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February 7, 2002

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Charles Money Penny

Hon. John O. Norquist

**AN ACTION PLAN  
FOR THE RESTRUCTURING AND  
RATIONALIZATION OF THE NATIONAL  
INTERCITY  
RAIL PASSENGER SYSTEM**

EXECUTIVE DIRECTOR

Thomas A. Till

**A REPORT TO THE CONGRESS**

**BY THE  
AMTRAK REFORM COUNCIL**

**PURSUANT TO SECTION 204 OF THE  
AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997**

JM-ARC, Room 7105  
400 Seventh Street, SW

Washington, DC 20590

Phone: (202) 366-0591  
Fax: (202) 493-2061



*The ARC is an independent federal commission established under the Amtrak Reform and Accountability Act of 1997 (P. L. 105-134)*

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EXECUTIVE DIRECTOR

Thomas A. Till

February 7, 2002

The Honorable Richard B. Cheney  
President of the U.S. Senate  
President of the United States)  
276 Eisenhower Executive Office Bldg.  
Washington, D.C. 20501

The Honorable Dennis Hastert  
The Speaker of the House of (Vice  
Representatives  
232 Capitol Building  
Washington, D. C. 20515

Dear Mr. President:

Dear Mr. Speaker:

This letter transmits to the Congress, pursuant to Section 204 (c) (1) of the Amtrak Reform and Accountability Act of 1997 (P. L. 105-134) (Reform Act), an Action Plan for the Restructuring and Rationalization of the National Intercity Rail Passenger System (Action Plan). The Council believes that there is a bright future for passenger rail in America. But Amtrak, as it is structured, managed, and operated under existing law, cannot achieve that promise.

Amtrak made this clear in its statement of February 1, 2002, when it announced that it was deferring maintenance and laying off 1,000 workers, thereby saving \$285 million, to get through the current fiscal year. Amtrak further indicated that it would request \$1.2 billion in funding for fiscal year 2003 and announced that, if the funding is not forthcoming, it would discontinue operation of 18 of the trains in its network of long-distance services on October 1, 2002.

To create a more effective passenger rail program, the Council recommends that a new business model be implemented. The National Railroad Passenger Corporation (NRPC), commonly referred to as Amtrak, would be restructured as a small federal agency responsible for administering and overseeing the nation's passenger rail program. The NRPC would implement the program through two strong companies. One would conduct Amtrak's nationwide train operations. The other would own, operate, maintain, and improve Amtrak's Northeast Corridor and other real property infrastructure. All services would be provided under contractual arrangements with performance requirements. Amtrak operates commuter services under this franchising model today.

As additional incentives to innovation and efficiency, the Council's proposal would permit the NRPC to introduce, after a transition period, competition by competitively bidding train operating services. The combination of performance-based contracts and the possibility of competition will make it possible to deal with the two chronic problems that have affected Amtrak's train operations – high operating costs and poor service quality. This will assist in

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controlling the costs of one of the two unfunded mandates in our national rail passenger system, the network of long-distance trains.

The Council's proposal addresses the second unfunded mandate – the rail infrastructure of the Northeast Corridor – by placing it in a separate corporation, controlled by the states through which it runs. The NEC infrastructure is vital to the economy of the Northeastern United States, and Amtrak has not had – for many years – the resources to maintain it in good operating condition. Placing the ownership burden on Amtrak, which is the minority user, has not been effective because Amtrak has never received the funding that is needed to fund the Corridor's needs. Tying the NEC infrastructure to Amtrak seriously impairs – financially and operationally – both the Northeast Corridor infrastructure and Amtrak's nationwide system of train operations. To promote efficiency, the infrastructure company could eventually contract out maintenance or the entire operation.

The Council also recommends that the government provide stable and adequate funding to support the rail passenger program, which will be challenging in today's budgetary environment. These funds clearly will not come from a single source. States, localities, and the federal government will all have to contribute appropriately. Currently pending legislative proposals for tax-exempt and tax-credit bonds should be considered, as should investment tax credits. Increasing the flexibility of surface and aviation trust funds should be considered where rail investments make economic and transportation sense. And, to encourage efficiency, the structure of funding for passenger rail subsidies needs to be changed. In the future, greater deficits should not be rewarded with greater funding; funding should be administered to reward efficiency in the provision of rail transportation.

There is a strong consensus on the Council regarding the recommendations in the Action Plan. Nine Council members – Ms. Connery and Messrs. Carmichael, Chapman, Coston, Cox, Gleason, Kling, Norquist, and Weyrich – have voted to approve the Action Plan. Messrs. Coston, Cox, and Kling have submitted letters of concurrence, which are found in Appendix I. Mr. Charles Money Penny, the representative of Rail Labor on the Council, voted against the Action Plan's recommendations, and his statement opposing the Council's views is also in Appendix I. Secretary of Transportation Norman Y. Mineta, an ex officio member of the Council, has abstained.

We are pleased to forward this report on behalf of the Council and its staff. Please do not hesitate to contact any member of the Council or the Council staff should you need additional information or wish to discuss issues regarding the Council's proposals.

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**FOR THE AMTRAK REFORM COUNCIL**

Very truly yours,



Gilbert E. Carmichael  
Chairman

Enclosures

Enclosure: Action Plan for the Restructuring and Rationalization  
of the National Intercity Rail Passenger System

Cc: Senate Committee on Commerce, Science, and Transportation  
Senate Appropriations Committee, Subcommittee on Transportation  
House Committee on Transportation and Infrastructure  
House Committee on Appropriations, Subcommittee on Transportation

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## EXECUTIVE SUMMARY

On November 9, 2001, the Amtrak Reform Council found that Amtrak will not achieve operational self-sufficiency by December 2, 2002, as required by the Amtrak Reform and Accountability Act of 1997. Amtrak finished FY2001 with a loss of \$341 million for purposes of self-sufficiency, as the test is defined by Amtrak, and a record operating loss of \$1.1 billion under Generally Accepted Accounting Principles.<sup>1</sup> Amtrak is no closer to self-sufficiency today than it was in 1997, a conclusion recently affirmed by the Inspector General of the US Department of Transportation, and Amtrak's announcement on February 1, 2002, that unless it receives \$1.2 billion of federal funding in FY2003, it will eliminate all long-haul routes on October 1, 2002. Amtrak's actions to raise needed cash by mortgaging a portion of Penn Station and increasing its debt have weakened the company's financial condition.

This report is the Council's Action Plan for a "restructured and rationalized national intercity rail passenger system" as required by the Reform Act. The Action Plan is grounded in a thorough, three-year examination of Amtrak's financial performance and management practices, as well as a series of public meetings with state and local officials throughout the United States and lively discussions among Council members.

The Council's plan addresses Amtrak's current and historical problems, but also takes a broader view by considering reform in the context of a vision for the future of intercity passenger rail service. The Council's view is that there should be a bright future for passenger rail service in America. But the Council believes that passenger rail service will never achieve its potential as provided and managed by Amtrak. A new and different program is needed to move forward.

### A. REFORM CONCEPTS ENDORSED BY THE COUNCIL

The Amtrak Reform Council's action plan is based on three principal concepts for reform.

a) A New Business Model for Amtrak. Amtrak's primary mission is the transportation of people. Today's Amtrak also establishes and administers governmental policy on rail passenger issues and is effectively the sole federal oversight body responsible for monitoring its own business plans and operations. Amtrak also owns and maintains much of the Northeast Corridor (NEC) rail infrastructure, an asset shared with commuter authorities and freight carriers and having an economic significance that transcends Amtrak's operations. To correct these institutional failings, the Council recommends:

- Restructuring the National Railroad Passenger Corporation (NRP) as a small federal program agency to administer and oversee the intercity passenger rail program. In the absence of competition, a monopoly operator such as Amtrak needs government oversight. While audits of Amtrak's financial performance are regularly performed by at least three agencies, analysis and

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<sup>1</sup> Based on Amtrak's unaudited financial statements. As of February 5, 2002, Amtrak had not released audited financial statements for the fiscal year.

reporting functions are not a substitute for effective, hands-on oversight. Amtrak's current train operating and infrastructure functions, under the Council's plan, would be strong companies with independent boards. The NRPC would actively oversee the new train operating and infrastructure companies with respect to budget matters and approval of business plans. The NRPC would also be responsible for administering the federal program for development of high-speed rail corridors and would have the authority, at its discretion, to introduce competition for some or all Amtrak markets.

- Organizing Amtrak's responsibilities for train operations and infrastructure as separate companies. This would allow Amtrak to focus on its mission of running trains and free it from the burden of ownership for the portions of the NEC that it owns. A separate infrastructure company would ensure that funds earmarked for infrastructure improvements will be used for the intended purpose, and will better represent and balance the needs of all Corridor users and stakeholders. The NRPC would insulate both new companies from political interference. Separation also would highlight the NEC's 20-year capital needs, estimated by Amtrak to be nearly \$28 billion.

b) The Option of Introducing Competition. The Council's plan permits, after a transition period, the introduction of competition through the franchising of train service and NEC maintenance through a competitive bidding process. The Council believes that, as is the case throughout our free-market economy, competition would drive down costs and improve service quality and customer satisfaction.

Competition would help minimize losses, but in all likelihood would not eliminate the need for operating subsidies. Some Amtrak services – specifically Amtrak's long-distance trains – would need to be offered on a negative bid basis, i.e., the bidder requiring the least subsidy would be awarded the franchise.

The Council has taken a strong position in favor of protecting the rights of rail labor in any franchise arrangement. Congress, of course, would be the ultimate arbiter of the specific labor-protective conditions that would be imposed by law.

c) An Adequate and Secure Source of Funding. The Council believes that long-term sources of funding are needed to meet the needs of the intercity passenger rail program.

## **B. THE COUNCIL'S PROPOSAL**

At its first working session to consider reform options, there was a consensus among the Council members that train operations and the Northeast Corridor infrastructure should be organized as separate companies and that any reform plan should include more effective government policy and program oversight. The Council then evaluated four distinct approaches for train operations: (1) national or regional operating monopolies; (2) competition for long-haul markets only; (3) competition for all markets; and (4) a regionally-managed, operationally self-sufficient rail passenger network.

The Council considers all of the options meritorious, but specifically endorses option 3, with respect to train operations. The most significant amendment makes the introduction of competition permissive rather than mandatory.<sup>2</sup>

The Council's proposal thus has three elements:

1. Federal Program Management and Oversight. The Council recommends that the administration and oversight of the national passenger rail program be conducted by the National Rail Passenger Corporation (NRPC),<sup>3</sup> which would be restructured as a small government corporation. The NRPC would operate at arm's length from Amtrak's current train operations and infrastructure, which would be organized as companies with independent boards of directors. While it may be more appropriate for these companies initially to be subsidiaries of the NRPC, over the long term they would function more appropriately as separate companies. The NRPC's board of directors would comprise representatives from congressionally-defined regions covering the entire US (the governors of each of the regions would propose candidates to the President, for nomination to the Senate), the federal government, the railroad industry, and railroad labor. NRPC would hold the statutory franchise to operate over the rights-of-way of the freight railroads at incremental cost with operating priority, and would authorize the train operating company or other service providers to operate under the franchise on its behalf.

The Council recommends that the NRPC be modeled after the United States Railway Association (USRA), and be charged to administer and oversee the intercity passenger rail program. USRA was formed by the Congress in 1973 to plan Conrail and monitor its performance. USRA reviewed Conrail's business plans, monitored its progress in executing its plans, disbursed federal funds, and had the authority to withhold funds if Conrail did not take actions to improve its performance. USRA enforced discipline, shielded Conrail from political interference, and, by working closely with Conrail management, contributed to Conrail's success. The Council believes the passenger rail program would benefit from a similar oversight organization.

The NRPC would also:

- Administer federal funds made available for intercity passenger service;
- Administer the development of high-speed rail corridors, including evaluating project proposals and prioritizing projects for design and construction;
- Oversee the business plans of the train operating and infrastructure companies;
- Divest non-NEC physical assets (e.g., stations and track) to states and localities;
- Determine whether to franchise train services and/or maintenance of the Northeast Corridor, design franchises to be offered, administer the competitive bidding process, and administer contracts with franchisees; and

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<sup>2</sup> A matrix summarizing the major elements of each of the proposals may be found at the end of Chapter IV.

<sup>3</sup> The name National Rail Passenger Corporation is retained to make clear that it is intended to be the legal successor to the existing NRPC. Under existing law, the NRPC holds Amtrak's statutory right to operate over the lines of the freight railroads at incremental cost and with operating priority, and such rights would be retained by the restructured NRPC.

- In cooperation with Congress, the states, passenger and freight railroads and the public, manage public policy issues with respect to rail passenger service.
2. Train Operations. There should be a separate company (“Amtrak”) organized to provide train-operating services. Amtrak’s train-operating services, including passenger and mail/express operations, equipment repairs, and commuter operations, should be provided by contractual arrangement with federal or state authorities. NRPC would appoint its board, which would be comparable to the board of a major transportation operating company, such as an airline. Amtrak operates a number of services today under contract with state departments of transportation and commuter authorities and these contracts to operate services franchises are a model of how franchising can work. Amtrak’s responsibilities are clear and none of these services involve unfunded mandates to operate particular routes without adequate compensation. The Council recommends that contracts for train-related services require continuous improvement in specified performance measures such as cost recovery, customer satisfaction, and ridership. And train operations, mail and express, the equipment repair shops, and commuter services should each have transparent accounting. Amtrak must become more efficient either by meeting the terms of a contract or through the eventual introduction of competition.

The Council’s plan would permit a pilot project to be implemented immediately by the NRPC to gain experience with franchising. Otherwise, Amtrak would be given two to five years to “get its house in order” before competition could be introduced. During this transition period, the NRPC would design appropriate franchise units, seeking input from state authorities, the freight railroads, Amtrak and others.<sup>4</sup> Terms and conditions for franchising would be developed during this period and decisions made about how to manage the bidding process. Any exercise of franchise authority by the NRPC would be specific in its terms, would be based on consultation with all concerned parties, and would require that adequate capacity exist for both passenger and freight requirements before any expansion of services would be implemented.

After the initial transition period, the NRPC would have the authority, at its discretion, to franchise some or all Amtrak train operations, including mail/express. Franchises would be offered through a competitive bidding process and would provide exclusive rights to operate passenger and mail/express service. Franchisees would operate under the NRPC statutory franchise and would be afforded the same liability protection and access to insurance currently available to Amtrak. Ultimately, Amtrak, as the train operating company, could be privatized.

All franchisees would be subject to the Railway Labor Act, FELA,<sup>5</sup> and railroad retirement. Current Amtrak employees would be granted hiring preference with new franchisees to the extent that hiring is necessary. The Council recommends to Congress that in any restructuring, employees follow their work in seniority order with their collective bargaining agreements intact. Agreements would be subject to collective bargaining under the normal provisions of the Railway Labor Act. Labor protection would be provided by the NRPC under the terms of the then-existing collective bargaining agreements.

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<sup>4</sup> The Council envisions a relatively small number of franchises to avoid cherry-picking of Amtrak’s routes.

<sup>5</sup> Federal Employer’s Liability Act.

After transition, the Amtrak shops could be sold, leased to private entities, or operated or disposed of by the NRPC. Alternatively, train operators might bid to operate equipment repair shops as part of a franchise or contract with the shops for equipment maintenance. The equipment itself could be either owned by or leased to franchisees.

Federal operating subsidies to support train operations after the transition period would be available only for the long-distance trains that are Amtrak's most unprofitable operations. Shortfalls on non-national system routes, including new high-speed corridor services, would be the responsibility of the states after a transition period. The Council believes equipment capital should be funded through private financing, if possible.

3. Infrastructure. The Council recommends that Amtrak's Northeast Corridor infrastructure assets be organized as a government corporation that would control corridor operations, perform maintenance, and implement capital improvements. The company's board of directors would comprise representatives from the states along the Corridor, the US Department of Transportation, freight railroads operating on the Corridor, and the intercity passenger service provider. The Corridor would be managed as a shared regional and national asset.

As with Amtrak's train operations, the infrastructure company would operate under a contractual agreement with the federal government. Performance standards would require continuous improvement in specified performance measures. After a two- to five-year transition period, the NRPC could authorize the NEC company to franchise its functions through competitive bidding.

Track use fees would continue to be based on incremental costs for passenger operators with other users paying negotiated rates. Incremental cost is the standard that applies to intercity passenger services off the Corridor and for that reason is retained as the standard on the Corridor.

Significant capital funding is needed for the NEC infrastructure. While the Northeast Corridor is operationally self-sufficient under the standards of the Reform Act, the infrastructure company will not be able to fund its own capital needs. The Council's plan endorses Federal funding but also expects the states to fund a portion of the need in recognition of the Corridor's importance to regional and commuter rail operations.

### **C. Funding Issues and Alternatives**

The cost to fund intercity rail service will be considerable. Based on its FY2001 cash loss, Amtrak's federal operating subsidy could approach \$600 million annually (with Amtrak currently receiving another \$125 million in operating subsidies from states). Additional operating subsidies could be needed for high-speed corridors if ridership and revenue targets are overly optimistic. The Council's plan would minimize operating subsidies by creating incentives for cost containment and efficiency either through operating contracts with Amtrak or franchising. The plan also recommends that after a transition period, federal operating subsidies be limited to long-distance "national" trains; states would bear the cost of operating subsidies for corridor services, including new high-speed services.

Capital needs are even greater. The Northeast Corridor infrastructure is in need of about \$1 billion annually in capital funds. According to Amtrak's estimates, the cost to develop all of the high-speed corridor projects that have been advanced by the states amounts to \$70 billion, or \$3.5 billion per year over twenty years. These spending levels may be unrealistic in today's budget environment.

There are no easy answers. But it is clear that given the size of the needed investment, reform of Amtrak is essential to minimizing costs and protecting the taxpayers' investment. It is also clear that all of the stakeholders in intercity passenger rail service – the federal government, the states, Amtrak and its employees, the commuter authorities on the Northeast Corridor, the freight railroads, and the public – will need to make a contribution for the program to move ahead. A number of proposals have been advanced to fund capital needs. The Council has taken no position on these proposals but supports adequate and secure sources of funding for intercity passenger rail service.

# FOREWORD AND ACKNOWLEDGMENTS

The Council's *Action Plan for the Restructuring and Rationalization of the National Rail Passenger System* takes a different approach to reforming passenger rail service than most previous proposals. Rather than trying to redesign the network of trains, individually, in groupings, or all together, the Council has focused on designing a rational program structure that could develop an efficient and effective passenger rail system over time. Around the world, most railroad restructurings take from six to twelve years. Here in the US, Conrail took 13 years, and Amtrak will also take time.

The Council's purpose was to design an institution that could, if implemented, sustain a coherent program. Through a small, focused program agency, directed by a board with nationwide representation, such a program would be properly and equitably administered. It would also exercise strong oversight. Through an efficient, unencumbered train operating company, with an experienced business-oriented board, operating on performance based contracts, the program would implement the development of a market-oriented network of train operations providing efficient, customer-friendly service. The program would also provide the infrastructure that good train operations need. Through an infrastructure company that operates and improves the Northeast Corridor rail infrastructure, directed by a board representing the states in the region, upgrade the NEC so that it will support, appropriately and most efficiently, all classes of train operations on that economically vital link. In parallel, the program agency would administer the funding, based on applications that meet sound economic criteria, to upgrade the infrastructure of the emerging rail corridors around the nation. Gradually, after a transition, the program could introduce competition, to improve efficiency and service quality and to spur improvements in the rest of the system.

For assistance in developing the program that underlies the Council's Action Plan, the Council would like to thank the following people for their assistance and expertise.

