day operated by a private railroad: many times the number of trains Amtrak contemplates adding on freight railroad-owned lines as part of the corridor development program for which we will seek funding in reauthorization.

In summary, there are many steps Amtrak and our hosts can take to achieve good performance and growth for both passenger and freight service, but the most fundamental is the recognition by our hosts that supporting reliable passenger service is both an obligation to the public and the nation.

Question 2. Mr. O'Toole's testimony states that "passenger train advocates want the railroads to give preference to passenger trains." As history recalls, Congress granted this right of preference for Amtrak trains in exchange for relieving the struggling, privately-owned freight railroads of their common carrier obligation to provide passenger rail transportation by creating Amtrak. That statutory right of preference has been codified since President Nixon signed it into law five decades ago.

- Can you describe the negative impacts to Amtrak and its passengers when its trains are not provided the preference Congress specifically granted it 50 years ago?
- Does giving Amtrak trains preference harm the movement of freight?

ANSWER. In FY 2019, 6.5 million Amtrak passengers were significantly late on trains delayed by host railroads, largely as a result of some freight railroads ignoring Amtrak's right to preference. This resulted in lost time, missed family commitments and business meetings, and trips not taken for fear of arriving late. Across the Amtrak long distance network, customer on time performance (OTP) in FY 2019—the percentage of passengers who arrived at their destination on time—was only 42%. On one-third of our 15 long distance routes, more than seven out of every ten passengers arrived significantly late. Several state supported corridor routes were similarly delayed.

The principal reason for this dismal on time performance is freight train interference by host freight railroads. Freight train interference is caused by dispatching decisions that prioritize the operation of freight trains over passenger trains, either putting Amtrak trains behind slow-moving freight trains for miles or relegating the passenger train to wait in sidings for freight trains to pass. These delays totaled more than one million minutes in FY 2019—equivalent to two years of passengers waiting for freight—which demonstrates that on many host railroads Amtrak trains are not receiving the preference over freight transportation required by law.

Late trains have a major cost to Amtrak. When trains are regularly late, customers choose alternative modes of travel, representing a lost opportunity for ticket revenue. Delays also have a direct impact on operating costs by increasing overtime and labor expenses, fuel costs, additional meals and hotel rooms for passengers that miss connections, an increase in the number of locomotives and passenger cars required for the operation, among other costs.

The cumulative financial impact to Amtrak is substantial. The U.S. Department of Transportation Office of Inspector General found that Amtrak would experience a net annual gain of nearly $140 million if on time performance across the network improved to 85%.[1] The Amtrak Office of Inspector General found that improving on time performance by just five percentage points would result in short-term financial gains of $12 million, and improving on time performance to 75% for a sustained period would result in annual savings of $42 million and one-time savings of $336 million.[2]

Preference violations—and the absence of preference enforcement—have also meant that public investment in freight railroad infrastructure to improve passenger rail performance has not yielded promised returns for passengers or state funding partners. For example, in the year after nearly $500 million were invested in the freight railroad line used by the State of North Carolina-supported *Piedmont* service, host railroad delays actually increased, up to twice the level they were prior to the investment. On the route into Chicago used by three train services supported by the State of Michigan, as well as the *Capitol Limited* and *Lake Shore Limited* long distance trains, $200 million of public funds were invested into the Englewood Flyover and Indiana Gateway projects. Today, however, passengers traveling on this line regularly encounter severe—and eminently avoidable—host railroad delays. Taxpayers and passengers deserve a better return on their investment.

Some freight railroads claim that providing passenger trains with preference is an unreasonable standard that limits the efficiency of the rail network and service provided to shippers, or that it will bring freight movement to a standstill. These inflated claims do not withstand any level of scrutiny. First, freight railroads can seek relief from the Surface Transportation Board if they truly believe that providing Amtrak with preference materially lessens the quality of freight transportation provided to shippers. The fact that not one railroad has ever sought such relief suggests that either railroads do not believe that providing preference affects the quality of service provided to shippers or the railroads believe they can ignore the law with impunity. Second, there is no correlation between freight volumes and freight train interference delays on most rail lines, which means dispatching decisions unrelated to freight traffic levels drive Amtrak on time performance. Third, the presence of a few daily passenger trains on freight railroad mainlines poses no threat to the quality and growth of freight transportation. For comparison, Amtrak's mostly two-track Northeast Corridor mainline between Newark and New York Penn Station hosts up to 48 trains an hour. On most host railroad mileage, Amtrak operates two trains *a day*.

