

AMTRAK

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Stephen J. Gardner
Chief Executive Officer



May 19, 2023

The Honorable Merrick B. Garland
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Garland:

I write on behalf of the National Railroad Passenger Corporation (Amtrak) to ask your help in enforcing Amtrak's statutory rights in the use of our nation's railroad lines and facilities. Vigorous enforcement of these rights is critical to Amtrak's success in providing fast, safe, and reliable passenger rail service, and the Attorney General is the sole enforcer of an Amtrak right that is critical to providing such service.

Amtrak operates a nationwide intercity passenger rail network, serving more than 500 destinations in 46 states and the District of Columbia. Amtrak's customers are on track to take roughly 28 million trips in Fiscal Year 2023 as we approach our pre-pandemic ridership levels. As you may know, although Amtrak serves communities across the country, Amtrak only owns a small portion of the rail lines over which it operates, primarily on the Northeast Corridor between Washington, D.C. and Boston. The vast majority of Amtrak's train miles are operated over tracks owned by other "host" railroads, primarily large, publicly traded freight railroads. Amtrak pays these host railroads for the use of their tracks and facilities, and pays incentives to hosts for strong on-time performance (OTP).

In creating Amtrak over fifty years ago, Congress relieved the nation's freight railroads of their common carrier obligation to provide passenger service, and explicitly recognized the importance of prioritizing Amtrak's passenger trains over freight trains across the national rail network. Under 49 U.S.C. § 24308(c), Amtrak trains are entitled to "preference" over freight trains in the use of host railroad tracks, and under § 24103, the Attorney General is assigned enforcement authority. Without this requirement, Amtrak trains, which typically travel at higher speeds, would be routinely delayed by slower freight trains, diminishing the passenger experience and leading to a cascade of disruptions across the rail network. Thus, Congress's mandate of preference for Amtrak trains—which was consistent with the railroads' historical practices before Amtrak's creation—is essential to ensure fast and high-quality passenger service.

Unfortunately, in practice, Amtrak trains are regularly not afforded preference over freight traffic. Freight train interference (FTI) is the driving factor behind Amtrak delays on host railroad lines. This, in turn, has led to chronic, subpar performance across Amtrak's network. For example, virtually all of Amtrak's long-distance trains (routes over 750 miles) fail to meet the OTP standards established by the Federal Railroad Administration (FRA), largely due to FTI, preference violations, and other impermissible host railroad practices. *See Metrics and Minimum Standards for Intercity Passenger Rail Service*, 85 Fed. Reg. 72971, 72974 (Nov. 16, 2020), codified at 49 C.F.R. pt. 273 (FRA's Final Rule);



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see also FRA, Intercity Passenger Rail Service Quality and Performance Reports, available at <https://railroads.dot.gov/rail-network-development/passenger-rail/amtrak/intercity-passenger-rail-service-quality-and> (published quarterly reports detailing the performance and service quality of Amtrak train operations, based on the Metrics and Standards adopted in FRA's Final Rule).

There is one avenue available to Amtrak to promptly address this problem; only the Attorney General has the right to pursue relief in court. Congress authorized the Attorney General (not Amtrak) to file a civil action in federal district court for equitable relief for violations of Amtrak's preference rights. 49 U.S.C. § 24103. However, the Justice Department has only done so once, in 1979, in a case that concluded based upon a consent decree, without a final precedential decision. No additional cases have been filed, notwithstanding poor Amtrak OTP, continuing violations of Amtrak's preference rights on routes across the country, and requests from Amtrak.

Amtrak is constantly working with host railroads and other stakeholders to improve service for our passengers. In addition, we seek to use all available legal means to address host railroad delays. In December 2022, Amtrak filed a complaint under Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), asking the Surface Transportation Board (STB) to investigate persistent delays on Amtrak's *Sunset Limited* service, which operates between Los Angeles and New Orleans. Some years ago, Amtrak had also sought relief under PRIIA § 213 for delays on other routes, but those proceedings were ultimately dismissed in the course of litigation initiated by the freight railroad industry to challenge the constitutionality of provisions of PRIIA. Although that litigation has concluded, and FRA has established PRIIA performance metrics and standards by rule, the STB has not yet acted on Amtrak's *Sunset Limited* complaint. However, Amtrak performance continues to suffer due to impermissible host railroad practices.

DOJ's preference enforcement role is a complement to, not a substitute for, PRIIA § 213 relief. Congress intended for both legal avenues to be available, and to be pursued, to ensure high-quality intercity passenger service. This is particularly critical now, as Amtrak seeks to ensure that taxpayers can reap the benefits of the transformational investments in rail service that have been made possible by the Infrastructure Investment and Jobs Act, and so that we can achieve President Biden's vision of an enhanced Amtrak and intercity passenger rail system.

I would like the opportunity to meet with you to discuss these important issues and to reinvigorate the enforcement of Amtrak's statutory preference rights. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen J. Gardner".

Stephen J. Gardner
Chief Executive Officer