- The Council's staff – Thomas Till, Michael Mates, Kenneth Kolson, Mary Phillips, Deirdre O'Sullivan, and Felton Jones – for their hard work in serving the Council during three years of challenging but rewarding effort. And most particularly for their excellent work in preparing both the finding that Amtrak would not be self-sufficient and this Action Plan for rail passenger reform.
- The staff of the Federal Railroad Administration, who have provided helpful counsel responsive administrative support for the Council since its inception.
- The Office of the Inspector General (OIG), U.S. Department of Transportation, especially Inspector General Kenneth Mead and Assistant Inspector General Mark Dayton, for their recurring analyses of Amtrak's Strategic Business Plans and the company's performance, which has been of great value to the Council and its staff. The OIG has also given the Council excellent logistical support, through Samuel Davis and his staff, since the Council began regular operations three years ago.
- The staff of the U.S. General Accounting Office, working first under Associate Director Phyllis F. Scheinberg, and then under her successor, Jay Etta Hecker, and with the able assistance of

James C. Ratzenberger, for their productive collaboration on many topics of mutual benefit over the years.

- Charles Hoppe, a rail consultant with more than 40 years of domestic and worldwide experience in redesigning and restructuring railroads, who provided a vital sounding board for the Council's staff in many hours of discussion.
- Mort Lowenthal, a retired investment banker with many years of experience advising railroad clients, who for two years has provided, *pro bono*, his wise counsel to the Council's members and staff.
- Louis Thompson, Railways Advisor of the World Bank, for his unlimited availability to discuss issues, for his thoughtful comments, and for his assistance in understanding the wide range of reforms that have been adopted for passenger railways in other countries.
- William Watt, for his valuable counsel in analyzing complex policy issues and for his excellent editorial assistance in preparing this Action Plan and other Council writings.

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# **I. WHY AMTRAK'S PASSENGER RAIL PROGRAM DOES NOT WORK AND WHAT IT NEEDS TO BECOME SUCCESSFUL**

## **A. INTRODUCTION**

When, on November 9, 2001, the Amtrak Reform Council approved a resolution finding that Amtrak would not achieve operational self-sufficiency by December 2, 2002, as required by the Amtrak Reform and Accountability Act of 1997 (Reform Act), it marked a beginning, not an end.<sup>6</sup> The Council's finding reflected the majority's view that –

- Amtrak's financial performance since enactment of the Reform Act has deteriorated and will fall far short of that required by the Reform Act;
- Our nation's transportation system needs an effective program for the development and operation of intercity rail passenger service and that passenger rail can and should have a bright future in America;
- The current federally-chartered organization for providing intercity rail passenger service, Amtrak, needs major structural improvement; and
- The Council should propose a new program for intercity passenger rail in the Action Plan the Reform Act requires the Council to submit to the Congress.

The Council's view is based on its investigations of Amtrak's institutional structure and performance. This work led the Council to conclude that Amtrak, as it is currently structured, funded, and operated, is not capable of delivering the improvements in passenger rail service that America needs. In the almost four years since enactment of the Reform Act, Amtrak has not made any significant progress toward operational self-sufficiency.

The Council is confident that the recommendations for reform proposed in this report, if enacted, will improve the national passenger rail program.

Building on the Council's Second Annual Report, issued in March 2001, the Action Plan proposes a new policy framework for passenger rail as well as specific proposals for the implementation of the business model that the Council approved in its Second Annual Report. To ensure that these options are implemented effectively, the Council's plans include provisions for a careful transition from the current corporate and operational structure of Amtrak to the new structure proposed for the National Railroad Passenger Corporation.

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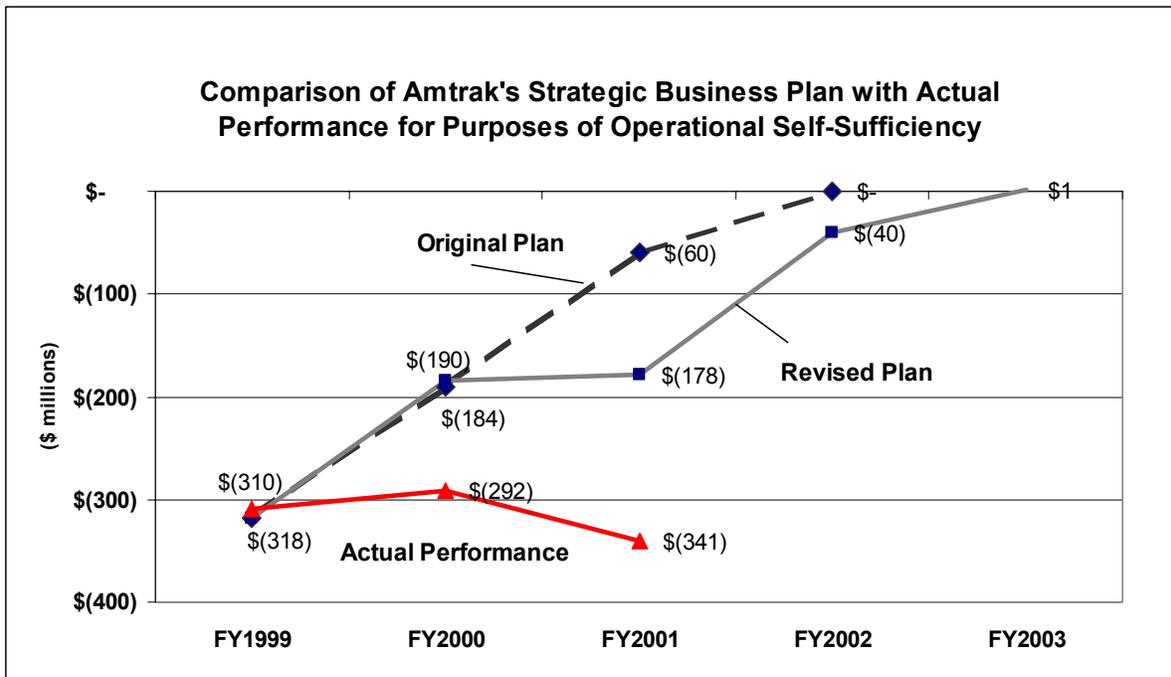
<sup>6</sup> The Council's finding document is attached as Appendix II.

## B. PROBLEMS OF A FLAWED INSTITUTION

The vision of improved passenger rail operations bears no resemblance to the performance of Amtrak over its 30-year history. The Council previously determined, as reported in its Second Annual Report, that the roots of Amtrak's flaws lie in its institutional structure. While one may criticize the management, the board of directors, and even the employees or the unions, the institutional structure is the root cause of Amtrak's problems. Effective reform will ensure that these same flaws do not undermine a new passenger rail program.

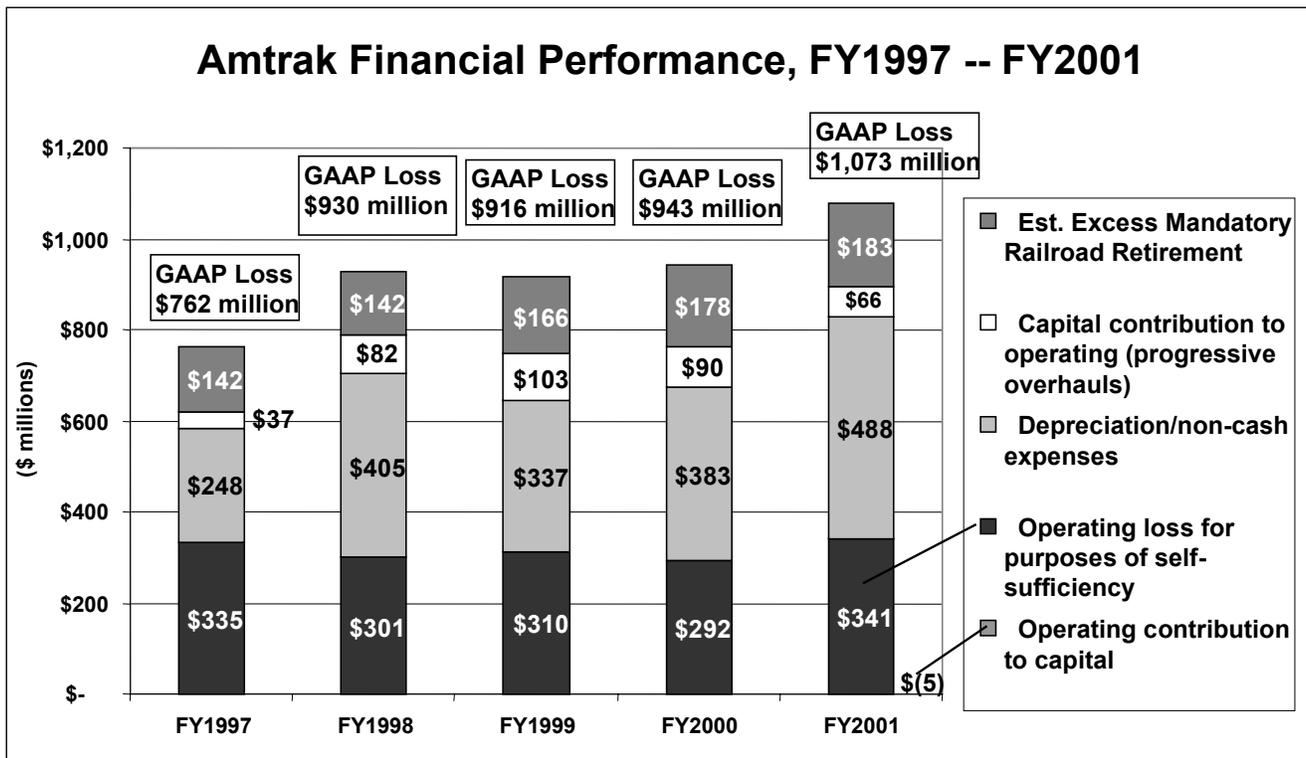
Some outstanding examples of Amtrak's problems under its existing organizational structure include:

- Failure to develop and execute sound business plans has prevented Amtrak from meeting its goals for revenue growth and cost containment.
  - Amtrak's original Strategic Business Plan for FY1999 – FY2002 projected that Amtrak would achieve self-sufficiency in fiscal year 2002. With the delays in the introduction of Acela Express service and rising costs, Amtrak had to revise its Business Plan, pushing back the date for achieving operational self-sufficiency a full year to fiscal year 2003. Amtrak finished fiscal year 2000 \$100 million behind its revised Plan. Amtrak finished fiscal year 2001 more than \$150 million behind its revised Plan and about \$280 million behind its original plan. Its operating loss for purposes of operational self-sufficiency – as that test is defined by Amtrak – increased in FY2001 to \$341 million<sup>7</sup>, up from \$292 million in FY2000.



<sup>7</sup> Based on Amtrak's unaudited financial statements for fiscal year 2001. Amtrak concurs with the Amtrak Reform Council's calculations for purposes of the self-sufficiency test.

- Amtrak's costs continue to grow faster than its revenues. Amtrak has projected significant overall cost reductions in its strategic business plans since 1999, but Amtrak did not define specific cost reduction initiatives until FY2001, and those proposals total only \$75 million annually, exclusive of any savings from Amtrak's planned reduction in force. These cost reductions are clearly inadequate to meet Amtrak's strategic business plan projections.
- In five years, Amtrak has made no progress toward achieving self-sufficiency and is in a weaker financial condition today than in 1997. While Amtrak made modest improvements towards self-sufficiency in FY1998 and FY2000, its FY2001 loss was its highest ever.
- On January 25, 2002, the US Department of Transportation's Office of the Inspector General (DOT/IG) released its report on Amtrak's FY2001 performance. The Inspector General reached the same conclusions as the Amtrak Reform Council about Amtrak's performance, stating "Amtrak's cash losses have not decreased and Amtrak is no closer to operating self-sufficiency now than it was in 1997. With less than a year remaining in its mandate, there is not sufficient time for Amtrak to implement the kinds of sustainable improvements necessary to meet its deadline for self-sufficiency. At this point in time, Amtrak will face a formidable challenge in 2002 just managing its cash resources – be they from operating revenues or Federal subsidies – to make ends meet without further borrowing."



- Amtrak's contentions to the contrary, simply meeting an annual target for reduced federal operating funding does not mean Amtrak is making meaningful strides toward self-

sufficiency. Amtrak has been able to continue operations with more limited federal operating funds only by using Taxpayer Relief Act (TRA) capital funds for operating purposes and by engaging in counterproductive practices and transactions that have weakened the overall financial and physical condition of the company.<sup>8</sup> Federal operating grants for Amtrak may be declining, but Amtrak's losses for purposes of operational self-sufficiency are increasing. The statutory deadline of December 2, 2002, for operational self-sufficiency is not a finish line. It is instead the starting point from which Amtrak must sustain operations over the long run without federal operating assistance.

- Despite receiving appropriated federal funds and TRA funds totaling approximately \$5 billion for Fiscal Years 1998 through 2002, Amtrak's assets are in worse physical condition now than when the ARAA was passed.
- Amtrak's inability to follow its business plans have led to imprudent borrowing, most notably the mortgaging of a portion of Penn Station New York to obtain a \$300 million loan that was used to avoid running out of cash in the last quarter of FY2001. In FY2000, Amtrak also engaged in the sale-leaseback of substantially all unencumbered Amtrak equipment, which raised \$124 million that had not been projected as a cash source in its strategic business plan for that year.
- The Penn Station loan and other borrowings, including sale-leaseback transactions, have tripled<sup>9</sup> Amtrak's debt since 1995, increasing its costs for debt service to about \$200 million annually.
- Amtrak lacks a transparent accounting system for its operations and infrastructure, an effective reservations system that will identify seats available on Amtrak trains on a real-time basis (including reservation no-shows), and a system to measure the productivity of its use of capital, labor, energy, and materials.
- Amtrak has not made any use of the reforms enacted under the Reform Act. Amtrak has not used its Reform Act authority to restructure or eliminate unprofitable routes. It has not used its Reform Act authority to contract out elements of its operations to achieve cost savings.<sup>10</sup>
- Amtrak has resisted all requests that it separate the financial statements for the Northeast Corridor rail infrastructure that it owns and maintains from the financial statements of its train operations. This makes management of both elements more difficult.

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<sup>8</sup> The sale leaseback of equipment in FY2000 raised approximately \$124 million, and the \$300 million Penn Station loan in FY2001 provided additional funds that were not in Amtrak's strategic business plans, but which helped fund cash shortfalls from business plan projections. Such additional debt and asset liens will limit future years' options and sources of cash flow.

<sup>9</sup> Amtrak notes that its debt only doubled since 1995 if cash escrow deposits of approximately \$1 billion set aside to defease (i.e., repay outstanding debt from a dedicated escrow fund) the sale-leaseback obligations are deducted from the approximately \$3 billion of Amtrak debt outstanding at September 30, 2000.

<sup>10</sup> The Reform Act eliminated previous statutory prohibitions concerning contracting out work where the loss of a job would result, and made contracting out a collective bargaining issue. Amtrak and its unions have been in collective bargaining on the issue of contracting out since June 2000.

- Amtrak lacks a strong policy to improve the intermodal connections of its system. A case in point is that Greyhound, which serves about 3,500 cities, has secured access to only 55 of Amtrak's 500 stations in the 30 years that Amtrak has been in business, and at only 35 of those 55 stations do all Greyhound buses serving that city come to the train station.

These flaws make it clear that Amtrak will not achieve operational self-sufficiency because, as an institution, it has not been able to use the past four years to get its house in order by better managing revenues, costs, and productivity. The events of September 11<sup>th</sup> are simply irrelevant to the reasons why Amtrak's financial situation has not improved over this period, and why Amtrak will fail to pass the operational self-sufficiency test.

### **C. ROOT CAUSES OF THESE PROBLEMS**

Amtrak's poor performance is the result of institutional flaws:

- Direct susceptibility to political pressures on major and minor management decisions, which provides strong incentives to make decisions that are politically expedient in the short run, but financially crippling in the long run.
- A monopoly structure, that exhibits inherent resistance to innovation and lacks motivation to improve efficiency.
- Lack of transparency and accountability in Amtrak's management structure, accounting system, and financial reporting
- Lack of effective program administration and oversight.
- A business model based on the faulty premises of large-scale cross-subsidization and the availability of federal funding as needed.
- Lack of Congressional confidence in Amtrak as an institution, making it virtually impossible for Amtrak to secure stable and adequate funding.

Both historically and currently, the administration and oversight of the passenger rail program are ineffective. Without reform, there will be continued reliance on deficit financing with no incentives for efficiency in the conduct of operations or the use of capital. These practices will continue to fuel the debate about the efficacy of the institution, making it difficult – if not impossible – to secure adequate funding. Inadequate funding will continue the cycle of deterioration of assets, both equipment and infrastructure. This particularly will be true for the passenger equipment on the long-haul trains and for the NEC infrastructure. The operational reliability of the NEC will continue to degrade, introducing further train delays that will – if unchecked – act as a drag on the competitiveness of the regional economy of the Northeastern US (New England and Middle Atlantic). Impediments to the ability of states outside the NEC to develop their emerging high-speed rail corridors will continue.

Improvement will not come without institutional reform.

#### **D. THE COUNCIL'S VISION**

The Council view is that there should be a bright future for intercity rail passenger service in America. But the Council also believes that passenger rail service will never achieve its potential as currently organized and managed by Amtrak. A new and different program is needed to move forward.

The basis for reform should be the design of a new program that will support passenger train operations and infrastructure improvements and that will provide for planning and development of improved intercity passenger rail services. The program's basis would be a business model in which strong federal program administration and oversight works with states and the freight railroads to provide the high-quality rail infrastructure needed to support a passenger rail program. This would be so both in the Northeast Corridor and on the track network of the freight railroad industry. Concomitantly, any needed operating support for passenger rail services would be provided on the basis of contracts involving performance incentives to lower costs, raise revenues, and improve the quality of service.

This program, which would work with states and regions to support the development of passenger service, would be modeled on the programs for infrastructure development that have been so successful for highways and airports. The states have been the leaders in the expansion and improvement of passenger rail service over the past decade, and this program would provide them with the federal-state partnership to do that job more effectively.

Amtrak's primary mission is the transportation of people and mail/express. As presently constituted, however, Amtrak also administers governmental policy and program authority on rail passenger issues and is responsible for owning and maintaining much of the Northeast Corridor (NEC) rail infrastructure, an asset shared with rail commuter authorities and freight railroads and having a significance that clearly transcends Amtrak's operations. To correct these institutional failings, the Council recommends:

- Restructuring the National Railroad Passenger Corporation (NRPC) as a small federal program agency to administer and oversee the intercity passenger rail program. Under current law, no federal oversight entity exists to review Amtrak's operations and performance. *Ex post facto* audits of Amtrak's performance by the DOT/IG and GAO provide analyses and reports, but are not a substitute for hands-on oversight. Amtrak's current train operating and infrastructure functions, under the Council's plan, would be provided by strong companies, with independent boards. The NRPC would actively oversee the new train and infrastructure companies with respect to budget matters and approval of their business plans. The NRPC would also be responsible for managing the federal program for development of high-speed rail corridors and would have the discretion to introduce competition in some or all Amtrak markets.
- Organizing Amtrak's responsibilities for train operations and infrastructure as separate companies. This will allow Amtrak as a train operator to focus on its mission as a service

provider and free it from the burden of ownership for much of the NEC. A separate infrastructure company will better represent and balance the needs of all Corridor users and stakeholders. The NRPC would insulate both new companies from political interference. Finally, separation will highlight the Northeast Corridor's capital needs, estimated by Amtrak to be nearly \$28 billion over the next 20 years.