Simply stated, freight railroads cannot show that compliance with federal law on preference leads to a detrimental impact on their freight transportation business. When freight carrier leadership has decided to dispatch Amtrak trains according to the law, we have seen Amtrak's on time performance improve literally overnight. During these times, there was no evidence of negative impacts to the overall fluidity of America's rail network. In fact, it has been reported by some freight railroad leaders that efficient Amtrak service is a strong indicator that their own operations are running efficiently.

Question 3. Over the last several years, the freight railroads have adopted a set of operating procedures championed by the late Hunter Harrison and known as "precision scheduled railroading." Along with other negative outcomes for shippers and employees, this has resulted in 3-mile-long trains that are too long for most existing sidings. How have the excessively long trains associated with precision scheduled railroading impacted Amtrak and its passengers?

ANSWER. In theory, tightly-scheduled freight operations could help support passenger train performance by ensuring minimal conflicts, consistency, and better utilization of existing capacity. In practice, however, "scheduled" freight operations are often a far cry from what we would consider "scheduled," as Amtrak trains operate on schedules set, essentially, to the minute-hand while "scheduled" freight trains operate on schedules set to hour-hand. This mismatch in required precision and operating discipline is evident when one looks closely at our operation over most hosts, and the much heralded benefits of "precision railroading" have yet to arrive for our trains on most lines.

Additionally, passengers traveling over lines owned by some railroads that have deployed Precision Scheduled Railroading principles have experienced severe delays, in part driven by the operation of trains too long to fit into the existing sidings on the line. In recent months, passengers on Amtrak Cascades and *Missouri River Runner* trains have been forced to follow freight trains for miles, at a slower speed, because the freight train ahead could not fit into a siding to allow the Amtrak train to pass. Even if the freight railroad eventually allows the Amtrak train to pass, maneuvering the Amtrak train ahead of such long freight trains typically results in significant additional delay.

Passengers have also been stuck for hours while freight trains experience mechanical issues, inherent to the operation of extremely long and heavy freight trains, that effectively shut down the rail line. For example, just since October, there have been at least 6 incidents on the *Missouri River Runner* route that shut down the entire rail line, forcing Amtrak passengers to wait for hours and leading to several cancellations, including the following incidents:

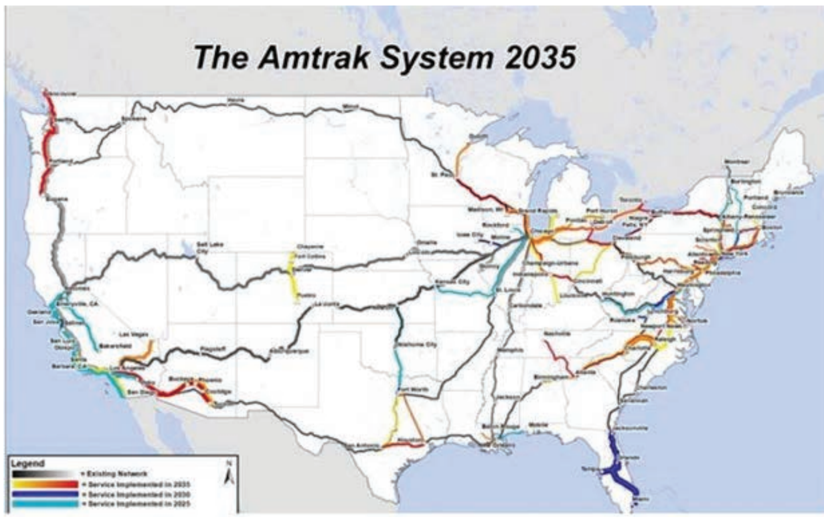
- On November 8, a freight train stalled twice, causing 4 hours of delay to passengers and an early termination that required busing to customers' final destination.
- On November 6, a freight train broke down, causing an hour of delay to passengers.
- On November 3, a freight train broke down, causing 6 hours of delay to passengers, an early termination, as well as the cancellation of the return train.
- On October 28, a freight train broke down, blocking the line and causing 3 hours of delay to passengers on one train and a 1-hour delay to passengers on the return train.