- The option of introducing competition, through a competitive bidding process, of both intercity passenger rail services and the operation, maintenance, and improvement of the NEC. The Council believes that, as is the case throughout our free-market economy, competition would drive down costs and drive up revenues, service quality, and customer satisfaction. The Council does not stand alone in making this recommendation. The introduction of competition has been an effective hallmark of reform of state-owned railroads world-wide in recent years. And franchising is realistic. Experience shows that a variety of other interests, both public and private, would be interested in operating Amtrak services. Under the right circumstances, even some of America's freight railroads might be interested in participating.
- The Council strongly supports protecting the existing rights of Amtrak employees under the Railway Labor Act, FELA and the Railroad Retirement System.
- The Council also believes that long-term sources of funding are needed to meet the operating and capital needs of the intercity passenger rail program.

This report describes in detail the Council's Action Plan for implementing its vision.

## **II. ISSUES GOING FORWARD**

In considering options for restructuring Amtrak, the Council identified a number of core issues for reform:

- What does the future look like for intercity rail passenger service in America? Where can it best compete with other modes of transportation? How can rail and other modes best complement one another?
- How can the program be improved to increase its real and perceived value to customers, employees, lawmakers, and other stakeholders? How can it be designed to incorporate incentives for efficiency?
- What role must the freight railroads play if intercity passenger service is to improve? What steps must be taken to ensure that passenger improvements do not come at the expense of diminished ability of the freight railroads to play their vitally important role in the economy?
- How much will the new program cost? What capital and operating subsidies will be needed? What are the potential sources of funding, and which are most appropriate? And who should bear these costs?
- What experience has there been, both domestic and international, with rail reform? What lessons are to be learned and what mistakes avoided?

Each of these is discussed below and was considered in the Council's deliberations.

### **A. THE SHAPE OF INTERCITY PASSENGER RAIL SERVICE**

An effective system of intercity rail passenger services has three components: short-distance corridor trains, long distance trains and intermodal connections to link rail service with other modes of transportation. Today, most Amtrak riders – 82 percent – use short-haul corridor trains, many of which receive state operating support. These are the fastest-growing element of the intercity rail passenger system. The other eighteen percent of Amtrak's riders use Amtrak's national network of inter-corridor long-haul trains. In contrast, the long-haul network experiences poor financial performance and uneven service quality. It is losing both riders and money. Both of these elements of the passenger system are important, however, because the Amtrak Reform and Accountability Act directs the Council to submit an action plan for a 'restructured and rationalized national intercity rail passenger system,' which integrates both corridor and long-haul trains. A third element must, in the view of the Council, be added to the other two, and that is an effective intermodal system that connects and integrates all modes of passenger transport – rail, bus, auto, and air.

## **1. High-Speed Corridors**

The past several years have seen a groundswell of state and local support for expanding intercity rail service. Interest is focused primarily on developing high-speed (or higher-speed) service along densely populated urban corridors. Through ISTEA and TEA-21, eleven corridors in 33 states and the District of Columbia have been designated as candidates for high-speed rail development. Several federal legislative proposals have been advanced to fund corridor development through the issuance of bonds, but, despite garnering considerable interest and support, none has been approved by Congress. High-speed rail initiatives outside the Northeast Corridor include:

- **California** has announced a \$10 billion, 20-year plan to increase train speeds and add passenger and freight capacity along existing freight rights-of-way in the Capitol, Coast, Pacific Surfliner and San Joaquin corridors. California projects that the planned improvements will increase ridership 300 percent and be significantly more cost effective than comparable highway investments. California's existing rail program – the most extensive state-supported rail program in the country – has been highly successful and may offer a model for the development of additional corridors. In FY2001, California provided over \$60 million in state subsidies to support corridor train operations. Ridership on California corridor trains has risen 27 percent in the past three years, to 3.5 million riders in FY2001.
- **The Midwest Regional Rail Initiative** is a nine-state initiative for the development of a \$4 billion hub and spoke system based in Chicago and connecting Chicago with Milwaukee, Minneapolis, St. Louis, Kansas City, Indianapolis, Cincinnati, Cleveland, Detroit and a number of other Midwestern cities. MWRRI estimates that when fully operational, the network will carry 9.6 million passengers per year, generating approximately half of the train miles of Amtrak's current system. Although still awaiting federal financial support for the project, MWRRI, in cooperation with Union Pacific, has begun upgrading the line between Chicago and St. Louis.
- **In the Pacific Northwest**, Washington and Oregon have plans to increase train speeds along the Cascades corridor to 110 miles per hour. Since 1992, the states, Amtrak and the freight railroads have committed nearly \$600 million toward the project. In 1999, the state of Washington purchased two trainsets made by Talgo at a cost of \$20 million; Amtrak purchased a third trainset for the service. The Talgo equipment features advanced tilt technology that permits the train to approach curves without reducing speed. Ridership on the Cascades corridor has risen 25 percent in the past three years.
- **In Pennsylvania**, years of work are near to producing an agreement for joint state-Amtrak funding of some \$150 million in improvements to the Keystone Corridor. In FY2001, over one million passengers rode Amtrak's two Keystone Corridor routes: Route 14 between Philadelphia and Harrisburg and Route 42 between New York and Harrisburg. About 650,000 of the riders originated and/or terminated between Philadelphia and Harrisburg.

- **Other Initiatives** are underway in **New York, Florida, North Carolina** and other states to increase train speeds and frequencies, often with significant planning and capital and operating commitments by the states.

High-speed corridor services can be cost and time competitive with other modes of transportation for short-distance travel. For trips of approximately 250 miles or less, Amtrak operating expenses appear to be lower than prevailing air fares.<sup>11</sup> In these short-distance lanes, take-off and landing fees, baggage handling service, and other fixed trip expenses tend to drive up airline ticket prices.

Rail travel can also be time-competitive with air and vehicle travel in shorter distance markets, depending on the average train speed with intermediate station stops. The maximum speed planned for most US high-speed rail corridors is 110 miles per hour, since this speed can be accommodated on existing railroad rights-of-way. Average speeds with station stops, will be closer to 70-80 mph. At these average speeds, rail can compete with air travel up to distances of 150-200 miles. Non-stop trains moving constantly at the maximum speed of 110 miles per hour could compete up to 300 miles.<sup>12</sup>

Travel Times (hours) for Selected Train Speeds

AVERAGE SPEED (miles per hour)	TRIP DISTANCE						
	100 miles	150 miles	200 miles	250 miles	300 miles	350 miles	400 miles
60	1.7	2.5	3.3	4.2	5.0	5.8	6.7
70	1.4	2.1	2.9	3.6	4.3	5.0	5.7
80	1.3	1.9	2.5	3.1	3.8	4.4	5.0
90	1.1	1.7	2.2	2.8	3.3	3.9	4.4
100	1.0	1.5	2.0	2.5	3.0	3.5	4.0
110	0.9	1.4	1.8	2.3	2.7	3.2	3.6

Train time the same or less than flight time plus one hour  
 Train time the same or less than flight time plus two hours

Corridors of about 125 miles or less in length connecting major metropolitan areas may offer some of the best opportunities for rail development, since there are high travel volumes between such city pairs and often little commercial air service. The Philadelphia – Baltimore, Washington – Baltimore, Philadelphia – New York markets and, to a lesser extent, the Baltimore – New York market have limited air service and account for 40 percent of Amtrak’s ridership between Washington, D.C. and New York.<sup>13</sup>

<sup>11</sup> Based on a comparison of air fares in selected markets with the operating expenses reported by Amtrak in its FY2000 Route Profitability System, or RPS, report.

<sup>12</sup> For these short-distance flights, an average flight time (with boarding and deplaning time) of one hour has been assumed.

<sup>13</sup> The American Travel Survey for 1995 shows the following metropolitan area city pairs 125 miles or less apart having at least one million person trips per year: San Diego – LA/Long Beach; San Jose – Sacramento; San Diego – Riverside/San Bernadino; Philadelphia – Harrisburg/Carlisle; Sarasota/Bradenton – Lakeland/Winter Haven; Tucson – Phoenix/Mesa; Portland/Vancouver – Eugene/Springfield; Riverside/San Bernadino – LA/Long Beach; Philadelphia – New York; San Francisco – Sacramento; Philadelphia – Baltimore; Houston – Beaumont/Port Arthur; Santa Barbara/Santa Monica/Lompoc – LA/Long Beach; Riverside/San Bernadino – Orange County; Tulsa – Oklahoma City; Philadelphia – Atlantic City/Cape May; Columbus – Cincinnati; Milwaukee/Waukesha – Chicago; Washington – Richmond; Indianapolis – Cincinnati.

Corridor trains, defined in this report as trains having an average rider trip length of 300 miles or less, are Amtrak's best performers. Nineteen million passengers, or 82 percent of Amtrak total ridership in FY2001, rode corridor trains (versus 18 percent on long-haul trains such as the California Zephyr and the Sunset Limited). Incremental revenues on corridor trains have been growing faster than expenses, a move in the right direction for Amtrak. With many states providing operating subsidies for corridor trains and the profitability of the Acela service on the Northeast Corridor, corridor trains as a whole showed a profit of \$239 million on direct train expenses in FY2001 compared to a loss on direct train expenses of \$269 million for long-haul trains (excluding depreciation).<sup>14</sup> Corridor trains showed a loss of \$191 million on a full cost basis, compared to loss of \$581 million on long-haul trains in FY2001. With the majority (82 percent) of the riders and lower operating losses, corridor trains have lower operating losses per passenger. (See the chart on the next page.)

## **2. Long Distance Trains**

Amtrak's long-haul overnight trains are part of the national network and serve to connect local and corridor trains with regional and national routes. These long-haul routes, however, are responsible for the largest share of Amtrak's direct losses from train operations.

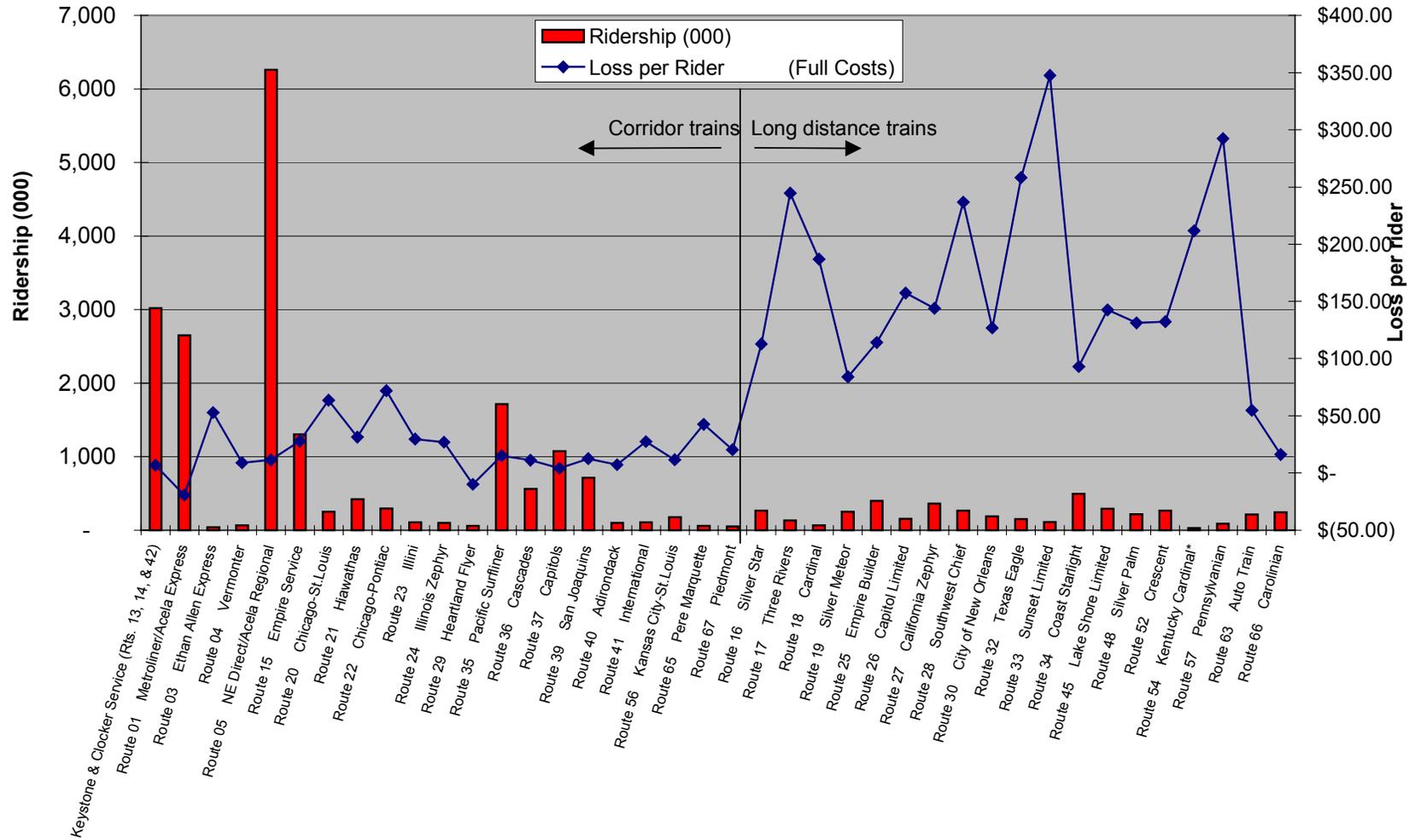
Recognizing the difficulties of the long-haul network, the Council has recommended that:

- There should not be any unfunded mandates for passenger rail service. If Congress wishes to mandate the operation of unprofitable services, it should operate them under contract, which would provide adequate funding of these operations while at the same time introducing incentives for the trains to operate efficiently.
- If a national system is retained, it should more closely reflect current travel patterns. Atlanta – Florida, for example, is a heavily traveled corridor that is effectively not served by Amtrak. Amtrak's reservations system routes passengers traveling between Atlanta and Jacksonville or Orlando, Tampa, or Miami through Washington, D.C. Passengers traveling between Atlanta and Tallahassee and the other cities in the Florida panhandle are routed through New Orleans.

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<sup>14</sup> Based on Amtrak's Route Profitability System report for FY2001. See Appendix V for details on individual routes.

### Amtrak Ridership and Profit/(Loss) per Rider, FY2001



- Franchising should be considered for the long-distance trains or for the expensive dining car and sleeper services associated with these trains. Private operators may be able to provide these services at lower cost or earn higher revenues with innovative services, thereby reducing required subsidies.

### 3. *Intermodalism*

The third element vital to the success of intercity rail passenger service is the existence of seamless links to other modes of transportation. In today's passenger rail environment, it is simply not possible in many instances to travel from origin to final destination on Amtrak without transferring to a bus, an automobile or an airplane.<sup>15</sup> While Amtrak lists nearly 300 cities in its timetable as having connecting bus service, Amtrak and Greyhound actually share only 55 stations nationwide, and Greyhound has all of its bus operations in only about 35 of those 55 stations shared with Amtrak.<sup>16</sup> For the other 20 or so stations shared by Amtrak and Greyhound, only a portion of the Greyhound buses stop at Amtrak stations, reducing the value of the intermodal connection. Making most connections, therefore, involves a taxi or bus ride, adding cost and time to the trip and making rail a less attractive travel choice. There is also little joint ticketing or coordination of schedules between Amtrak and other modes<sup>17</sup>, a distinct disadvantage for Amtrak when so many trips involve intermodal connections.

One bright spot is California. There, the state Department of Transportation funds any deficits from providing connecting rail-bus service, and Amtrak contracts with bus operators (generally smaller bus companies) to provide connecting bus service with Amtrak's corridor trains under contract requirements of the state of California. Buses are waiting at Amtrak stations when the trains arrive. Connecting bus revenue accounted for 5 percent of Amtrak's revenue in California in FY2001.

The Council strongly supports the development of more and better intermodal connections, including connections between high-speed corridor trains and other commuter and long distance trains. Sharing stations, services and information will make rail travel more convenient and enjoyable. Sharing stations would also reduce Amtrak's station-related costs, currently over \$100 million annually. The Council believes these efforts should be guided by four principles developed by the National Center for Intermodal Transportation:

“CONNECTIONS. All modes must be connected with one another to accomplish the convenient, expeditious, and efficient movement of commodities and people.

CHOICES. The intermodal network should offer choices, allowing its users to select the mode that can most efficiently satisfy their transportation needs.

COORDINATION. The transportation infrastructure must be planned, designed, and built in a way that brings the modal networks sufficiently close together so that connections can

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<sup>15</sup> Amtrak serves a relatively small number of town and cities. Amtrak currently has about 530 stations, for example, compared to Greyhound's 3,500 stations.

<sup>16</sup> The number of Amtrak stations served by Greyhound buses (55 in total, including approximately 35 that are the only Greyhound facilities in the towns) was provided to the Council by Greyhound Lines, Inc. on January 18, 2002.

<sup>17</sup> Amtrak has established joint ticketing with United Airlines for Amtrak trips combining travel by rail in one direction and by air in the other. Amtrak has also partnered with a cruise line for rail-cruise vacations in the Caribbean. On January 17, 2002, Amtrak and Continental Airlines announced joint ticketing and code sharing through the new Amtrak train station at Newark International Airport, which is scheduled to begin in mid-March of 2002.

be made relatively effortlessly. In addition, transportation providers must coordinate their schedules to reduce dwell time between intermodal movements.

COOPERATION. There must be cooperation and collaboration among transportation providers and governmental agencies at the federal, state, and local levels to ensure that the needs of the users for seamless service are realized.”<sup>18</sup>

Intermodalism also offers broader, more general benefits for our transportation system. As stated by the National Commission on Intermodal Transportation,

“The benefits of a National Intermodal Transportation System are enormous. Intermodalism offers the promise of: (1) lowering overall transportation costs by allowing each mode to be used for the portion of the trip to which it is best suited; (2) increasing economic productivity and efficiency, thereby enhancing the Nation’s global competitiveness; (3) reducing congestion and the burden on overstressed infrastructure components; (4) generating higher returns from public and private infrastructure investments; (5) improving mobility for the elderly, disabled, isolated, and economically disadvantaged; and (6) reducing energy consumption and contributing to improved air quality and environmental conditions.”<sup>19</sup>

The Council endorses the Commission’s conclusions. It also recommends that Congress give state and local governments more flexibility in how federal funds are used so that they can make the best overall transportation decisions rather than the best decisions for each mode.

## **B. LEVERAGING IMPROVEMENTS IN INTERCITY PASSENGER RAIL PERFORMANCE**

The most important issue in improving America’s national intercity rail passenger system is making the existing funding more effective by introducing efficiencies into the design and operation of the system of services. More efficient services will be better-managed services, and better management will bring with it the needed focus on market penetration and on improving the quality of the service. Because of the direct political pressures that, throughout its 30-year history, have affected Amtrak’s major management decisions, introducing efficiency has not gotten the attention it deserves.

Efficiency affects the financial and operational performance of all of Amtrak’s trains. These issues revolve around very high overhead costs, the structure of services, and low frequencies of service, causing less efficient use of personnel and equipment. This is particularly true for corridor trains. Infrastructure conditions and costs affect the efficiency of Amtrak’s Northeast Corridor and other corridor operations, and its long-haul trains.

The following types of improvements can be implemented to improve efficiency:

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<sup>18</sup> National Center for Intermodal Transportation, A New Transportation Agenda for America in the aftermath of 11 September 2001, November 2001, pp. 3-4.

<sup>19</sup> National Commission on Intermodal Transportation, Toward a National Intermodal Transportation System, final report, September 1994, p. 3.

**Substantial reductions in overhead costs**, to which Amtrak has been very resistant, are the quickest way to reduce costs. With about 2,900 non-agreement employees, Amtrak is overstaffed. As an indication of the level of overstaffing, when fully implemented, the proposed Midwest Regional Rail Initiative will operate a system of trains that will be equivalent to half of the number of train-miles of service that Amtrak operates today. The Midwest, which is negotiating with Amtrak to operate these services, will require that the operation be financially insulated from Amtrak's other business operations and that Amtrak operate the system with less than 350 non-agreement employees, less than an eighth of Amtrak's total complement of non-agreement employees. There is no reason why Amtrak could not implement, at its own initiative, a program of overhead cost reductions for its system operations. It has tended to pay little attention to this issue, providing in its business plans for increases in overhead costs that are greater than expected increases in revenues.

**Structuring services to increase productivity** of passenger equipment and crews is another important element in improving efficiency, principally for corridor trains. More trips per day, within the terms of safety regulations and labor agreements, will lower unit costs, and, if the increased number of trips results in increased frequencies of service, rail travel will likely become more attractive in the marketplace.

**Together, lower overheads and improved service structure will reduce train-mile costs.** In the Midwest and in Florida, Amtrak has subscribed to plans that would have them operating trains at less than \$30 per train-mile, which is less than half of the train-mile costs that are incurred, on average, by the trains in Amtrak's current system.

**Better-managed, more efficient operations, are more likely to lead to higher service quality**, which is being provided today by rail passenger operations designed, funded, and supervised by states, such as those Amtrak operates under contract for California, Oregon, and the state of Washington. This improved quality includes better on-time performance, better-maintained equipment, and better on-board food service operations. In addition, the states are more apt to design train operations that have more effective rail-bus connections for travelers than Amtrak provides throughout its own system. And many of the states take over responsibilities for marketing, reservations, and ticketing, to assure better market penetration and better customer service.

Unlike the airline industry, for which the Congress has prescribed a strict regime to ensure that its customer service is satisfactory, there is not any federal agency to which Amtrak passengers can report poor service quality. Amtrak's service quality is known to be uneven; Amtrak's own service quality guarantee program is experiencing three times the number of claims that Amtrak had initially forecast. The Council believes it would be appropriate for the Congress to consider establishing an oversight mechanism, perhaps similar to that applied to the airline industry, for reviewing the quality of customer service provided by Amtrak.

**Franchising** can introduce efficiencies into train operations. Amtrak today operates and maintains commuter trains under franchise agreements with several public agencies. Experience with franchising both domestically and internationally confirms that major savings – as high as 50 percent in some cases – can be achieved. Franchising is a promising option for the long-haul

trains, or at least for the expensive dining car and sleeper services associated with these trains.<sup>20</sup> Private operators, providing higher levels of amenities, augmented by better operating discipline, may be able to provide these services at lower cost and earn higher revenues, thereby reducing required subsidies.

**Improving corporate structure** will simplify missions and make it easier for the management teams of separate train operating and infrastructure companies, insulated from political interference by the NRPC, to focus effectively on their core businesses. The train operating company, with a board that looks like the board of a major airline or other passenger operating company, will focus on market and revenues, within the structure of performance measures prescribed in its funding agreement. The regionally-based board of the NEC infrastructure company will ensure that all of the revenues from both track usage fees and from non-operating sources will be dedicated to the operation, maintenance, and improvement of the NEC infrastructure. Such a board will also be more likely to ensure that the company's management structure is compact and efficient, and that business policies ensure that competitive bidding and other efficient business practices are used to lower costs and improve efficiency wherever possible.

**Designing program funding to incorporate incentives for efficiency** is essential. Properly structured funding can be a lever to achieve improved efficiency. In exchange for stable and adequate funding for intercity rail passenger capital and operating needs, the Congress should introduce performance improvement requirements for passenger operations. The Council also believes, with respect to operating subsidies, that there should not be any unfunded mandates. If Congress determines that Amtrak should continue to operate money-losing routes, it should first ensure that measures are taken to introduce efficiencies to minimize operating losses, including allowing franchising as a way of minimizing operating losses. Ultimately, however, it must adequately fund these services under specific contracts between the NRPC and the operating company or a franchise operator.

## C. THE COUNCIL'S PERSPECTIVE ON THE U.S. FREIGHT RAILROAD INDUSTRY

Outside the Northeast Corridor, much of which is owned by Amtrak, our nation's intercity rail passenger operations move virtually exclusively over 22,000 miles of track owned by the American freight railroad industry. It is therefore clear that rail passenger service outside the NEC cannot improve without the active involvement and cooperation of the freight railroad industry.

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<sup>20</sup> Between August 1999 and December 2001, a noted rail expert, Charles W. Hoppe, took it upon himself at his own expense to ride 35,000 miles on many of the trains in Amtrak's long-haul network, as well as a number of Amtrak's short-haul trains. He sent reports of each trip to Amtrak's top management. In December 2001 he published a compilation of his trip reports and an assessment of his overall experiences. His assessment concluded: (1) an Amtrak long-haul passenger has less than a 50 percent chance of having a satisfactory experience; (2) much of the equipment on the long-haul trains is old and in a poor state of repair; (3) the operating loss imposed on Amtrak by the long-haul trains is large (in the range of \$600 million per year); and (4) it is doubtful that it would make economic sense for the federal government to invest in rehabilitating or replacing the fleet of equipment for these services. His recommendation was that, if the Congress determines that it is important for the long-haul trains to remain in the national system, the long-haul trains should be operated under competitively-bid franchises.

The American freight railroad industry is widely regarded as the most effective freight railroad system in the world. The nationwide track network that five major and hundreds of smaller railroad companies own, maintain, and pay taxes on, supports the movement of about 40 percent of the intercity ton-miles of freight that move in US intercity commerce.<sup>21</sup> Profitable, private sector companies carry this freight. Moving this freight is the most important function of the US rail network. If this freight were on the roads, it would add to the heavy and worsening road congestion around our major metropolitan areas and in the heavily traveled intercity highway corridors around the country. It would also lower the productivity of our economy by making it more costly to transport freight. The continued health of the freight railroad industry is vital to the US economy.

In recent years, as their freight traffic has grown constantly during the period of sustained economic growth, America's private freight railroads began to encounter congestion on their track networks. This was a new phenomenon for a rail system that had been slimming down its network since economic deregulation of the railroads was enacted in the Staggers Act of 1980. Adding new passenger trains on freight tracks will require – in many instances – investments to increase the capacity of the freight railroads' networks.

An effective program to promote the healthy growth of intercity rail passenger service should provide for infrastructure improvements on the freight railroad network where passenger trains need to travel. These infrastructure improvements should ensure that the introduction of expanded passenger service does not diminish the ability of the freight railroads to operate efficiently. Payments for improvements would appropriately be allocated to government agencies for public benefits to passenger service and to private railroads for benefits that inure to them. This kind of a program for infrastructure improvement would clearly provide benefits to both passenger and freight traffic. It would be a win-win solution.

#### **D. PROGRAM COST ESTIMATES**

The cost to fund intercity rail service will be considerable. How much funding will be needed depends on (1) the scope of the program; (2) the extent to which the efficiency of train operations can be improved through incentive-based funding, operating contracts, and franchising; and (3) the pace of investment to develop high-speed rail corridors.

##### ***1. Operating Subsidies***

Annual operating subsidies for Amtrak's existing network, as it is operated by Amtrak, are estimated at \$600 million annually (excluding existing state subsidies), based on Amtrak's cash operating loss in FY2001.<sup>22</sup> To the extent Amtrak's costs continue to grow faster than its revenues, the required subsidy could be higher. New high-speed corridor services could also significantly increase federal and state exposure to subsidies for operating losses.

State subsidies in support of Amtrak operations are now close to \$125 million annually. These subsidies help support newer train operations, primarily corridor services, that are not part of the national network. It is Amtrak's practice to negotiate state support for new services to cover its

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<sup>21</sup> This modal comparison includes railroads, motor carrier, pipeline, barge and air carriers. Railroads carry approximately 53% of combined rail and truck ton-miles.

<sup>22</sup> Cash losses on train operations are closer to \$800 million, but are offset by non-train profits of about \$200 million.

incremental losses. With these state subsidies – and the operating profits of Amtrak’s Acela Express service – corridor trains as a whole nationwide show a \$239 million profit on direct train expenses.<sup>23</sup>

Eliminating long-distance trains, which carry 18 percent of Amtrak’s riders and are responsible for 75 percent of Amtrak’s operating losses, could reduce operating subsidies by about \$270 million per year if all direct train expenses could be avoided; additional savings would be possible if some route and overhead costs could be eliminated. The Amtrak Reform Council takes no position on what routes should be operated other than recommending that Congress adequately fund the desired network and do so under a contractual or franchise arrangement administered by the NRPC that would eliminate the unfunded mandates.

The Council’s plan would minimize operating subsidies by creating incentives for cost containment and efficiency either through operating contracts with Amtrak or franchising. The plan also recommends that after a transition period, federal operating subsidies be limited to long-distance trains that are part of the historical national network; states would bear the cost of operating subsidies for corridor services, including new high-speed services.

## **2. Capital Needs**

Developing new high-speed rail corridors and maintaining the NEC will require significant federal capital investment in partnership with the states and the freight railroads. There is a shortage of needed capacity on certain segments of the freight railroad network if it is to accommodate additional passenger and freight traffic. To build new high-speed corridors, it may be necessary to add an additional main line (perhaps including an entirely new right of way) the length of the corridor and install centralized traffic control. The need to build new track, rather than modify existing track, will add significantly to initial project construction costs.

In February 2001, Amtrak released a 20-year capital needs report. The report presents two scenarios, one representing the “minimal investment” needed to support Amtrak’s current services and a second plan identifying capital needs to significantly increase service. Amtrak’s growth plan includes “all passenger rail services under study and/or development by the states and Amtrak. It contains high-speed corridor projects and some long-distance and point-to-point service.”<sup>24</sup> According to Amtrak, the amount needed to maintain current service is \$23.6 billion over 20 years, while the total capital cost of the growth scenario is another \$73.6 billion. Thus the total need, according to Amtrak, approaches \$100 billion.<sup>25</sup>

Under Amtrak’s plan, \$28 billion would be spent on the Northeast Corridor, including \$10 billion to address the Penn Station tunnels, upgrade the south end of the Corridor between New York and Washington, and maintain other existing services. The balance, \$18 billion, would be applied to growth projects. Off the Northeast Corridor, \$70 billion would be spent over the 20-year period mostly to develop high-speed rail along the federally designated corridors.

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<sup>23</sup> Corridor trains are defined as Amtrak routes with an average rider trip of 300 miles or less. Revenues and costs are drawn from Amtrak’s Route Profitability System Report for FY2001.

<sup>24</sup> National Railroad Passenger Corporation, Investing in the Future of Passenger Rail – Long-Term Capital Plan, February 2, 2001, p. 42.

<sup>25</sup> Appendix III summarizes Amtrak’s twenty-year capital plan.

In essence, Amtrak's plan calls for spending \$5 billion per year on the passenger rail program using a combination of federal and state funding. Adding the annual operating subsidy would bring the total to approximately \$6 billion annually, a sum that may be unrealistic given funding constraints at all levels of government.

The size of these projected capital spending levels compared to Amtrak's funding of about \$25 billion in its first 30 years, and the preponderant portion of the funding that is for infrastructure improvements, make it clear why the Council is recommending that Amtrak's government program administration functions, its train operations, and its real property infrastructure assets be separated and restructured. There must be effective government oversight to ensure that funds of this magnitude are properly accounted for. There must also be assurance that infrastructure funds are spent on needed infrastructure improvements, and not diverted to operating expenses.

## **E. AMERICAN AND INTERNATIONAL EXPERIENCE WITH RAIL REFORM**

The establishment of Amtrak by the US government was one of the first major railroad restructuring programs in the worldwide realm of railroading. It is important to note, however, that the establishment Amtrak was incidental to the need to lift the burden of some \$500 million in annual passenger service losses from the nation's freight railroads, which were in perilous financial condition. The Rail Passenger Service Act of 1970 was followed closely by the Regional Rail Reorganization Act of 1973, which established a federal program to restructure the seven bankrupt railroads in the northeastern quadrant of the United States, the largest of which was the Penn Central.

Through a very difficult but ultimately successful program, the United States Railway Association (USRA), a special purpose government agency, reorganized and rationalized rail service in the Northeast and Midwest through the creation of Conrail, a company that was privatized through a public stock offering in 1986. Rail reorganizations, to be effective, take time. Deregulation of the US railroads in 1980, which included a substantial liberalization of merger procedures, led to a massive reorganization in the US freight railroad industry, conducted principally in the private sector, making them currently the most efficient freight railroad system in the world.

Internationally, significant restructuring of freight and passenger rail service on every continent has occurred during the past fifteen years.<sup>26</sup> The number of countries pursuing reform and the extent of change has been remarkable.

While each country has tailored reforms to its particular circumstances, certain trends and similarities stand out. In general, reform follows financial crises and the need to reduce large government subsidies.<sup>27</sup> Reform has generally been aimed at improving efficiency and market responsiveness, often through the introduction of competition through concessions or franchises.<sup>28</sup>

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<sup>26</sup> See Appendix VI

<sup>27</sup> The Council's primary source of information on international reform has been the World Bank and the case studies published on its website.

<sup>28</sup> Concessions make the concessionaire responsible for train operations and infrastructure maintenance; franchises involve only responsibility for train operations.

And many countries, including those of the European Union, have separated infrastructure from train operations, either through separate accounting or separate operating and infrastructure entities. The reforms recommended by the Amtrak Reform Council are well within the bounds of the types of changes implemented internationally.

Several recurring themes in both US and international railroad reform experience apply to Amtrak:

- Rail restructuring takes time, on average between six and twelve years. In Japan, ten years passed between the time restructuring was initiated and the listing of the first passenger company on the Tokyo exchange. In Sweden, rail restructuring was initiated in 1988; twelve years later it entered a second phase with the division of the operation group into six independent entities. Closer to home, the planning and privatization of Conrail, begun in 1973, was not completed until 1986.
- The restructuring process should be managed by an independent group or agency at arm's length from the railroad. Experiences in other countries suggest that railroads being restructured are often resistant to change, an obstacle to reform and innovation, and as such cannot be relied upon to restructure themselves. The agency or group managing the restructuring process plays an important role in managing the performance of the existing and the new operators, designing franchises or concessions, managing conflicts between political and policy objectives, and driving forward the process of reform.
- Assets and liabilities of the existing railroad must be restructured to reflect new franchise units and to help ensure that new franchises will be viable. This could mean writing off some Amtrak debt or renegotiating repayment terms.

### **III. PRINCIPLES AND KEY CHANGES UNDERLYING THE COUNCIL'S RECOMMENDATIONS**

#### **A. PRINCIPLES**

In developing its restructuring plan for Amtrak, the Council has been guided by a number of principles the Council believes important to improving the rail passenger service program.

- There should be transparency and accountability in management structures, accounting systems, and financial reporting for both train operations and infrastructure.
- There should not be any unfunded mandates to provide train services nor any cross-subsidization of rail passenger service by offsetting losses from one region or class of services or with profits from others. Train operating companies, including Amtrak, should have incentives to maximize profits from specific corridor services and to reinvest operating profits into such services to improve operations and profitability.
- Rail passenger service decisions should be made on a regional basis to the maximum extent possible, particularly if regional entities and states provide operating and capital funding grants for the rail passenger service.
- State and local governments should have more flexibility in how they use federal transportation funds.
- All users of the Northeast Corridor should bear fair and reasonable portions of the operating and capital costs of maintaining and improving the Northeast Corridor.
- Train operators should be shielded from political influences so that they are free to make operational and marketing decisions as commercial companies based on customer demand.
- Any federal subsidy to intercity passenger rail service should be offered on a performance basis. Such performance-based formulas could include a percentage of revenue performance measure or a farebox recovery ratio.
- Congress should take steps to improve intermodal connectivity between rail and other modes of passenger transportation, including direct connections at airports, possibly with incentives for airport operators to encourage travelers to take trains for shorter trips.
- Inasmuch as transportation policy generally accepts the policy that the Federal government assumes responsibility for funding infrastructure while the private sector assumes responsibility for operations, Amtrak is an anomaly. The Council recommends that Congress recognize the Federal responsibility for rail infrastructure through the creation of a Rail Infrastructure Trust Fund, (which should not be funded by the current 4.3 percent deficit reduction tax on rail diesel fuel).

- For any franchising to be successful, there must be a level playing field for potential competitors to Amtrak. Franchisees must be able to access the rights-of-way of the freight railroads on an incremental cost basis and with operating priority, must be afforded the same statutory limitation on liability as Amtrak, and must be able to purchase insurance on the same terms as Amtrak.
- If franchising is invoked, franchises should provide exclusive – not open access – to franchise operators to provide rail passenger service where the franchisee will operate over privately-owned rights-of-way. Franchises should be designed to avoid cherrypicking of Amtrak routes.
- The national network should reflect current and prospective travel demand (with an emphasis on current travel patterns). A process should be put in place to evaluate routes based on objective criteria so that service can be added where justified and terminated where warranted.

## **B. BASIC DESIGN—A NEW BUSINESS MODEL**

To solve Amtrak’s basic problems, a new set of models is needed for organizing, funding, and implementing train operations, infrastructure management, and government program administration, policy development, and oversight.

### ***1. The Role of Government – Administering the Program***

Extensive program administration, oversight, and policy development authority resides under current law in the existing Amtrak organization. The Council recommends that the Congress vest this authority in a restructured National Railroad Passenger Corporation, which would be a small government program administration agency directed by a board representing all regions of the US. The NRPC would perform much as did the United States Railway Association (USRA), which Congress established in 1973 to carry out the successful planning and oversight of Conrail. USRA reviewed Conrail’s business plans and monitored their execution, disbursed federal funds, and could withhold funds if Conrail did not take actions to improve its performance. USRA also shielded Conrail from political interference, and worked closely with Conrail’s management, contributing its success. The Council believes that government administration and oversight cannot be exercised effectively under the current statutory structure and that the national passenger rail program would benefit from an effective oversight organization.

### ***2. Train Operations – Accountable and Efficient***

The vision for train operations is a customer-focused commercial enterprise shielded from political interference, and directed by a board with extensive transportation operating experience. The organization would have the ability to modify routes, schedules, and prices to improve financial performance, a culture that puts the customer first, the tools to effectively manage the business, and appropriate compensation incentives. The operating company would also be held to new performance standards set by a government oversight entity for measures such as operating income, operating ratio, ridership, and on-time performance. The operating entity would not be expected to operate unprofitable service unless compensated for losses under a service contract with the federal government or the affected states.

The Council believes that the most effective means for ensuring that the operating company operates as an efficient commercial enterprise would be to place the operating company in a competitive commercial environment. Thus, after an appropriate transition period, the new government oversight entity would have the option of contracting out specific operating company services to private, regional, or state operating entities, pursuant to competitively bid franchise arrangements (in which the operating company would be a participant). To make a clear break with the current de facto operating monopoly held by the existing Amtrak organization and to fine-tune the effectiveness of the franchise approach, pilot projects could be immediately introduced for selected services or operations. Appropriate labor protective conditions (ultimately to be determined by Congress) would protect the rights of current Amtrak employees for any franchised operations.