We appreciate that the Committee has recognized the potential adverse effects of certain Precision Scheduled Railroading practices and has included in the Moving Forward Act a Government Accountability Office study on the impact of the implementation of Precision Scheduled Railroading on Amtrak and other stakeholders, as well as a National Academies study of the safety impacts of freight trains that are longer than 7,500 feet.

To ensure passengers do not continue to experience the severe delays associated with the operation of these behemoth freight trains, host railroads should hold the freight train until the Amtrak train has cleared the area.

QUESTIONS FROM HON. ERIC A. "RICK" CRAWFORD TO STEPHEN J. GARDNER, SENIOR EXECUTIVE VICE PRESIDENT, CHIEF OPERATING AND COMMERCIAL OFFICER, NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Question 1. Despite Amtrak's huge losses and potentially slow climb back to normal operations, it was reported in October that Amtrak was circulating a map showing plans to expand at a reported extra cost of at least $25 billion (see below from October 21, 2020 Politico Morning Transportation).



Amtrak's expansion plans for the next 15 years.—Amtrak

Given these plans:

a.) Please explain how you arrived at the extra cost of $25 billion, and whether you expect the cost to exceed that estimate.

ANSWER. Amtrak strongly believes that many corridors connecting city-pairs around the nation have the right mix of population, density, economic growth and congestion to warrant corridor service. Many of these locations have seen huge growth since Amtrak was founded in 1971 and yet, our route map has failed to evolve to serve them, creating irrational omissions in our network. These markets deserve, as other regions receive, to have frequent and auto-competitive intercity passenger rail service as part of a national passenger rail system.

The cost estimate of $25 billion represents the first one-third of investment needed to implement all the routes on the Amtrak System 2035 map. The approximate $25 billion reflects corridor development that is expected to begin during the period of Amtrak's reauthorization proposal and Five Year Plan (FY22–FY26). The investment to complete the full set of route expansions proposed to be implemented by 2035 is approximately $75 billion.

To develop these costs, we evaluated the current condition of each rail line that is a candidate for new or expanded passenger rail service. That analysis suggested what the most efficient method would be to add capacity to the rail line, such as additional tracks or better signaling, that may be required to accommodate the proposed new service. Unit cost estimates were applied to these capacity improvements to create the final cost estimate for each line. Amtrak also estimated the cost of train station improvements and additional locomotives and train cars. The cost estimates include contingency factors to absorb unexpected cost overruns.

b.) Please explain these expansion plans in written detail, including how these new routes were chosen and the expected funding source(s).

ANSWER. Amtrak is working on a 15 year vision for the future of intercity passenger rail service in the U.S., which will include more trains in more markets to serve a growing and changing population, reduce carbon emissions, and provide safe, fast, modern, efficient and enjoyable rail transportation. We hope to finalize our analysis and written report in the coming months and will make this expansion plan public as soon as our work is done. Our plans will include specific new routes as well as additional frequencies to existing routes. Amtrak envisions that any such expansion would require additional federal investment under a new authorized Corridor Development Program funded as part of Amtrak's National Network grant, and we will also include suggested policy proposals for Congress to consider early next year. We look forward to sharing this detail with you as soon as it is ready and hope to work with Congress to put the funding and tools in place so that Amtrak can reach more of your constituents.

c.) Please state whether Amtrak completed any studies or reports that assessed issues including rider demand, viability, expected profits, and the need for these new routes.

ANSWER. Amtrak analyzed each of the proposed services, which included both promising new and expanded corridor routes, addressing the following draft analytical elements:

- Developed pro forma train schedules including proposed stations with train times and frequency
- Forecast ridership and revenue using models developed in-house and by an external consulting firm, applied to the proposed train schedules and population around each station
- Estimated operating costs based on train schedules and capacity requirements using Amtrak costs for services of similar characteristics
- Combined estimated ridership, revenue, and operating costs to produce operating and financial measures by route
- Forecast route capital costs by assessing infrastructure condition and capacity through already completed studies (when available) or assembling route data from various sources and quantitatively assessing probable costs
- Assessed equipment and facility requirements for individual routes, combining resources when practical on adjoining routes

We continue to refine these analytical details.