### ***3. Infrastructure Management – Accountability to Regional and Local Needs in the Context of a Federal-State Partnership***

The model for infrastructure management is a U.S. government-owned corporation responsible for ownership and maintenance of the Northeast Corridor and (initially) other Amtrak-owned infrastructure. It would be authorized to buy or sell assets and, to the extent possible, transfer all non-NEC Amtrak properties to state and local governments. Funding would come (inter alia) from federal and state capital subsidies, trackage fees on intercity, commuter, and freight carriers for use of the Northeast Corridor, and real estate development revenues from such things as utility and communications easements. In addition to current sources of funding for the NEC infrastructure, which have proven inadequate under the current Amtrak program structure, funding from a variety of sources will be needed to return the NEC to a state of good repair and to fund improvements. The reauthorization of Amtrak this year, current proposals to provide infrastructure funding for corridor development, and reauthorization of TEA-21 and AIR-21 in 2003, may well provide appropriate opportunities for increasing rail development funding. To ensure accountability to regional and local needs, the infrastructure corporation would be controlled by a board of directors consisting of current users of the NEC. The board would also coordinate operations on the NEC by the various users to ensure equitable access arrangements. To provide incentives for efficient infrastructure management, the new government oversight entity would, after an appropriate transition period, have the option to contract out management of the NEC infrastructure or to transfer ownership and management to the NEC states. Appropriate labor protective conditions would protect the rights of current Amtrak employees for any franchised operations.

## **C. KEY CHANGES TO IMPROVE THE INTERCITY RAIL PROGRAM**

The Amtrak Reform Council's recommendations for restructuring Amtrak suggest four major changes to the intercity passenger rail program. The suggested changes address root causes of Amtrak's failure: an unworkable institutional structure, the lack of a government commitment to intercity passenger rail service – both in terms of policy program management and funding – and the absence of competition for the provision of services. Options for reform were judged according to the option's potential for getting more value out of the federal and state investments in intercity rail service; managing an effective program instead of a train operating company; and providing a foundation for the development of high-speed rail corridors.

## ***1. Separation of All of Amtrak's Passenger Train Operations from the Northeast Corridor Infrastructure (NEC)***

The Amtrak Reform Council recommends that Amtrak's responsibilities for owning and maintaining the NEC and other track and related infrastructure should be separated from its responsibilities for train operations. The Council reached this conclusion based on the following:

- *Amtrak's responsibilities for maintaining the Northeast Corridor make it more difficult for Amtrak to achieve and sustain operating self-sufficiency.* Operating expenses (even without considering capital costs) associated with maintaining the corridor add significantly to Amtrak's operating deficit. And since trackage use fees paid by the commuter authorities are based on incremental rather than full costs, Amtrak must fund a disproportionate share of NEC maintenance costs.
- *Amtrak should focus on its core mission as a service provider.* Amtrak's primary mission is to provide intercity passenger and mail and express service. Amtrak should focus exclusively on this mission and be freed from the financial and managerial distractions associated with track ownership and maintenance.
- *Separating the NEC infrastructure from Amtrak's operations will provide a true picture of the costs of the infrastructure and how funds are being used to maintain it.* There is currently no separate accounting for the NEC infrastructure. Capital and operating subsidies appropriated to Amtrak and are used to meet Amtrak's immediate needs. Critical maintenance needs are being ignored. For example, the Office of Inspector General of the U.S. Department of Transportation found that while Amtrak needs to spend at least \$135 million annually on minimum operational reliability investments, in fiscal years 1998, 1999 and 2000, Amtrak on average invested only \$71 million.
- In November 1999 the Amtrak Reform Council recommended to Amtrak's Board of Directors that Amtrak keep separate financial records for the NEC infrastructure. While Amtrak agreed to do so, Amtrak has never produced this information.
- *The Northeast Corridor will require significant capital in the coming years; Amtrak is looking to 'non-federal' sources to provide a significant amount of the needed funding.* Amtrak's long-term capital plan for FY2001-FY2020 identifies the capital needs on the Northeast Corridor as \$27.9 billion, of which \$10 billion is needed to meet current service needs and \$17.9 billion is needed for growth. Amtrak's plan assumes that \$4 billion of the \$10 billion needed to meet current service needs will come from non-federal sources and that non-federal sources will contribute \$15.7 billion of the \$17.9 billion needed for growth.
- *The Northeast Corridor is a regional asset and Amtrak is not the dominant user.* The NEC is a critical transportation asset for the northeastern states. The Corridor contributes to the economic health and growth of the region; its true value greatly exceeds the value to Amtrak alone. While Amtrak owns the majority of the right-of-way, it is the minority user of the

Corridor. A 1996 study by the U.S. General Accounting Office<sup>29</sup> found that in 1993, Amtrak operated only 100 of the 1,200 daily trains on the Corridor. Most of the other trains are operated by commuter agencies. Of the 100 million passengers estimated to use the Northeast Corridor in 1993, about 89 million were commuter rail passengers and 11 million were Amtrak passengers.

- *A separate infrastructure company might have a greater opportunity than Amtrak to attract private capital.* Many believe that private capital would influence how the organization functions financially and would help ensure that funds intended for rail capital programs are used for that purpose. With an objective of protecting their investment, providers of private capital can influence the organization to take steps necessary to cut expenses (especially overhead) and achieve revenue growth to maximize the return on investment. In other words, private capital could help make a government-owned entity behave more like a business.

The Council is not proposing – in recommending that the NEC infrastructure be separated from Amtrak's train operations – to do what was done in Britain with the formation of Railtrack. In Britain, the track network in all of Great Britain was privatized immediately. Railtrack's directors do not have any relationship to the train operating companies that operate the 26 passenger franchises or to the companies operating the two freight franchises. The Council's proposal does not involve privatization; the Corridor would remain under government ownership. Unlike Railtrack, the Council proposes that the board of the NEC infrastructure organization would principally represent the users, not some random group of private shareholders. And the board would be required to produce an annual five-year business plan for the NEC infrastructure detailing the required maintenance and improvements and the associated funding requirements. In its 25 years of owning the Corridor, Amtrak has never produced such a plan. In short, the situation in the Northeast Corridor is not anything like the situation in Britain, and the Council is not doing proposing – unless the proposal is viewed in the most superficial terms – anything resembling what was done in Britain.

## ***2. Establishing an Effective Federal Program Administration and Oversight Function***

Amtrak is unlike other federally funded transportation programs in that public policy and program administration is performed essentially by Amtrak itself rather than by a government body. Amtrak decides what routes will be operated, how corridor development will proceed, and determines the funding priorities for passenger service throughout the nation. Amtrak even provides federal planning money to the states to support these planning efforts. These are all public policy roles that more properly belong with federal and state governments. Neither the Federal Railroad Administration nor any other executive branch agency has a direct role in overseeing or approving Amtrak's operations and expenditures. Amtrak may dispense federal funds as it sees fit and may retain or initiate money-losing services without objective criteria and based solely on political considerations. Government oversight is largely restricted to safety matters under the jurisdiction of the Federal Railroad Administration and audits of Amtrak's performance by the U.S. General Accounting Office, the Inspector General's office in the Department of Transportation and by the

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<sup>29</sup> U.S. General Accounting Office, Northeast Rail Corridor: Information on Users, Funding Sources, and Expenditures, June, 1996.

Amtrak Reform Council. Analysis and reporting functions are not a substitute for hands-on guidance and oversight.

Amtrak's performance under the ARAA demonstrates an emphatic need for more pro-active involvement. Amtrak has consistently issued its Strategic Business Plans well after the start of the fiscal year. When it became clear that the introduction of Acela would be delayed, Amtrak took no steps to develop a contingency plan to stay on track. Amtrak has projected significant overall cost reductions in its strategic business plans since 1999. Amtrak, however, did not define specific cost reduction initiatives until FY2001, and those proposals total only \$75 million annually, clearly inadequate to meet Amtrak's strategic business plan projections. Had a federal oversight group had the authority to require Amtrak to submit realistic business plans and follow through on them as a prerequisite to receiving federal appropriations, we believe Amtrak would not be in its current financial crisis. Business plan shortcomings would have become apparent sooner and corrective actions taken to move Amtrak towards operational self-sufficiency.

The Council believes the federal government's role should be to:

- Administer federal funds made available for intercity passenger service;
- Facilitate the development of high-speed rail corridors, including evaluating project proposals and prioritizing projects for design and construction;
- Assisting states and regional compacts of states and other transportation entities to develop, evaluate and prioritize high-speed rail passenger projects.
- Actively oversee the business plans of the operating and infrastructure companies (in a manner similar to that of the United States Railway Association (USRA) during the early years of Conrail's operations). The group should have the authority to withhold funds if the operating and infrastructure companies do not act in good faith to prepare and execute their business plans;
- Determine whether to franchise any or all Amtrak services, design franchises to be offered, administer the competitive bidding process and administer contracts with franchisees;
- Coordinate a national system of ticketing and reservations to permit seamless transfers between intercity franchises and between intercity travel and other modes of transportation; and
- In cooperation with Congress, the states, the freight railroads, the public, and other interested parties, manage public policy issues with respect to intercity passenger rail service.

### ***3. Allowing the Introduction of Competition***

One of the overriding trends in rail reform internationally has been the introduction of competition into the provision of rail passenger services through some form of franchising. While there are

many variations on the process, it generally involves competitively bidding a route or group of routes for operation under contract with a government authority for a specified period (often five to ten years). Many people have the mistaken impression that franchising can only be applied to routes or systems of routes that are profitable. This is not the case. The competition provided by franchising helps maximize returns on profitable routes (positive bids) and minimize losses on unprofitable ones (negative bids).

Competition would force Amtrak to operate more efficiently to successfully bid for franchises. Competitive forces would drive down the cost of operations, off-setting potentially higher subsidies to adequately compensate service providers for operating unprofitable routes. Amtrak or other service providers would essentially be treated like other government contractors.

Under the Council's recommendations, franchising could also apply to the Northeast Corridor infrastructure. The NRPC would have the authority to contract out maintenance of the corridor through a competitive bidding process. As for train operations, the competitive pressures of franchising could improve productivity and make federal and state dollars go further.

Franchising does not imply open access. The Council's proposal recommends that if franchising is implemented, franchisees have exclusive rights to operate services or routes. Because most rail passenger markets do not appear to be large enough to support multiple operators, exclusive franchises are most sensible. The Council envisions only a limited number of franchises and proposes that the freight railroads have input into the design of franchises and operating requirements, including ensuring that adequate capacity exists or will be provided, so that the operational effectiveness of freight service will not be adversely affected by additional rail passenger service. The Council recommends further that the NRPC design franchises in a manner that prevents bidders from cherry-picking Amtrak's network and leaving Amtrak to operate the least attractive routes.<sup>30</sup>

There are several issues vital to successful franchising. The first is the ability of the franchisee to be able to access the rights-of-way of the freight railroads on the same basis as Amtrak, i.e. at incremental cost and with operating priority. Without this, service providers other than Amtrak would have to negotiate access and track use fees with the freight railroads and would be at a competitive disadvantage relative to Amtrak. It is also imperative that other service providers be able to obtain insurance and be afforded the same limitations on liability that apply to Amtrak.

The members of the Council have taken a strong position in favor of protecting the rights of rail labor. The Council recommends that all franchisees be subject to the Railway Labor Act, Federal Employer's Liability Act (FELA) and railroad retirement. Moreover, all agreement employees should have hiring preferences with new franchisees and should be transferred to franchisees with their seniority and existing contracts in place. Collective bargaining agreements would be renegotiated under the provisions of the Railway Labor Act.

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<sup>30</sup> Current law also provides a forum before the Department of Transportation if a dispute develops between Amtrak and a freight railroad over an introduction of additional trains or accelerated speed that could unreasonably impair freight operations. (49 U.S.C. 21308.) Such provisions would remain in place under the Council's proposal.

#### ***4. A Secure Source of Funding***

There is presently no secure source of either capital or operating funding for passenger rail service. The Council believes Congress should provide a stable and adequate source of capital funding for the Northeast Corridor, the emerging high-speed corridors and other rail-related infrastructure. The Council also believes, with respect to operating subsidies, that there should be no unfunded mandates. If Congress wishes Amtrak to continue to operate routes that lose millions of dollars annually, it should adequately fund these operations under a specific contract between the NRPC and Amtrak, and that Congress should further consider allowing franchising as a way of minimizing operating losses.

## **IV. THE COUNCIL'S PROPOSED RAIL PASSENGER RESTRUCTURING PLAN**

The Council's proposal is spelled out in detail below.

### **A. A RESTRUCTURED NATIONAL RAILROAD PASSENGER CORPORATION AS THE FEDERAL PROGRAM MANAGEMENT AGENCY**

- Federal governmental responsibilities for administering the program that provides national rail passenger service should be consolidated in a federal program management entity called the National Railroad Passenger Corporation ("NRPC"). The NRPC would be authorized to exercise the program management and oversight responsibilities currently lodged in the existing NRPC as well as to ensure that the train operations and infrastructure responsibilities of the existing NRPC are properly performed through newly established NRPC train operation and infrastructure companies. The new NRPC would be the legal successor to the existing NRPC.<sup>31</sup> The NRPC's strengthened oversight and program functions would be clearly set forth in its restructured charter.
- The NRPC would be re-chartered as a wholly-owned, independent government corporation generally subject to the District of Columbia Business Corporation Act to the extent not inconsistent with its statutory charter. The NRPC would be responsible for administering, monitoring, planning, and federally funding the national rail passenger program in a role similar to the United States Railway Association's ("USRA's") role in monitoring and funding Conrail's early years of operation. It is anticipated that the NRPC would be able to perform its oversight functions with approximately 50 employees.
- The NRPC would be under the control of a board of directors comprising: (1) ex officio, the Secretary of Transportation and the Secretary of the Treasury; (2) a representative of the freight railroads (probably nominated by the Association of American Railroads (AAR)); (3) a representative of the railway labor organizations; (4) a representative of the investment community; and (5) one representative from each of not less than 7 nor more than 11 regions constructed on the basis of transportation patterns and population, nominated from lists provided to the President by the governors of each region and approved by the Senate. The inclusion of broad regional representation on the board ensures that regional and state preferences regarding intercity rail passenger needs are effectively represented; it would also serve to make the NRPC a more effective buffer against political interference in route and service decisions because board decisions would reflect input across a broad political and regional spectrum.

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<sup>31</sup> The name National Rail Passenger Corporation is retained to make clear that it is intended to be the legal successor to the existing NRPC. Under current law, the NRPC holds Amtrak's statutory right to operate over the lines of freight railroads at incremental cost and with operating priority, and such rights would be retained by the restructured NRPC.

- The NRPC would hold Amtrak's existing statutory franchise to operate over the lines of the freight railroads at incremental cost and with operating priority (“statutory franchise”). The NRPC would have the authority to authorize its train-operating subsidiary (or subsidiaries) to operate under the statutory franchise as well as other approved train operating companies acting on the NRPC’s behalf under competitively-bid franchise contracts. (Amtrak may in fact contract out operations under current law subject to collective bargaining agreements with its employees.)

The NRPC’s Legal Authority To Enter Into Franchise Arrangements

Under current law, the NRPC has specific authority to contract out its rail passenger operations to other carriers and entities. 49 U.S.C. 24305(a). Indeed, as originally enacted, the Rail Passenger Service Act of 1970 (“RPSA”) contemplated that Amtrak would contract with the freight railroads for the provision of rail passenger services which would generally continue to be provided by freight railroad employees. See RPSA, secs. 305, 401-402. Although the RPSA was amended shortly after to allow Amtrak to employ directly its own employees and to operate and control directly, to the extent practicable, all aspects of the services it provides (RPSA, sec. 305, codified at 49 U.S.C. 24305 (b)), the law contains no prohibition precluding Amtrak from contracting out operations where “practicality” factors so permit. Moreover, an amended provision in prior law prohibiting contracting out where the result would be a layoff of an Amtrak employee was repealed by the Amtrak Reform and Accountability Act of 1997 (“ARAA”) (and the issue of contracting out left to collective bargaining). ARAA Sec.121.

Under the restructuring recommended by the Council, the NRPC, as Amtrak’s legal successor, would retain Amtrak’s existing statutory track access rights with respect to rail passenger operations. The “practicality” and “collective bargaining” requirements of existing law as applicable to the NRPC’s authority to franchise would be repealed, however, to allow the NRPC to contract out operations at its discretion to its train operating subsidiaries or other carriers pursuant to competitively-bid franchise agreements (with certain labor protections and subject to FRA safety requirements) where financial and service benefits would result. (Under the Council’s proposal, any franchisees awarded contracts would have to negotiate with transferred Amtrak employees under existing collective bargaining agreements before subcontracting out work under the franchise agreements.)

### ***Incremental Cost***

The Rail Passenger Service Act of 1970 created the National Railroad Passenger Corporation, doing business as Amtrak, to relieve freight railroads from the financial burden of operating passenger rail service. A condition for freight railroads' relief from the "public convenience and necessity" regulatory obligation of providing intercity rail passenger service was that the freight railroads would only charge Amtrak incremental cost for passenger trains operating over the freight railroads, and that the freight railroads would continue to provide operating priority to passenger trains (as required under the common law).

The Council's Action Plan specifies that the NRPC would retain the right to pay incremental costs for operating over the tracks of freight railroads, and that passenger trains would retain their statutory (and common law) operating priority.

Arguably the NRPC and freight railroads may be better served if they were required to negotiate passenger train trackage fees and incentives that provide adequate profit incentives to the freight railroads to provide on-time dispatching of passenger trains. However, the Council recommends retaining the current incremental cost and operating priority standards in its Action Plan based on the belief that, without them, the freight railroads would have an unfair position in negotiations with the NRPC over trackage fees.

The Council would note, however, that retaining the NRPC's right to pay incremental costs for trackage fees does not preclude the NRPC and freight railroads from negotiating contracts which specify another trackage fee structure that may be more advantageous to both parties with respect to the long term operation of rail passenger service.

In fact, there is no assurance that incremental cost-based trackage fees will be lower than trackage fees based on average costs. Normally, when excess capacity exists, the incremental cost of running additional trains (freight or passenger) over a track are lower than the fully allocated average cost of all trains running over the track. However, if excess track capacity does not exist, or if the speed of additional passenger trains is so much faster than existing freight trains that all (or most) track capacity is used up accommodating the faster passenger trains, the incremental cost of providing the track capacity needed for rail passenger service may be higher than the average cost of providing track capacity on that route. Federal, state or other contributions to make capital investments to increase track capacity may rectify such situations.

- Federal funding appropriations would be requested and disbursed solely through the NRPC based on Operating Company and Infrastructure Company proposed business plans that have been approved by the NRPC and provided that the Operating and Infrastructure Companies' individual actual performance meets minimum business plan objectives contained in their approved business plans. The NRPC would receive all federal funds,

monitor actual Operating Company and Infrastructure Company performance relative to the companies' respective strategic business plans, and disburse such funds monthly based on each company-proposed business plan. If a company's actual performance deviates from its plans, it would be required to adopt plans of corrective action acceptable to NRPC as a condition precedent to continue receiving funding.

- The NRPC would also handle or offer to handle risk management functions, including bidding and purchasing of insurance, re-insurance and funding of self-insurance (claim deductible) reserves, for the Operating and Infrastructure companies as well as for franchisees under competitively-bid contracts. Such activities would ensure that the Operating and Infrastructure companies and franchisees meet all insurance requirements currently applicable to existing Amtrak operations under the statutory franchise and as may be subsequently modified by law. The NRPC would also establish safety policies and practices, and monitor safety programs (under the general jurisdiction of and consistent with FRA safety regulations) as part of overall risk management to minimize the cost of insurance and self-insured losses.
- The NRPC would ensure that train operations (including mail and express and mechanical shops) and infrastructure would be accounted for separately. To ensure this result, the NRPC would establish separate companies to perform its train operations and infrastructure functions. The NRPC would require that the Operating and Infrastructure companies develop and adopt transparent accounting systems that provide essential business and financial information for the efficient operation of intercity rail passenger service and the management, maintenance and improvement of infrastructure.
- The NRPC would also be specifically authorized to:
  - Design appropriate train operations franchises, the terms for franchises and minimum service requirements and to negotiate and administer franchise contracts;
  - Establish a decision-making framework for evaluating proposed high-speed rail projects;
  - Assist states and regional compacts in designing and evaluating high-speed rail passenger projects using realistic planning assumptions.
  - Establish a decision-making framework for operating other train service, including long-distance routes;
  - Establish a competitive bidding process for franchising train operations and maintenance of the NEC infrastructure;
  - Establish and implement, with its train operating subsidiary, a plan for putting the NEC in a state of good repair; and
  - Ensure that travelers may make reservations through a national reservations system and obtain joint tickets on any of the rail passenger services it authorizes and oversees.

## **B. A SEPARATE CORPORATION TO CONDUCT TRAIN OPERATIONS**

- The NRPC would establish a separate train-operating subsidiary under the effective control and oversight of the NRPC. The NRPC would also establish subsidiary units of the train-operating company to:
  - provide train-operating services over the NEC, other federally designated corridors, other existing short-haul routes, and for inter-corridor long-haul services. The new operating units would be based on logical route systems predicated on revenue and passenger transportation demands and would avoid “cherry-picking” of only the most profitable services.
  - operate mail and express business;
  - operate the locomotive and car repair shops;
  - hold ownership and lease rights to operating equipment; and
  - provide commuter services under contracts with state, regional or local authorities.
- The new train-operating subsidiary would serve as the nation’s intercity rail passenger operator (except as indicated below), perform mail and express business, operate the mechanical shops that conduct heavy repair and rebuilding operations, and own passenger rolling stock. All services would be performed under contracts with the NRPC and/or state or regional authorities. Contracts would include performance standards requiring continuous improvements in performance (cost recovery, customer satisfaction and ridership, for example). These performance standards are intended to help the train-operating subsidiary improve its overall performance to be in a good position to compete with other service providers after the transition period, should franchising be initiated.
- The train-operating subsidiary would be organized as a wholly-owned government corporation under D.C. law. It would have a separate board of directors selected by the NRPC board that would be comprised of business professionals with backgrounds in operation and finance.
- After a transition period (2 to 5 years), the NRPC would have the option of franchising some or all operations and services, including corridor trains, long-haul trains, mail and express service and the Amtrak locomotive and car repair shops. The NRPC train-operating subsidiary would act as fall-back operator if no competitive bids (positive or negative bids) are proffered.
- Pilot projects could be initiated within the first year to franchise (pursuant to competitive bidding procedures) one or several Amtrak routes (e.g., California Corridor Trains, Coast Starlight, and/or the AutoTrain). Franchisees would be authorized by the NRPC to operate

under its statutory franchise. Franchisees would be subject to the same labor (Railway Labor Act (RLA)), Federal Employers' Liability Act (FELA) and railroad retirement laws that Amtrak is currently subject to; current Amtrak train operating employees would be granted hiring preference with the new franchisees to the extent that new hiring is necessary. The Council recommends that in any restructuring, employees follow their work in seniority order with their collective bargaining agreements intact. Agreements would be subject to collective bargaining under the normal provisions of the Railway Labor Act. Labor protection would be provided by the NRPC under the terms of the then-existing collective bargaining agreements applicable to Amtrak employees.

- During the transition period, only the national train-operating company (through its operating units) and franchisees under designated pilot projects would be able to operate under the NRPC statutory franchise. As under existing law, however, regions or states would be free to contract with other operators for specific services outside of the statutory access rights.
- During the transition period, the NRPC would configure the specific corridors or routes that may be subject to competitively-bid franchise arrangements at the discretion of the NRPC. At the option of the NRPC, all corridors and routes could be subject to competitively-bid franchise arrangements (including negative bids) after the transition period, with the NRPC train-operating subsidiary acting as fall-back operator if no competitive bids are proffered.
- Specific corridors or routes that would be subject to franchise arrangements should be selected by the NRPC in a manner that will ensure that routes or corridor services to be provided form part of a rational and viable economic and geographic unit to the maximum extent possible (i.e., the NRPC should not permit "cherry picking" of only the most potentially profitable services).
- Franchisees would provide services under contract with either the NRPC or directly with regions and states for both corridor and inter-corridor services; franchisees would be authorized by the NRPC (with NRPC program oversight and FRA regulation of safety requirements) to operate under the NRPC statutory franchise for the services performed on behalf of the NRPC.
- All franchisees authorized to operate under statutory franchise rights would be subject to same labor (RLA), FELA and railroad retirement laws that Amtrak is currently subject to; current Amtrak train operating employees would be granted hiring preference with new franchisees to the extent that new hiring is necessary. The Council recommends to Congress that in any restructuring, employees follow their work in seniority order with their collective bargaining agreements intact. Agreements would be subject to collective bargaining under the normal provisions of the Railway Labor Act. Labor protection would be provided by the NRPC under the terms of the then-existing collective bargaining agreements.
- After franchising is introduced, equipment could be owned by the NRPC, the franchisee, or a state or states; alternatively, the equipment subsidiary could be privatized after the

transition period. Such arrangements would ensure that potential franchisees have access to equipment on the same terms as the train-operating subsidiary in submitting competitive franchise bids after the transition period.

- States developing high-speed rail corridors and/or providing operating subsidies on lower-speed trains would have the right to manage the franchising process for those operations and select the service providers using their own selection criteria.
- After the transition period, mail and express operations could be franchised through competitive bidding as a single unit or as part of the passenger operations franchises, at the discretion of the NRPC.
- After the transition period, the NRPC would determine whether to privatize NEC (Wilmington and Bear, DE shops) and Beech Grove, IN and other maintenance and repair shops, lease them to private entities, or otherwise operate or dispose of the facilities. At the discretion of the NRPC, passenger train operators could bid, as part of their franchise agreements, to operate equipment repair shops or to contract with the train-operating subsidiary or another service provider for locomotive and car maintenance.
- Operating shortfalls for the long-haul trains would be funded by the federal government both before and after the transition period; during the transition period, the current arrangements for funding operating shortfalls for existing and new corridor services would remain in place (i.e., the federal government would continue to fund operating shortfalls for only “basic system” services as historically defined; shortfalls for non-basic system and new services would continue to be funded by the states); after the transition period, including a ramp-up period for new corridor train services, the states would be responsible for funding operating losses (if any) on all existing and new corridor services.
- Both during and after the transition period, franchising authorities or train operators would be responsible for privately financing new equipment purchases or leases; if necessary, federal funding would be provided for long-haul equipment and state funding for corridor equipment.
- After the transition period, the train-operating company could be privatized.

### **C. A REGIONALLY-DIRECTED COMPANY TO OPERATE, MAINTAIN, AND IMPROVE THE NORTHEAST CORRIDOR INFRASTRUCTURE**

- The NRPC would establish a separate corporation (a wholly-owned government corporation organized under DC law) to hold title to the NEC infrastructure.<sup>32</sup>

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<sup>32</sup> The infrastructure company could hold title to the NEC and other infrastructure owned by Amtrak outside of the NEC subject to the existing USG mortgage lien and as a condition of assuming all outstanding Amtrak debt to the

- The NEC infrastructure company would be established with a separate board of directors comprised of representatives of the Northeast Corridor states' governors, United States Department of Transportation, freight railroads that use the Northeast Corridor, and the new intercity passenger train-operating company.
- During a transition period of 2-5 years, the new infrastructure company would manage the NEC infrastructure under contract with the NRPC. The contract would include performance standards requiring continuous improvements in performance (cost recovery, user satisfaction, and decreases in track speed restrictions for Acela Express and other trains, for example).
- If the MTA, Connecticut Department of Transportation, and MBTA consent, their portions of the Northeast Corridor would be integrated with the infrastructure company; otherwise, the infrastructure company would coordinate operations, maintenance and capital programs with the states owning portions of the Northeast Corridor.
- Under the direction of the NRPC, the infrastructure company would have the authority to sell or transfer unneeded assets within the NEC or acquire needed assets within the NEC from states and localities.
- Ownership and responsibility for non-NEC assets (including train stations) would be divested to the states, local governments, or private enterprises (to the extent possible).
- The NEC infrastructure company would charge an incremental cost-based rate to all passenger operators on a fair and equitable basis, and market-based rates for other users. This policy would ensure that all NEC users are treated fairly and that there are no hidden subsidies.
- After the transition period, the NRPC would have the authority to contract out management of the NEC infrastructure to private contractors (under existing labor arrangements negotiated between the NRPC with NEC employees, as may be subsequently modified), or to transfer ownership and management of the NEC infrastructure company to the NEC states or a regional authority under appropriate terms and conditions ensuring fair use and proper maintenance.
- The new infrastructure corporation could be modeled on other examples under which the federal government owns the assets, but competitively awards a contract for the operation of the assets to a private sector company (i.e., a government-owned, contractor-operated (GOCO) facility, of which there are many examples in the US).

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USG, including the USG-held preferred stock; alternatively, payment of principal on the existing NEC mortgage note could be accelerated by federal statute as provided for in the mortgage agreement and settled in return for outstanding debt; under this option the NEC infrastructure company could take title under a new USG mortgage agreement. Other options, such as the conversion of existing USG debt to equity, are also available.

- The federal government would provide funds to the Infrastructure Company via grants administered by the NRPC, including some initial appropriated funds for the Penn Station life and safety projects and Northeast Corridor bridge and tunnel projects that need immediate attention. On a long-term basis, funds would be provided via a trust fund (with an income source to be determined by Congress).<sup>33</sup> States would be expected to fund a portion of the capital expenditures reflecting the importance of the Northeast Corridor for commuter rail operations either directly or through flexible transportation funding programs.

#### **D. OTHER ALTERNATIVES CONSIDERED BY THE COUNCIL**

The Council initially considered nine different options for restructuring Amtrak. Most of the differences in the proposals were with respect to train operations. The options ranged from retaining a national operating company to establishing a group of regional operating companies to franchising some or all of Amtrak's operations. All of the options called for a more active federal role overseeing the passenger rail service program. All of the options also called for separating Amtrak's train operations from the Northeast Corridor infrastructure for purposes of accounting transparency, with eight of the nine options recommending the creation of separate infrastructure and train operations companies.

At a public meeting held on December 14<sup>th</sup>, the Council directed the staff to collapse the nine options into three. Council Member Cox subsequently offered a fourth option to establish a regionally-managed, operationally self-sufficient train network. The Council met to consider the final four options on January 11<sup>th</sup>. At that meeting, the Council noted that all of the options are meritorious, but Option 3, with amendments, was specifically endorsed as the Council's proposal. The following charts summarize the key differences between the four options and the amendments adopted to Option 3.

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<sup>33</sup> Not the 4.3 cent diesel tax currently assessed to the freight railroads.

<b>Operating Company Options</b>				
	<b>OPTION 1: National or Regional Monopolies</b>	<b>OPTION 2: Competition for Long Haul Markets</b>	<b>OPTION 3: Competition for All Markets</b>	<b>OPTION 4: Competition and Local Accountability</b>
New High-Speed Corridors	Amtrak (as a national operating company) or regional operating companies.*	Amtrak.*	Amtrak for a transition period*, then Amtrak and/or other franchisees selected through competitive bidding process to operate under contract to the NRPC or the states. [As adopted by the Council, franchising is permissible rather than mandatory.]	Passenger Rail Transitional Board (PRTB) under transitional authority (up to 5 years), then franchisees selected through competitive bidding to operate under contract to Regional Rail Operating Corporations (RROC)
Existing Corridor Trains	Amtrak (as a national operating company) or regional operating companies.*	Amtrak.*	Amtrak for a transition period*, then Amtrak and/or other franchisees selected through competitive bidding process to operate under contract to the NRPC or the states. [As adopted by the Council, franchising is permissible rather than mandatory.]	PRTB under transitional authority, then franchisees selected through competitive bidding to operate under contract to RROCs
Long-Distance Trains	A national operating company or regional operating companies. Option to organize long-hauls as a separate operating company.	Franchised to Amtrak and/or private operator(s) through competitive bidding	Amtrak for a transition period, then Amtrak and/or other franchisees selected through competitive bidding process to operate under contract to the NRPC or the states. [As adopted by the Council, franchising is permissible rather than mandatory.]	PRTB under transitional authority, then franchisees selected through competitive bidding to operate under contract to RROCs or agreements between RROCs. Commercial operations could be provided at any time by private firms under contract with railroad infrastructure owners.
Mail and Express	A national operating company or regional operating companies.	Amtrak or long-haul franchisee(s).	Amtrak for a transition period, then mail and express franchised through competitive bidding as a single unit or as part of passenger operations franchises. [As adopted by the Council, franchising is permissible rather than mandatory.]	PRTB under transitional authority, then through competitive bidding.
*As under current law, states would have the option of operating corridor services and choosing their own operator.				

	<b>OPTION 1: National or Regional Monopolies</b>	<b>OPTION 2: Competition for Long Haul Markets</b>	<b>OPTION 3: Competition for all Markets</b>	<b>OPTION 4: Competition and Local Accountability</b>
Commuter Operations	As under current law, performed by Amtrak or others under contract with commuter authorities	As under current law, performed by Amtrak or others under contract with commuter authorities	As under current law, performed by Amtrak or others under contract with commuter authorities	PRTB under transitional authority, consistent with the terms and conditions of current contracts.
Right of access to freight railroad rights-of-way at incremental cost and with operating priority	Assigned by NRPC to monopoly operator(s). States/regions wishing to assume corridor operations would have to negotiate access with freight railroads.	Assigned by NRPC to Amtrak for corridor services and to franchisees of long-distance trains; states/regions wishing to assume corridor operations would have to negotiate access with freight railroads	Assigned by NRPC to franchisees. [As adopted by the Council, franchising is permissible rather than mandatory.]	Access and rate arrangements to be commercially negotiated.
Shops	Owned and operated by the NRPC.	Owned and operated by NRPC unless transferred to states/regions as part of corridor operations they assume.	Owned and operated by NRPC during transition; then may be retained, leased or sold. Franchisees could bid to operate shops or contract with the Amtrak shops or another service provider for equipment maintenance. [As adopted by the Council, franchising is permissible rather than mandatory.]	PRTB, to be sold.
Equipment Ownership	Existing equipment transferred to new subsidiary of NRPC; equipment could be leased to national or regional operating companies or leased or sold to contract operators or states operating corridor services. New equipment owned by states or train operator(s).	Existing equipment transferred to new subsidiary of NRPC; equipment could be leased to Amtrak or leased or sold to franchisees, contract operators or states operating corridor services. New equipment owned by states or train operator(s).	Existing equipment transferred to new subsidiary of NRPC; equipment could be leased to Amtrak or leased or sold to franchisees and states operating corridor services. New equipment owned by states or train operator(s).	Existing equipment transferred to RROCs. Equipment could be leased or sold to franchisees. New equipment could be owned by RROCs or train operators.
Labor Protection and Labor Contracts	National or regional monopolies assume Amtrak contracts. In the case of regional monopolies, future contracts would be negotiated on a regional basis.	Labor protection provided by NRPC. Amtrak employees have preferential hiring status with long-haul franchisees but franchisees may immediately negotiate new labor contracts.	Labor protection provided by NRPC. Amtrak employees have preferential hiring status with corridor and long-haul franchisees but franchisees may immediately negotiate new labor contracts. D15	Provided by PRTB.

	<b>OPTION 1: National or Regional Monopolies</b>	<b>OPTION 2: Competition for Long Haul Markets</b>	<b>OPTION 3: Competition for all Markets</b>	<b>OPTION 4: Competition and Local Accountability</b>
Insurance and Liability	NRPC insures operator(s); liability limited as under current law	NRPC insures operators or operators obtain their own insurance, at their election; liability limited as under current law	NRPC insures operators or operators obtain their own insurance, at their election; liability limited as under current law	National Passenger Rail Marketing Association (NPRMA) insures operators or train operators obtain their own insurance, at their election; liability limited as under current law.
Status of Amtrak	National or regional monopolies remain quasi-government organizations.	Remains a quasi-government organization.	Ultimately privatized [if franchising is invoked under Option 3, as amended]	Transitional. The organization would be wound down during transition by PRTB.
Time to Implement	Six-month transition to new organization.	One year-transition period to new organization and franchised long-haul routes.	Immediate projects to introduce competition; two to five years for full implementation. [As adopted by the Council, franchising is permissible rather than mandatory.]	Conversion to be completed in 5 years. No PRTB administered route to receive operating subsidies after three years.
Funding Requirements -- Operating Subsidies	Federal operating subsidies for long-haul trains; after transition period, states to cover losses associated with existing and new corridor services	Federal operating subsidies for long-haul trains; after transition period, states to cover losses associated with existing and new corridor services	Federal operating subsidies for long-haul trains; after transition period, states to cover losses associated with existing and new corridor services	Consistent with the Amtrak Reform and Accountability Act (ARAA), no federal operating subsidies. Federal subsidies would be phased out over three years. States could subsidize services.
Funding Requirements -- Equipment Capital	Capital funds would be provided on a federal-state matching basis.	Train operators responsible for securing new equipment and related financing based on the value of the equipment and their operating contracts with possible state/corridor/federal credit enhancement; to the extent equipment cannot be funded from operating profits, the federal government would be responsible for funding equipment on long-haul trains and states would fund equipment for corridor services.	Train operators responsible for securing new equipment and related financing based on the value of the equipment and their operating contracts with possible state/corridor/federal credit enhancement; to the extent equipment cannot be funded from operating profits, the federal government would be responsible for funding equipment on long-haul trains and states would fund equipment for corridor services.	RROCs, using federal capital subsidies or state subsidies. Equipment could be owned by RROCs or train operators.
National System	Marketing, coordination and intermodal arrangements administered by Amtrak or, in the case of regional monopolies, by the NRPC.	Marketing, coordination and intermodal arrangements administered by Amtrak or the NRPC.	Marketing, coordination and intermodal arrangements administered by the NRPC.	Marketing, coordination and intermodal arrangements administered by a National Passenger Rail Marketing Association (NRPMA), composed of the RROCs.