Question 2. The Subcommittee appreciates Amtrak's response to the letter me and my colleagues sent regarding operation of the Biden presidential campaign charter train despite Amtrak's severe service limitations due to the pandemic. However, as Ranking Member of the Subcommittee, I'm still concerned that the response failed to answer the question about the total cost to Amtrak of providing this service, which is very important given Amtrak's extremely limited resources and historic demands for taxpayer money right now. Accordingly, please provide the Subcommittee with the total costs to Amtrak and whether Amtrak made a profit off the Biden charter train.

ANSWER. As stated in Amtrak's letter of November 10, 2020, the Biden presidential campaign charter train was commercially priced and utilized the same costing methodology that Amtrak applies to every other charter train customer. This customer received no financial discount or rate reductions. The pricing produced a surplus over Amtrak's fully allocated costs, which were $209,000.

Question 3. In 2012, the Surface Transportation Board (STB) found Amtrak's state-supported route payment cost methodologies to be compliant with the Passenger Rail Investment and Improvement Act. Yet, both the Government Accountability Office (GAO) and Amtrak's Inspector General (IG) have highlighted a lack of transparency and major deficiencies in Amtrak's state cost formulas. A recent Amtrak IG report published August 5, 2020 found that Amtrak cannot even identify what the cost to a state would be if it added an additional car to a train. Please explain what Amtrak doing to address these issues.

ANSWER. In 2012, the STB approved Amtrak's petition to adopt a Section 209 cost sharing methodology that was developed jointly by Amtrak and 18 states affected by Section 209. Since then, Amtrak has worked with states to update the methodology and develop reporting tools for the states to use in managing their services. We acknowledge that, after these several years, some states are not satisfied with the current approach.

The August 5th report mentioned above quotes a state representative making the claim that Amtrak "cannot tell a state how much it would cost to add a car to a train." We respectfully submit that this statement is not entirely accurate, but we acknowledge that forecasting the costs of proposed service changes can be a complex undertaking that is highly route-specific and can take time. Because total costs for any route are a combination of direct costs and overhead costs that are allocated pursuant to the Congressionally-directed and DOT Volpe center-developed APT allocation system that Amtrak is required to use for allocating and assigning costs, what appears to be a simple change can have complex ramifications related to allocated charges. These challenges were magnified in the beginning of COVID–19, when many states were requesting service changes to respond to health and safety concerns, along with reduced ridership.

As a member of the State-Amtrak Intercity Passenger Rail Committee (SAIPRC), Amtrak has agreed to work with the other members to revisit the Section 209 formula, based on what we have learned to date. One important element of this formula is the share of total costs that should be covered by Amtrak rather than the states, and, therefore the amount that the federal government is investing in these corridor services through its funding of our operation. Amtrak believes that it is appropriate to revisit the burden placed on states for funding new or expanded services initially and to consider the overall funding shares from Amtrak and the Federal government and the states that support these services. We look forward to any guidance the T&I committee may be able to provide as to what level of federal funding through Amtrak they would like to see in any future Section 209 cost sharing formula.

Question 4. Since 2012, how many times has the State-Amtrak Intercity Passenger Rail Committee adopted changes to the Section 209 cost formula, as prescribed by the Passenger Rail Investment and Improvement Act? Please detail any proposals that were presented by states but not approved by Amtrak to the cost formula.

ANSWER. Since 2012, after the original policy was approved, SAIPRC has approved four rounds of changes to the Section 209 cost formula, as shown in page 2 of the current Section 209 policy:

Version	Date	Description
v1.00	August 13, 2011	Recommended by the State Working Group (SWG) and Amtrak Staff.
v2.00	October 27, 2015	Revised by the State-Amtrak Intercity Passenger Rail Committee.
v3.00	September 21, 2017	Revised by the State-Amtrak Intercity Passenger Rail Committee.
v4.00	June 13, 2018	Revised by the State-Amtrak Intercity Passenger Rail Committee.
v5.00	February 20, 2020	Amended by the State-Amtrak Intercity Passenger Rail Committee (SAIPRC).

No proposals for changes to the cost formula have been presented by states and not approved by Amtrak.

Question 5. Does Amtrak believe that freight railroads are more incentivized to provide consistent on-time service when they are compensated at a market rate? If Amtrak were to pay a negotiated market rate to access host railroad infrastructure, how would Amtrak's budget be impacted?