<b>Additional Amendments to Option 3 Adopted by the Amtrak Reform Council</b>		
		<u>Sponsor</u>
1	The Council recommends that any federal subsidy to intercity passenger rail service should be offered on a performance basis. The basis of any operating subsidy should include a percentage of revenue performance measure or a farebox recovery ratio.	Norquist (seconded by Cox)
2	The Council recommends that Congress establish an investment tax credit for the purchase of rights of way, roadbed, equipment, station property and other facilities needed to support regularly scheduled passenger service. (This would be analogous to the low income housing tax credit, which rewards investment in affordable housing. With the housing tax credit, the credits are rewarded at the state level under an overall cap, they can be flexibly pooled to meet overall project financing needs, and spread over a period of years.)	Norquist (seconded by Weyrich)
3	The Council recommends that Congress allow states and units of local government to use federal transportation funds with more flexibility.	Norquist as amended by Gleason (seconded by Chapman)
4	The Council recommends that Congress encourage intermodal connectivity between rail and other modes of transportation, including airports. For example, perhaps Congress should allow airports to treat passenger rail facilities, including the intermodal stations necessary to connect air and rail, as the equivalent of runways. Short route rail can cost effectively replace short distance aviation if there is an easy point of transfer. Known as the "landside access issue," this flexibility would enable current funding authority (normally secured by anticipated airline revenue) to be pledged against long term rail revenue. Airport operators could then charge a passenger facility charge to replace the revenue they currently collect from short route air travel, and to cost share with the private sector and other levels of government as funding is available for further improvements."	Norquist as amended by Gleason (seconded by Chapman)
5	Whereas in the past four years in hearings held across the country the states have expressed an interest in having more decision-making authority for scheduling, operations and other passenger service matters, the Council recommends that Congress adopt a principle that train service decisions and administration should be handled at the regional level to the maximum extent possible.	Cox (seconded by Chapman)
6	Inasmuch as transportation policy generally accepts the policy that the Federal government assumes responsibility for funding infrastructure while the private sector assumes responsibility for operations, Amtrak is an anomaly. The Council recommends that Congress recognize the Federal responsibility for rail infrastructure through the creation of a Rail Infrastructure Trust Fund,	Coston as amended by Chapman (seconded by Norquist)
7	The Council recommends to Congress that in any restructuring, employees follow their work in seniority order with their collective bargaining agreements intact. Agreements would be subject to collective bargaining under the normal provisions of the RLA.	Money Penny (seconded by Weyrich)
8	Franchising should be permissible rather than mandatory. Franchises should be designed to avoid cherry-picking particular routes.	Kling (seconded by Chapman)

## **E. TRANSITION PLANNING TO IMPLEMENT THE COUNCIL'S PROPOSAL**

To prepare for the implementation of the Council's proposed rail passenger restructuring plan, a number of transition tasks will need to be executed by appropriate implementing agencies, should the Congress decide to adopt the Council's Proposals. Examples of some of the more important transition planning efforts and tasks are summarized below:

- Prepare detailed lists of Amtrak's assets, liabilities, and contingent liabilities including descriptions of the condition, location and use of physical assets; the realizable value of other assets and liabilities; the likely cost of outstanding Amtrak guarantees and contracts; and the likely cost of settling outstanding self-insured losses, claims in excess of insurance for damages to third parties, FELA claims to employees, etc. These lists will be needed to organize the train operating and infrastructure companies and to determine the funding requirements of the NRPC during the transition period from the current Amtrak organization to the new structure for rail passenger service.
- For each of the principal business components organized under the restructuring plan, the National Railroad Passenger Corporation, the Passenger Train Operating Company, and the NEC Infrastructure Company, it will be necessary to develop: (1) organization charts and staffing plans; (2) lists of equipment and other assets to be transferred to each entity, including their current use, their condition, and their future maintenance and capital expenditure requirements; (3) debt and other obligations to be transferred to each entity; (4) recommended capital structures for each entity in view of the debt and other obligations being assumed and the future funding and financing requirements of the entity; and (5) financial pro forma projections for each entity projecting operating revenues and expenses, capital expenditure requirements, and working capital requirements.
- For the NEC Infrastructure Company it will be necessary to develop an assessment of: (1) train operating capacity and operating cost analyses in the aggregate and by each user of the NEC infrastructure; (2) requirements for returning the NEC to a state of good repair; (3) requirements for annual normalized maintenance; (4) priority capital needs; and (5) long-term capital needs.
- The NRPC will need to develop, in cooperation with the emerging corridors, state and regional proposals for investments to develop improved passenger service.
- The NRPC will need to estimate the transition costs, including costs of planning for the restructuring, costs of restructuring existing financial obligations of Amtrak, costs of employee severance and labor protection, costs of current obligations and future liabilities of Amtrak that are not due for payment, and the NRPC will need to develop a plan for paying such transitional obligations as economically as possible as they mature and become due for payment.

## **V. FUNDING OPTIONS**

The proposed rail passenger restructuring plan will only be effective if there are adequate, reliable sources of funding for the three types of entities being proposed: the NRPC (the government oversight agency), the Operating Company, and the Infrastructure Company. Potential funding options and issues of each will be discussed separately. The Council is providing funding options for Congressional consideration and debate. Funding is critical to the success of any transportation mode to provide the service demanded by the market place. However, the Council is not making specific recommendations to the Congress concerning the most appropriate financing mechanisms to adopt because, among other reasons, such recommendations would be premature until the institutional structure of rail passenger service is determined.

With a few notable exceptions around the world, rail passenger operations require governmental assistance with long term capital funding and, in many cases, with annual funding to cover operating deficits. For the past 31 years, Amtrak has received approximately \$25 billion in funding to cover its operating cash shortfalls and capital expenditures.

The funding needs of rail passenger service are enormous, and there is no assurance that merely providing federal and state funding grants to the existing Amtrak will result in the types of capital investments which are needed to expand and improve rail passenger service in the United States. The separation of the Northeast Corridor and other corridor infrastructure assets from train operations and government oversight will help ensure that the funds which the federal and state governments provide to Amtrak for selected capital projects are actually spent on the intended projects. However, both the infrastructure and operating companies will need reliable sources of operating and capital funds provided with the right incentives to use the funds efficiently to meet the market demands for rail passenger service.

### **A. FUNDING THE NRPC -- THE GOVERNMENT OVERSIGHT AGENCY**

The NRPC, a government oversight agency, is anticipated to be funded by annual federal appropriations in a manner similar to the way that the Federal Aviation Administration (FAA) and Federal Highway Administration (FHWA) are funded, except that these two government agencies receive appropriated funds from dedicated trust funds while the NRPC will receive appropriated funds from general funds, unless Congress creates a trust fund for rail passenger service. The NRPC is envisioned to have a small staff of approximately 50, excluding staff dedicated to providing insurance and risk management functions. After initial funding of the insurance and risk management staff and administrative functions, the cost of the insurance and risk management staff's salary and administrative costs may be passed on to the operating companies utilizing the insurance and risk management functions as a percentage of the cost of insurance premiums and claims paid.

Appropriated funds will also be needed by the NRPC to fund any labor protection costs, excess railroad retirement costs (which may be advanced to the operating and infrastructure companies which actually are liable for the excess railroad retirement payments), and remaining obligations of Amtrak which mature after the Action Plan is adopted (i.e., FELA claims for employee injuries;

unpaid amounts due to states or for Amtrak's share of joint projects; liability claims to passengers and others for accidents; environmental clean-up costs; payments which may be made under Amtrak loan guarantees, to the extent that the federal government agrees to fund them; etc.).

## **B. FUNDING THE OPERATING COMPANY**

### *1. Corridor Trains*

After an initial transition period, during which all routes may initially receive federal operating subsidies, any operating deficits of regional corridor trains are anticipated to be funded by states and regional compacts of states and other transportation entities affiliated with the state and local governments. The Council recommends increased transportation funding flexibility to allow states to decide how to utilize all available transportation funds.

As discussed previously, most of Amtrak's operating losses historically have been generated by the long-haul, overnight trains. With implementation of recommended operating efficiencies and overhead reduction programs, coupled with better utilization of equipment and crews to generate additional ticket revenues and seat miles of transportation service, the regional corridors are likely to cover their direct operating costs, particularly after the corridors mature and have the levels of ridership projected as mature passenger rail corridors.

Although operating subsidies of corridor trains are anticipated to be funded after an initial transition by state and local governments, the capital requirements of corridor trains are anticipated to be funded by locally controlled, flexible funding as well as other capital investment financing mechanisms discussed in greater detail in the section below on capital funding.

### *2. Long-haul Trains*

The operating company (or, optionally over time, franchisee operating companies) are likely to always need operating subsidies for certain long haul routes due to the inherent costs of providing long haul rail passenger service and due to the market price that can be charged for rail passenger tickets. Since there will be no unfunded mandates, uneconomical, long haul trains will only be retained if the federal government decides to subsidize the operating company (or new, competitively-bid franchisee operators) to provide such long haul services. Theoretically, before the operating company abandons long haul rail passenger routes (or any rail passenger route being considered for discontinuance) such routes could be competitively bid out by the NRPC to private operators offering to operate the services on a contractual basis, with the NRPC selecting franchisee operators based on the most attractive terms offered such as levels of service, implicit governmental operating subsidies, and other social considerations such as mitigation of highway and airport congestion.

Long-haul, intercity rail passenger trains are anticipated to receive federal operating funds under subsidy contracts with the NRPC on a train by train basis provided that Congress funds the specific operating deficits through the NRPC and affirmatively determines that such trains should be run at the subsidy levels specified for the service levels proposed.

The current approach to funding Amtrak rewards inefficiency by basing operating subsidies on the size of Amtrak's operating losses. The greater the operating losses Amtrak incurs, the greater the

funding the government needs to provide. The Council recommends that the Congress change this approach by requiring that funding to the NRPC or any other authorized franchising authority (if the NRPC has authorized contracting out) be based upon performance criteria, such as a percentage of revenue measure or a farebox recovery measure. These performance criteria would be the basis of the federal funding allocation throughout the nation.

It is possible that, when multiple franchising authorities are in operation, more successful authorities may develop surpluses as a result of the national funding formula. In these cases, the franchising authorities would establish additional services or expand present services through competitive franchising arrangements or contracts negotiated with the operating company.

### *3. Capital Funding*

With appropriately set operating subsidies provided by the states for corridor trains and the NRPC (with operating subsidies set as a percentage of ticket revenues collected) for long-haul trains, the operating company or companies should be able to finance equipment debt and leasing costs. However, the actual ownership or leasing of equipment from third parties may more logically reside with a separate NRPC subsidiary (which, in turn, enters into short-term operating leases of its equipment with the actual train operators), states, or regional corridors for a number of reasons.

- Ownership or leasing control of equipment would give the operating company with such control undue advantages in any competitive re-bidding for the service routes or corridors.
- States such as California have historically purchased equipment specifically designed for their service requirements.
- Equipment manufacturers or lessors are more likely to provide equipment at low financing rates to regional corridors or states since such entities are not likely to go out of business, and since the inherent demand for transportation service by local voters will ensure that the equipment is used in revenue service, regardless of the financial condition of the train operating company using the equipment.

Like airlines, with proper operating subsidies, equipment leasing and financing costs incurred by operating companies should be able to be funded out of operations. For routes with high costs structures or low ticket revenues, the federal government and states or regions may choose to subsidize trains providing certain train services which are considered to be essential or desirable. As long as federal, state and/or local subsidies are provided in sufficient amounts to enable marginal routes or trains to cover their full operating costs and, presumably, a reasonable profit to the operating company, economically marginal services may be maintained at the lowest cost to the taxpayers thanks to the competitive bidding by operating companies for the franchises to operate the trains with the subsidies offered.

Stations should be developed and funded by local governments, with multi-modal access to buses, transit, airlines and other modes, as applicable. Existing tax-exempt bonds, municipal investments, and private sector funds from commercial real estate developers should provide sufficient financial resources and credit to develop the stations in many cities. Operating rail carriers will pay rents to use the facilities, which will be funded out of their operating cash flows.

If rail operating companies own and maintain their own equipment, they may need to finance the cost of building and furnishing equipment maintenance facilities along with trucks and other vehicles associated with providing rail operating services. Such financing needs will not be materially large relative to the overall scope of the operations. Such equipment maintenance facilities and equipment supporting train operations can be financed with traditional tax-exempt, private activity bonds, operating and capital leases of equipment, and some of the funding mechanisms described below for development of high speed rail corridors.

## **C. FUNDING RAIL INFRASTRUCTURE**

With proper user fees, the Northeast Corridor infrastructure company should be able to fund its operating costs, but the approximately \$28 billion of capital investment needed by the NEC infrastructure company along with the approximately \$70 billion<sup>34</sup> of investment needed to develop a number of federally-designated high-speed rail corridors in other areas of the country, will need long term capital funding sources providing: (1) at least \$1.5 billion annually over approximately 20 years to just maintain and expand the capacity of the Northeast Corridor; and (2) as much as \$3.5 billion annually for 20 years or more to develop a number of the federally-designated high-speed rail corridors.

Such large amounts of capital funding will require new sources of funding from federal and state sources. A number of alternative sources of capital investment financing have been proposed. The Council identifies these options as alternatives for the Congress to consider, but makes no specific recommendations other than certain policy guidelines summarized below.

- Financing mechanisms should facilitate federal-state partnerships.
- Financing mechanisms should encourage regional decision-making to the maximum extent possible, and at the lowest level practical, ideally at the state or local levels.
- Mechanisms or financing programs adopted should not encourage political allocations of funding in projects which do not make transportation and economic sense. Accordingly, funding mechanisms which require state or local participation are preferred to options that rely solely on federal financing mechanisms.
- Funding options that encourage flexibility of funding from various sources at the lowest level of decision-making appropriate are encouraged.

### ***1. Current Legislative Proposals***

During the past two years, proposed legislation has been offered in several forms to facilitate rail infrastructure and high-speed rail development projects including, but not limited to, the following

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<sup>34</sup> Amtrak anticipates that states and interstate compacts will fund a significant portion of the approximately \$100 billion capital investment requirements identified over the next 20 years with state funds or financing mechanisms such as tax exempt bonds, tax credit bonds, and other financing mechanisms.

mechanisms, which can be used to begin funding capital projects of both the Northeast Corridor infrastructure and the federally-designated high-speed rail corridors.

- The RIDE-21 (Rail Infrastructure Development and Expansion Act for the 21<sup>st</sup> Century) legislative proposal, H.R. 2950, proposed total federal funding of \$71 billion for high-speed rail investment by (1) allowing the states to issue \$36 billion (\$3.6 billion per year for 10 years) of tax-exempt, high-speed rail infrastructure bonds which would exempt from the tax exempt volume caps contained in Section 146 of the Internal Revenue Code, and (2) increase the amount of funds available in the RRIF Loan Program from \$3.5 billion to \$35 billion, including \$7 billion for short lines, which funds would be available to freight rail as well as passenger rail projects; and (3) reauthorize the Swift Act at \$35 million per year through 2009, allocated \$25 million for corridor planning and \$10 million for technology development and make the \$25 million available for acquisition of rolling stock.
- The High-Speed Rail Investment Act Bond proposals anticipated that bonds would be issued by Amtrak and possibly others which would provide for federal investment tax credits in lieu of cash interest for the 20 year lives of the bonds. These bonds were proposed by S.1900 and H.R. 3700 in the summer of 2000. The proposals would have required state or other matching funds equal to at least 20 percent of the loan principal, which would have gone into an escrow fund to repay the bonds after 20 years.<sup>35</sup>
- Infrastructure and economic stimulus bills introduced in the 107<sup>th</sup> Congress would provide funding for high speed rail include the \$9 billion of high speed bonds in the proposed Economic Security and Recovery Act of 2001 (H.R. 3090 introduced by Representative Thomas) and the \$15 billion of high speed bonds in the proposed "Rebuild America: Financing Infrastructure Renewal and Security for Transportation Act of 2001 (H.R. 3166 introduced by Representative Borski).
- Other emergency bond and grant legislation proposed after the September 11, 2001, terrorist incidents, with Amtrak originally requesting \$3.5 billion, and finally getting approximately \$100 million to be administered by the Federal Railroad Administration to begin addressing life safety projects in the tunnels leading to Penn Station, New York, and \$5 million to Amtrak for additional security costs.

The above bond mechanisms require repayment in some form or other. The high speed rail bonds use a 20 percent or more escrow fund contributed by states and others when the bonds are issued, which escrow fund presumably will grow over time to fully redeem the bonds in 20 years when they mature, with the federal government providing investment tax credits to holders of the bonds in lieu of cash interest. Other bonds rely on user fees to pay both interest and bond principal. The tax credit bonds are very costly to the federal and state taxpayers. A federal funding program providing 80 percent of the funds from appropriated sources as long as the states fund a 20 percent matching amount would be less costly to the taxpayers over the 20 year lives of the bonds than the high speed rail bonds, but the bonds may be preferable from a public policy perspective of having financing

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<sup>35</sup> To ensure that the escrow funds will be adequate to fully redeem the proposed bonds when they mature in 20 years, a number of states determined that initial escrow deposits of approximately 30 percent would be advisable.

decisions made at the lowest level possible since states have to put up funds equal to 20 percent of the face amount of the bonds being issued before the federal investment tax credits are issued.

Proposed legislation to provide significant funding for rail passenger development, other than the \$105 million of emergency funding for security and life safety expenditures after September 11, 2001, has not been passed by both houses of Congress, and is unlikely to be enacted until the re-authorization of Amtrak, or its successor, is completed.

## ***2. Financing Northeast Corridor And Other Infrastructure***

NEC ownership and maintenance places an unreasonably large financial burden on Amtrak. This burden is not reasonable because Amtrak is the minority user of the corridor, and is not in a position to access or provide the capital resources necessary for the Northeast Corridor. Indeed, the NEC clearly should be owned and controlled by those who operate the dominant and economically vital commuter and freight traffic on the corridor. Once the NEC infrastructure is separated from Amtrak, the result will be an immediate and positive major impact on Amtrak's bottom line profitability and a significant reduction in Amtrak's capital funding requirements.

Amtrak's status as the minority user is evident from the fact that only a small fraction of the massive long-term funding needs of the NEC infrastructure are related uniquely to Amtrak's higher speed passenger operating requirements. In its 20-year plan for capital requirements of the south end of the NEC, issued early in 2000, Amtrak identified only about \$700 million of the \$12 billion in total funding needs as related directly to its new high-speed service. The preponderance of the remaining needs are for conventional intercity passenger, commuter and freight railroad service.

If an original expectation of transferring the NEC infrastructure to Amtrak in 1976 was that it would provide a pipeline to the US Treasury for capital, that expectation has simply not been the case. Further, Amtrak's ability to access additional federal appropriations for the NEC's maintenance and infrastructure requirements have been minimized by recent changes in federal transportation policy. Thus today, there is not any obvious single source, particularly any single federal source, for funding the NEC infrastructure's investment needs. It is important to note, however, that Massachusetts, Connecticut, and New York, the three Northeast Corridor states that own all or part of the NEC spine in their states, have managed to find funding for maintaining and improving their portions of the Corridor.

For two basic reasons, it is vitally important that the NEC infrastructure be properly funded. First, it is vital to the economy of the Northeast, particularly its need to maintain its economic competitiveness with other regions of the nation. In no part of the Corridor is this more important than in the highly congested Northern New Jersey-New York-Western Connecticut metropolitan area, where the preponderance of the commuter train operations are conducted, and where the need for additional commuter rail capacity, and the major additional investments to support that traffic, is greatest.

Second, the Council strongly believes that, if Amtrak continues to be burdened by the ownership and maintenance of the Northeast Corridor infrastructure, its ability to secure sufficient funding for its nationwide train operations will be threatened. The Council's assessment is that Amtrak's

ownership of the Northeast Corridor infrastructure has been a lose-lose proposition – bad for Amtrak’s nationwide train operations and bad for the NEC infrastructure.

Because of the importance of funding the NEC infrastructure, the Council retained the assistance of BGL Rail Associates to compile the latest assessments of capital investment requirements and to assess the sources of funding that might be marshaled to finance them. The BGL report emphasized the limitations on federal appropriations and the lack of any single source of funding able to fund the entire needs of the NEC. The report indicated, however, that there were a number of sources that might each make a contribution to the Corridor’s funding needs.

These potential sources, some existing and some proposed, could be applicable not only to the Northeast Corridor, but also, where appropriate, for the development of other high-speed rail corridors as well:

- Expand transit-related contributions from the Mass Transit Account, as is currently done on portions of the NEC owned by New York’s MTA and Connecticut DOT;
- Partnership with the Regional Transmission Organizations (RTOs)<sup>36</sup> in the Northeast and Middle Atlantic regions to assist in funding the \$800 million cost of the new catenary system south of New York;
- Federally guaranteed loans for large (greater than \$100 million) rail projects under the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA);
- Federally guaranteed loans for smaller rail projects under the Railroad Rehabilitation and Improvement Financing (RRIF) Program;
- Bond financing, such as the tax credit bond financing proposed in the High Speed Rail Investment Act (S. 250), introduced by Senator Biden, and the tax exempt bond financing proposed in the Rail Infrastructure Development and Expansion Act for the 21<sup>st</sup> Century (RIDE-21)(H.R. 2950), introduced by Representative Young of Alaska.
- The Rail Security Act of 2001 (S. 1550), sponsored by Senators Hollings and McCain, \$1.8 billion to fund security and safety, including Penn Station New York (PSNY) and the Advanced Civil Speed Enforcement System (ACSES).
- Tax incentives or tax-exempt financing for investment in qualified rail projects that might be offered in economic stimulus proposals put forward by the Congress.
- Expanding the flexibility of current surface transportation funds for the funding of economically justified rail projects that would reduce congestion on other modes of passenger transportation. TEA-21 included flexibility provisions that allowed states to

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<sup>36</sup> Regional Transmission Organizations were created by electric utility companies to interconnect their systems of electrical generation plants and transmission facilities. One or more RTOs may be willing to fund much of the cost of the new catenary system south of New York in return for easements giving one or more RTOs the right to use the NEC to run new high voltage transmission lines.