ANSWER. On the freight railroad-owned rail lines over which Amtrak operates, there is no "market rate" because there is not a competitive market. In most cases, a single freight railroad has a governmentally-granted right to own and operate the only rail line over which an Amtrak train can operate—and unlike many freight shippers, Amtrak cannot shift its passengers to trucks if the freight railroad demands an excessive rate.

As described in my testimony at the hearing, the incremental cost-based rates Amtrak pays freight railroads reflect the public bargain the railroads accepted in 1970 in return for relief from their common carrier obligation to provide unprofitable intercity passenger rail service at their own expense. When Congress transferred the enormous financial burden of providing intercity passenger rail service from the private railroads to Amtrak, it did not intend to make the railroads' continuing obligation to accommodate Amtrak trains a new profit center for them, or to make it more costly for Amtrak to operate trains than it had been for the railroads themselves. However, in addition to the incremental costs Amtrak pays host railroads, those railroads can earn significant additional incentive payments for providing good on-time performance for Amtrak trains.

Any additional costs Amtrak might be required to pay to profitable freight railroads would necessitate increased congressional appropriations, increased payments by Amtrak's state partners who fund Amtrak's payments to host railroads pursuant to the methodology adopted under Section 209 of the Passenger Rail Investment and Improvement Act of 2008, reductions in Amtrak service, and/or diverting funds away from critical capital projects.

Question 6. Amtrak's November 16, 2020 press release following the final metrics and standards rule states that "more must be done" to allow Amtrak to enforce its right to preference. How can Amtrak know that "more must be done" before it has worked with freight railroads to adjust schedules for the new Customer OTP metric, and before the new metric goes into effect? What is it about Section 213 of the Passenger Rail Investment and Improvement Act that you believe is inadequate?

ANSWER. The public bargain with the freight railroads that relieved them of the obligation to operate unprofitable intercity passenger rail service and created Amtrak included an important condition: freight railroads would provide Amtrak passengers traveling over their rail lines with "preference" over freight transportation. The law has been clear for 47 years: except in an emergency, Amtrak must be provided with preference over freight transportation.

One of the reasons why freight railroads can delay our passengers while facing essentially no consequences is because Amtrak's ability to enforce our right to preference is limited. Only the U.S. Attorney General is allowed to bring a case, and in the 47 years since the preference law was enacted, the U.S. Department of Justice has brought only one case to enforce Amtrak's preference rights, in 1979.

More than ten years ago, Congress recognized the challenges that Amtrak faces regarding freight railroad noncompliance with the statutory right to preference and passed two provisions in the Passenger Rail Investment and Improvement Act of 2008 (PRIIA): Section 207, which directed Amtrak and the Federal Railroad Administration together to develop metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, and Section 213, which set forth a new process for the Surface Transportation Board to investigate the causes of substandard on time performance.

Fundamentally, Amtrak's right to preference and PRIIA Sections 207 and 213 are separately set forth in the law and serve different purposes. Amtrak is hopeful that PRIIA Section 213 will be an effective mechanism in practice to hold all parties accountable to the on time performance standard in the metrics and standards rule. However, the standard has not gone into effect yet because the Association of American Railroads spent nearly a decade and millions of dollars fighting to prevent the implementation of the minimum standard. This is why Amtrak, our passengers, and the communities we serve cannot wait any longer. The fact is that the existence of the metrics and standards does not lessen the need for preference enforcement legislation that would allow Amtrak to seek to defend your constituents from being delayed by freight trains—an essential element of the bargain that led to the creation of Amtrak and not in any way contingent on the provisions enacted in PRIIA.

When freight trains are prioritized ahead of passengers in contravention of the law, Amtrak must be able to defend ourselves and our passengers, just as any other organization could seek to defend itself in the judicial system when rights provided by law are being violated. Consider the following analogy: while an individual who has been discriminated against may bring a case against their employer to the Equal Employment Opportunity Commission, that does not diminish the individual's right to bring a case under federal civil rights laws.

Finally, regarding schedules, customer OTP has been Amtrak's internal measure of reliability for several years, so many schedules have already been designed or modified to align with the customer OTP metric, such as the *San Joaquin* service in California and *Northeast Regional* trains that operate in Virginia. A number of trains regularly meet the standard today. For other routes, Amtrak and host railroads are nearing agreement on additional modifications. Amtrak looks forward to working with all host railroads on an ongoing basis to ensure that schedules offer trip-time competitive and reliable service to passengers.

Question 7. What are the non-freight railroad causes of delays in on time performance and how can these delays be fixed?

ANSWER. While a variety of factors may contribute to delays, it is important to note that host railroads cause the majority of delays to Amtrak passengers. In FY 2019 and FY 2020 respectively, host railroads caused 61% and 64% of total delays for Amtrak state supported and long distance trains. Freight train interference is the leading cause of delay and is largely responsible for the poor on time performance experienced on many long distance and state supported trains. In FY20 alone, Amtrak passengers experienced more than two million minutes of delay caused by host railroads, including nearly 800,000 minutes of delay caused by freight trains.

Outside of delays attributable to host railroads, a delay may be caused by Amtrak or a "third party," which means neither Amtrak nor the host railroad is responsible for the delay. Amtrak delays can include mechanical issues with the train or holding for additional time at a station to finish boarding. There are also numerous "third party" occurrences that can result in delay, including severe weather, issues along the right of way that require local police or fire department response, or other unpredictable incidents such as debris strikes. Please see Appendix A for additional information on the leading causes of delays.

Amtrak has implemented several initiatives designed to reduce the prevalence of Amtrak-caused and third party delay to state supported and long distance trains. These include:

- Undertaking a data-driven continuous improvement program. When a service or station fails to meet on-time performance targets, local managers conduct "after action reviews" with staff to identify the root causes of the performance issues. Corrective action plans are identified to mitigate the impact of the issue in the short term while actions to correct the problems for the longer term are developed and implemented.

- Increased use of mobile technology between onboard crews and station staff to orchestrate the positioning of personnel and equipment to expedite boarding and detraining of customers needing assistance.
- Targeted visibility improvements at bridges prone to vehicular traffic strikes, including clearing obscuring vegetation and dramatic use of high-visibility markings.
- Targeted HVAC and door systems to improve over-the-road reliability of passenger cars.
- Efforts to reduce PTC-related delays, including onboard equipment, signal infrastructure, and transitions between host railroad segments.
- Redistributed recovery time in schedules to improve on-time performance for customers throughout the route, not just at the final destination.
- Procuring ALC42 diesel locomotives to replace the aging fleet of P42 diesel locomotives, thereby improving fleet reliability across the National Network.
- Collaborating with local law enforcement to release trains as soon as it is safe to do so once any police activities along the right of way are completed.

Question 8. Isn't it true that Freight Train Interference (FTI) delays occur on portions of the network where Amtrak is the host railroad, such as the northeast corridor? Accordingly, isn't it true that even when Amtrak controls a line its operating on, Amtrak is unable to reduce Freight Train Interference to zero? Please provide the Subcommittee with FTI data on the portions of the network where Amtrak is the host railroad.

ANSWER. In FY 2020, there were 1,951 minutes of freight train interference delays on Amtrak-owned rail lines, one-third of which involved Amtrak passengers waiting to depart the origin station because of freight train derailments on host railroad segments later in the route. In contrast, there were more than 790,000 minutes of freight train interference delays on host railroad lines—*more than 400 times* the level on Amtrak rail lines.

Amtrak has never claimed that all delays should be reduced to zero. In fact, in Amtrak's annual Host Railroad Report Card, a host railroad can receive an "A" grade with as many as 900 minutes of delay per 10,000 train-miles.

QUESTION FROM HON. LLOYD SMUCKER TO STEPHEN J. GARDNER, SENIOR EXECUTIVE VICE PRESIDENT, CHIEF OPERATING AND COMMERCIAL OFFICER, NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Question 1. Mr. Gardner testified that freight and interstate passenger rail can work together but he didn't finish because of technical issues. Could you identify how Amtrak and commuter agencies, like SEPTA, can work together without interfering with one another's service or imposing onerous costs and indemnification requirements on one another?

ANSWER. With respect to commuter and intercity passenger train operations over Amtrak-owned infrastructure, Amtrak and the commuter agencies have longstanding access and service agreements that address, among other things, a clear allocation of liability for injuries and damage involving our respective operations. Since establishing the Northeast Corridor Commission under PRIIA 212, owners and operators in the NEC have considered establishing a common liability approach and have agreed to a set of principles to guide development of a corridor-wide rubric. We can work together by continuing our efforts within the Commission to develop a common, consistent liability arrangement.

In addition to passenger train operations, NEC commuter agencies and Amtrak routinely enter into agreements to advance sole-benefit and/or joint benefit improvements to Amtrak-owned or commuter-owned infrastructure used in such operations, while protecting the operation of freight railroads with access rights to certain territories. Such jointly beneficial projects often include a direct financial contribution by Amtrak, but can also involve pursuit of federal grants via various competitive grant programs. For example, via the cooperative efforts of Amtrak, SEPTA and the Pennsylvania Department of Transportation (PennDOT), a federal grant of $15.91 million was recently awarded for Harrisburg Line signal system upgrades via the FY 2020 Federal-State Partnership for State of Good Repair grant program; Amtrak, SEPTA and PennDOT will split the $6 million local match requirement. We endeavor to support commuter projects without interfering with the operations of either railroad, however, due to the heavy volume of projects, limited field support personnel (due, in part, to the lack of a multi-year Federal funding program for Amtrak, which undercuts our ability to plan and invest for future years) and limited track outages, there is often a need to prioritize among projects. We try to give the commuters advance notice as to when we can support their projects and have embarked on a regional planning effort to provide more certainty. The agreements are typically project-specific; however, Amtrak is making an effort to put in place modern, streamlined master project agreements with the commuter agencies (including SEPTA) so as to expedite the process for commencing individual projects.

APPENDIX A

Total Delay Incurred by Amtrak State Supported and Long Distance Trains: FY2019 & FY2020 by Delay Responsibility

Excludes NOD-coded (waiting for scheduled departure time) minutes.

Top Delay Incurred by Amtrak State Supported and Long Distance Trains: FY2019 & FY2020

by Delay Responsibility and Code

Responsibility		FY2020		FY2019		Description
Host Resp (Other RR)	Total	2,178,663	100%	2,970,706	100%	
	FTI	774,029	36%	1,027,419	35%	Delays from freight trains.
	DSR	469,394	22%	556,834	19%	Temporary slow orders, except heat or cold orders.
	PTI	328,807	15%	521,042	18%	Delays for meeting or following other passenger trains.
	All Other	606,433	28%	865,411	29%	
Host Resp (Amtrak) ...	Total	85,526	100%	149,397	100%	
	PTI	17,717	21%	32,477	22%	Delays for meeting or following other passenger trains.
	DSR	14,362	17%	29,489	20%	Temporary slow orders, except heat or cold orders.
	DCS	14,023	16%	26,725	18%	Signal failure or other signal delays.
	All Other	39,424	46%	60,706	41%	
Amtrak Resp	Total	852,298	100%	1,389,339	100%	
	SYS	232,297	27%	359,195	26%	Delays related to crews including lateness, lone-engineer delays.
	ENG	116,762	14%	157,181	11%	Mechanical failure on engines.
	OTH	116,590	14%	143,672	10%	Lost-on-run, heavy trains, unable to make normal speed, etc.
	All Other	386,649	45%	729,291	52%	
Third Party	Total	277,179	100%	323,099	100%	
	WTR	109,309	39%	126,087	39%	All severe-weather delays.
	TRS	65,630	24%	68,898	21%	Trespasser incidents including road crossing accidents.
	POL	64,035	23%	79,012	24%	Police/fire department holds on right-of-way or on-board trains.
	All Other	38,205	14%	49,102	15%	

Excludes NOD-coded (waiting for scheduled departure time) minutes.

Total Delay Incurred by Amtrak State Supported Trains: FY2019 & FY2020 by Delay Responsibility

Excludes NOD-coded (waiting for scheduled departure time) minutes.

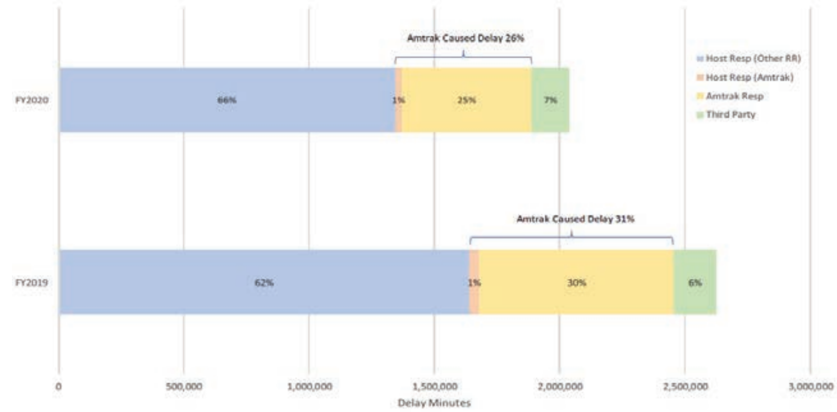
Top Delay Incurred by Amtrak State Supported Trains: FY2019 & FY2020

by Delay Responsibility and Code

Responsibility		FY2020		FY2019		Description
Host Resp (Other RR)	Total	834,618	100%	1,330,829	100%	
	FTI	205,553	25%	331,402	25%	Delays from freight trains.
	PTI	171,716	21%	301,471	23%	Delays for meeting or following other passenger trains.
	DSR	155,375	19%	223,617	17%	Temporary slow orders, except heat or cold orders.
	All Other	301,974	36%	474,339	36%	
Host Resp (Amtrak) ...	Total	61,209	100%	111,163	100%	
	DSR	12,098	20%	26,871	24%	Temporary slow orders, except heat or cold orders.
	PTI	11,770	19%	24,482	22%	Delays for meeting or following other passenger trains.
	DCS	9,437	15%	18,847	17%	Signal failure or other signal delays.
	All Other	27,904	46%	40,963	37%	
Amtrak Resp	Total	333,809	100%	611,505	100%	
	SYS	91,776	27%	153,976	25%	Delays related to crews including lateness, lone-engineer delays.
	OTH	55,563	17%	79,678	13%	Lost-on-run, heavy trains, unable to make normal speed, etc.
	ENG	45,185	14%	76,386	12%	Mechanical failure on engines.
	All Other	141,285	42%	301,465	49%	
Third Party	Total	124,596	100%	153,299	100%	
	WTR	39,218	31%	44,697	29%	All severe-weather delays.
	TRS	33,900	27%	42,958	28%	Trespasser incidents including road crossing accidents.
	POL	31,097	25%	34,969	23%	Police/fire department holds on right-of-way or on-board trains.
	All Other	20,381	16%	30,675	20%	

Excludes NOD-coded (waiting for scheduled departure time) minutes.

Total Delay Incurred by Amtrak Long Distance Trains: FY2019 & FY2020 by Delay Responsibility



Excludes NOD-coded (waiting for scheduled departure time) minutes.

Top Delay Incurred by Amtrak Long Distance Trains: FY2019 & FY2020

by Delay Responsibility and Code

Responsibility		FY2020		FY2019		Description
Host Resp (Other RR)	Total	1,344,045	100%	1,639,877	100%	
	FTI	568,476	42%	696,017	42%	Delays from freight trains.
	DSR	314,019	23%	333,217	20%	Temporary slow orders, except heat or cold orders.
	PTI	157,091	12%	219,571	13%	Delays for meeting or following other passenger trains.
	All Other	304,459	23%	391,072	24%	
Host Resp (Amtrak) ...	Total	24,317	100%	38,234	100%	
	PTI	5,947	24%	7,995	21%	Delays for meeting or following other passenger trains.
	DCS	4,586	19%	7,878	21%	Signal failure or other signal delays.
	RTE	3,445	14%	4,737	12%	Routing-dispatching delays including diversions.
	All Other	10,339	43%	17,624	46%	
Amtrak Resp	Total	518,489	100%	777,834	100%	
	SYS	140,521	27%	205,219	26%	Delays related to crews including lateness, lone-engineer delays.
	SVS	85,875	17%	108,509	14%	All switching and servicing delays.
	ENG	71,577	14%	80,795	10%	Mechanical failure on engines.
	All Other	220,516	43%	383,311	49%	
Third Party	Total	152,583	100%	169,800	100%	
	WTR	70,091	46%	81,390	48%	All severe-weather delays.
	TRS	34,533	23%	33,929	20%	Trespasser incidents including road crossing accidents.
	POL	30,135	20%	36,054	21%	Police/fire department holds on right-of-way or on-board trains.
	All Other	17,824	12%	18,427	11%	

Excludes NOD-coded (waiting for scheduled departure time) minutes.

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