“flex” funds allocated to their states for transportation projects that were their highest priority. Funds eligible for flexing included those in the Surface Transportation Program (STP) and the Congestion Mitigation and Air Quality Improvement program (CMAQ), though federal law does not currently stipulate whether railroad projects would be eligible for the flexible funding;

- Expanding the flexibility of the Airport and Airway Trust Fund has also been suggested, especially in the aftermath of September 11<sup>th</sup>. The purpose of such flexibility would be to invest in rail projects that would substitute rail service in higher-density corridors for short-haul air services that are no longer economic (such as the air link between Chicago and Milwaukee). It could also be used to expand capacity of rail services that provide direct intermodal access to airports, encouraging integrated, through-ticketed multi-modal transportation services to most efficiently serve the transportation needs of region. This source of funding might be useful on the Northeast Corridor in certain markets connecting with airlines at airports such as Baltimore-Washington International and Newark, New Jersey, as well as other airports along the Northeast Corridor and other regional corridors throughout the United States;
- Another source of potential funding for rail bridges over navigable waterways in the Northeast Corridor and other high-speed rail corridors would be as civil works projects carried out by the Army Corps of Engineers, where bridges essential to rail or highway traffic have received such funding. In Maryland alone, bridges over the Susquehanna, the Bush, and the Gunpowder rivers might conceivably qualify; and
- Freight users could possibly contribute to financing of infrastructure capacity that is used by all NEC users.

### ***3. Proposal For Tax Credit Financing Incentives***

Although the Council makes no recommendations in this Action Plan, in response to Congressional requests that funding mechanisms and options be provided by the Council, the following additional financing mechanism favored by certain large freight railroads is offered as an alternative mechanism to encourage rail infrastructure and high-speed corridor development.

The new rail funding mechanism offered for consideration by the Congress is a tax credit for qualified rail investments, possibly fashioned after the federal low income housing tax credits. Federal low income housing tax credits are earned over a 10 year period based on the value of low income housing investment, provided that such housing remains rented to qualifying low income residents. The housing credit is either 4 percent per year for 10 years or 9 percent per year for 10 years, which, on a net present value basis, amounts to either 30 percent or 70 percent, respectively, of the investment in low income housing. The 4 percent low-income housing credits are available to projects that receive tax-exempt or federally supported funding. The 9 percent low-income housing credits are available to projects, which receive no federally supported or subsidized debt financing.

For a possible multiyear rail investment tax credit, the annual percentage, the number of years that the tax credit is earned, and the net present value of the multi-year credit need to be determined by

Congress. The advantage of such a tax credit is it would benefit the freight railroads, which presumably will upgrade their facilities for rail passenger service, but the credit could be designed so that the freight railroads would only get the full financial benefit if the rail facility remained in passenger use for 10 or more years, giving the freight railroads an incentive to provide good passenger service over their lines. Another advantage of such a multi-year tax credit is that it can be administered by states just as the low income housing credits are issued, subject to overall limitations by state which are determined by the federal government.

#### ***4. Conclusion***

Rail passenger projects will only succeed if there is a multi-year, assured funding source, (funded in a way that Congress and the Administration determine) to enable commitments to build multi-year capital investments in new and renovated facilities. Ideally, multi-year facilities would ensure that political pressures to keep unprofitable trains would be minimized.

# APPENDIX I: CONCURRING OR DISSENTING OPINIONS FROM COUNCIL MEMBERS

## A. MR. JAMES COSTON'S CONCURRING OPINION

### ☆ ☆ ☆ AMTRAK REFORM COUNCIL ☆ ☆ ☆

THE COUNCIL

February 4, 2002

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Paul M. Weyrich  
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Hon. Norman Y. Mineta

Charles Money Penny

Hon. John O. Norquist

EXECUTIVE DIRECTOR

Thomas A. Till

Mr. Gilbert E. Carmichael  
Chairman  
Amtrak Reform Council  
400 Seventh Street, SW  
Washington, D.C. 20590

Dear Mr. Chairman:

I have voted in favor of the Amtrak Reform Council's Final Action Plan, even though I retain serious reservations about and even objections to--several of the its central elements.

I set aside those reservations and objections for two simple reasons: political expediency and practical necessity.

Amtrak's funds are dwindling so rapidly that a systemwide shutdown can be avoided only through an immediate reform of the company's organizational structure and managerial practices. It is too late to wait for the Ideal Plan to emerge. Something must be done to change the way passenger trains are run in this country now.

Yet only the Reform Council has recommended any reforms, flawed though some of them may be.

#### AMTRAK RESISTS CHANGE

Amtrak, in its announcement of February 1, suggested no reforms of any kind. All it advocated was that Congress pump more money into both an organizational structure and managerial system which together have led not

JM-ARC, Room 7105  
400 Seventh Street, SW

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Phone: (202) 366-0591  
Fax: (202) 493-2061

Washington, DC 20590

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that waste under a claim that Amtrak was actually on a "glide path" to only to waste of the taxpayers' resources, but to a four-year effort to conceal financial self-sufficiency as mandated by Congress in 1997. Amtrak is organizationally, intellectually and financially bankrupt and ultimately obsolete as currently configured. A compelling case can be made that in its present form it is not a fit receptacle for additional funding.

Thus, while I feel compelled to distance myself from some of the flaws in the ARC Plan, I sense an even greater gap between my vision of an American passenger railroad and that to which Amtrak has clung undeviatingly for the last five years.

**AMTRAK'S TRUE COLORS: NATIONAL SUPPORT FOR A ONE-REGION RAILROAD**

Amtrak's vision and values now stand revealed. Amtrak has exhibited a solid and enduring commitment only to a Northeastern railroad over which 90 per cent of the trains are state or local commuter trains. Amtrak apparently sees nothing wrong in demanding funds from all of the nation's taxpayers while applying them to a single region. But this regional favoritism on the part of Amtrak management actually is contrary to law. Congress established Amtrak in 1970 for the purpose of operating a national passenger railroad system, and Congress never provided Amtrak with any other legal mandate. From a legal standpoint, Amtrak is ultra vires in its focus on the Northeast Corridor at the expense of other promising routes and other deserving states whose taxpayers furnished dollars in good faith that Amtrak would try to meet their mobility needs. In the past, Amtrak always made a token effort to keep a national system intact. Now, shaken by the fear of imminent failure, Amtrak has shown its true colors by turning its back on the nation at large and fleeing to the protection of those it has favored.

Thus, I am compelled to vote in favor of the only existing Plan that provides Congress with a mechanism under which it can fund Amtrak and still be assured that it is funding a national transportation provider.

**THE ARC, THE PLAN AND THE SELF-SUFFICIENCY DELUSION**

Before I move on, let me just explain why my embrace of the ARC's plan remains reluctant.

First, the ARC plan, like the ARC itself, suffers from a terrible defect. It is linked legislatively to the 1997 mandate that Amtrak become operationally self-sufficient within five years. I have stated before and will now state again that demanding passenger trains to be financially self-sufficient is unfair and foolish. While I welcome the idea of a congressional commission exercising oversight over Amtrak's performance (and in fact propose below that Congress create a permanent citizens' panel for just that purpose), I see no purpose in holding American passenger trains to a strict profit/loss or even "operational self-sufficiency" standard. No such demand is made on passenger

JM-ARC, Room 7105  
400 Seventh Street, SW

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Phone: (202) 366-0591  
Fax: (202) 493-2061

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rail's competition, chiefly commercial and private automobiles, and, in fact, the transportation providers competing against rail are not self-sufficient.

The U.S. airline industry since its founding in 1926 has been profitable in some years and unprofitable in others, but its net aggregate performance over its entire 76-year lifetime has been a financial loss, even though the U.S. government has provided the industry with a trillion-dollar airport and air-traffic-control infrastructure for which user fees were not charged until 1971.

As for private autos, their "profitability" cannot be compared with that of trains, planes or buses. By definition private autos are not operated commercially and their transportation function is confounded and co-mingled with other functions such as personal amusement and vanity. Nevertheless, it is fair to say that with an average of 1.2 persons occupying a machine built for five or six, and with most private vehicles spending 18 to 20 hours out of each 24 standing idle in a garage or parking lot, the utilization rate of the typical personal auto, as well as the vast tracts of real estate set aside for its storage and operation, is so low as to make it unacceptable as a business proposition. Moreover, private autos, like commercial aviation, have been supplied with a state-of-the-art infrastructure system which the federal government continues to update and expand. In 1992 a distinguished professor of transportation evaluated that infrastructure as having a net current replacement value of over \$1 trillion. Nothing on the order of that infrastructure is available to American passenger trains.

Despite the manifest unfairness and self-evident impossibility of the self-sufficiency mandate, Amtrak management eagerly and uncritically embraced it on taking office in 1998 and until the spring of 2001 issued a virtual blizzard of happy-talk news releases claiming that the company was "on glide path" toward meeting the self-sufficiency deadline of 2003.

Not until his address to the National Press Club last May did the Chief Executive Officer even hint at a potential problem in achieving self-sufficiency. Instead, he concealed his growing doubts behind a verbal smoke screen that talked of a gap between Amtrak's "commercial mission" and its "public-service mission."

Moreover in the nine months between that first storm warning and the disaster alert he issued last Friday, the Chief Executive Officer still tried to have it both ways. He continued to warn of a disconnect between the "commercial mission" and the "public-service mission" while insisting that self-sufficiency still was achievable. If so, why the warnings?

I knew four years ago that the congressional mandate for Amtrak to achieve operational self-sufficiency by 2003 was literally Mission: Impossible. So did most of my fellow Council members. So did the General Accounting Office and the DOT Inspector General, both of which issued interim reports suggesting very strongly that Congress's unrealistic self-sufficiency mandate not only would not be met by 2003 but would be missed by an ever-widening mark. It didn't take a rocket scientist or even a part-time bookkeeper to know the numbers weren't adding up. Yet Amtrak the people

JM-ARC, Room 7105  
400 Seventh Street, SW

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Fax: (202) 493-2061

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who controlled the company and collected the figures and had first crack at evaluating the numbers was the last to know that numbers weren't working. Or the last to say so. I don't know which is the more grievous failure. As the saying goes, "If they didn't know, shame on them. If they did know and didn't tell, shame on them again."

**THE INFRASTRUCTURE QUESTION**

As preposterous as it is to imagine a national passenger railroad becoming operationally self-sufficient in five years, it is even more preposterous to imagine such an outcome when that railroad lacks the one prerequisite without which no transportation system can function: a modern infrastructure.

Yet this is the very core of the Mission: Impossible that Congress handed Amtrak in 1997—and that Amtrak's new management took home like a pig in a poke in 1998. Amazingly, the management of Amtrak promised Congress they could operate a profitable passenger railroad—a railroad that could successfully compete against the federal government's Interstate highway network and the FAA's trillion-dollar air-traffic control and airport infrastructure--over a 19th- century network of railroad tracks on which the average track speed is 48 miles per hour and both the main lines and junctions are congested with mile-long freight trains that make reliable scheduling impossible. Amtrak told Congress what it wanted to hear: We won't try to do very much and we won't ask you for a lot of money.

I have argued virtually from my first day on the Amtrak Reform Council that nothing remotely approaching financial self-sufficiency is in the cards for American passenger trains until Congress funds a modern system of railroad tracks and signals for trains as it funded modern infrastructure and control systems for the nation's motor vehicles, airplanes and inland watercraft. The privately owned railroads over which Amtrak operates most of its national system cannot raise the necessary capital in the private capital markets, nor have they the motivation to do so, since passenger trains no longer are their business. Only government has the financial strength to build the next generation of railroad infrastructure, and the nation's travelers cannot expect to ride fast, comfortable, reliable, frequent, safe or commercially successful passenger trains until government until it drops its anachronistic demand for profit and builds the kind of infrastructure that makes profits possible.

The federal government has been using tax money to fund commercial airports since 1946, but it has never closed an airport down because it didn't handle enough passengers at a "profit," and it has provided millions of dollars to the airline industry to provide Essential Air Services to sparsely settled communities that the airlines cannot serve profitably. The federal government spent over \$80 billion to build an Interstate highway system, but it never threatened to close I-94 through North Dakota and Montana so it could "concentrate" all the Chicago-Seattle truck traffic on I-80 to San Francisco and then up I-5 to Seattle in order to get more efficiency out of its concrete. Why are

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400 Seventh Street, SW

55

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Washington, DC 20590

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trains alone forced into this antiquated 19th-century private-business model? Why are trains subjected to a Darwinian struggle for existence while our government builds roads and airports everywhere regardless of economic justification?

Raising the money for rail infrastructure? We've already collected it now let's invest it: "Repatriate" the 1942-1962 rail-passenger ticket tax..

Some will ask, "But how can we pay for a nationwide program of railroad infrastructure improvements?" All of the other transportation infrastructures have been taken off the federal budget and turned into quasi-businesses that meet their expenses by charging user fees that are paid into a dedicated trust fund. How can passenger trains which carry less than one per cent of America's travelers raise enough money from a ticket tax to kick off a program like the Interstate or the Inland Waterways or the FAA's air-traffic control system?

Setting aside for a moment the dirty little secret that user fees have never fully funded the nation's highway and civil-aviation programs and that both consume billions of dollars of subsidies from the General Fund each year, the answer to the question of raising even more funds for a rail infrastructure program is simple: Enough money to kick off a railroad infrastructure program already has been raised indeed, it was raised by the federal government many, many years ago but it was never paid into a trust fund and never appropriated to fund improvements to the nation's privately owned railroad system.

In 1942 Congress passed an "emergency" World War II tax of 15 per cent on all intercity passenger railroad tickets in order to raise money for the war effort as well as to discourage unnecessary civilian travel at a time when every coach seat and sleeping-car berth was needed for essential military transportation and civilian travel connected to the war effort.

Unlike federal gasoline taxes, which always were used to build new highways, and unlike the 10-per-cent airline ticket tax of 1971 which raised money to expand airports and fund the FAA's radar technology and control towers, the 1942 railroad ticket tax was not placed in a special trustfund to modernize and improve America's 19th-century railroad infrastructure. None of the money collected from America's rail passengers was used to straighten curves or reduce steep grades, or to replace single track with double track, or to modernize the signal systems so high-speed trains could be stopped automatically if the engineer inadvertently passed a red signal, or to eliminate highway grade crossings, or to build viaducts and flyover ramps so trains would not get stuck at busy junctions.

Instead, the federal government took all of that money from railroad passengers and applied it to other uses, including expansion of the highway system and the airport system, creating tax-financed advances in highway and aviation and even waterway technology that the privately financed railroads could not afford to duplicate.

JM-ARC, Room 7105  
400 Seventh Street, SW

56

Phone: (202) 366-0591  
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Washington, DC 20590

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Nor did the government cease confiscating money from railroad passengers when the wartime emergency ended. The war ended in 1945, but the "emergency" 15-per-cent tax on railroad tickets continued for another nine years, and even then, in 1954, it was not abolished, but merely reduced to a 10-per-cent tax, which continued to be collected until 1962.

Throughout those 20 years, the federal government continued to invest the proceeds of the rail passenger ticket tax in a massive buildup of the airport, air-traffic-control, highway and waterway systems, all of which used their efficient new transportation plants to divert freight and passenger business away from the helpless railroads, whose rates and business practices were still regulated so rigidly by the federal and state governments that they could not raise the capital to make their antiquated tracks and signal systems competitive.

It is over those same antiquated, congested tracks and under those same antiquated 19th-century block signals that Amtrak was required by Congress in 1997 to run "self-sufficient" passenger trains and it is Amtrak's complacent willingness to go along with this Mission: Impossible that today has brought this hapless company to the brink of disaster.

What is the quickest and surest way to end this carnival of folly and provide the nation's travelers with the efficient, modern rail travel they deserve?

It is for this Congress to acknowledge the mistakes of its predecessors by "repatriating" the 1942-1962 railroad ticket tax to its rightful recipients and beneficiaries, the travelers and shippers who have been unfairly deprived of the advanced rail transportation to which they are entitled, and to the railroad industry, which was forced by congressional bungling into a century-long technological stall and an unnecessary commercial decline.

According to the Federal Reserve Bank of Chicago, the \$3.9 billion collected during the 20-year life of the Revenue Act of 1942 has a current value of more than \$30 billion. It is time for Congress to pass legislation making this money available to the railroads, to state departments of transportation, to local and regional commuter rail agencies and to interstate passenger-rail compacts for construction of vital improvements and upgrades that will allow higher speeds, increased frequency and assured protection against train-to-train and train/vehicle collisions on the nation's busiest railroad main lines. And the time to get started is now, when Amtrak's emergency coincides with a national logistical emergency that is raising the costs of passenger travel and freight transportation nationwide and retarding the expansion of the North American economy.

**Privatization: The fatal flaw in the ARC Plan**

Some on the Amtrak Reform Council have argued that the answer to the nation's passenger-train problem is to eliminate government from the equation and to "privatize" Amtrak either wholesale,

JM-ARC, Room 7105  
400 Seventh Street, SW

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Phone: (202) 366-0591  
Fax: (202) 493-2061

Washington, DC 20590

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at the corporate level, or piecemeal, by asking private-sector businesses to operate specific routes or trains.

Let me explain why this call for privatization is the chief obstacle to my embracing of the ARC Final Plan.

I believe that the economics of transportation in the United States have been fundamentally settled by the federal government's eight decades of funding, building, owning and managing non-railroad infrastructure. Government-funded highways and government-funded airways are so far ahead of rail in their technological development that only the massive low-cost capital available to the federal government can close the rail technology gap and enable rail to reach its full logistical and economic potential. Without a massive federal investment in railroad track, signaling and routing technologies, including high-speed flyovers and merge ramps, passenger rail will not be able to catch up to and surpass the enormous advances in productivity and efficiency that highway and air transportation technologies have achieved over the last three quarters of a century thanks to federal investment.

But precisely because even a very large federal investment in modern rail technology will take many years to complete, any private operators entering the passenger-rail field today will be forced to operate trains just as inefficient as Amtrak's.

The fact is, the vast majority of the costs associated with operating passenger trains are outside the train operator's control. The losses associated with operating passenger trains in the U.S. are generated not by the trains but by the antiquated tracks and signals that prevent rail operators from attracting large numbers of passengers at high fares. The result is that private operators using U.S. rail infrastructure will continue to require a subsidy and, after discovering the real costs of operating shiny new trains over an outdated and congested infrastructure, will continually return to government for higher and higher levels of subsidy.

This is what happened in Britain after the Conservative government sold off both the obsolete infrastructure and train operations to private interests, only to discover that 50 years of underinvestment in the infrastructure had deprived the over-optimistic train operators of the conditions they needed to run a successful business operation and saddled the infrastructure owners with investment needs far too steep for them to meet out of their own pockets. In the end, the government has been forced to dole out more in subsidy payments to the private train operators and the private infrastructure owner than it would have spent had it kept the whole operation in house and brought it up to date under one management with taxpayer funds. In the words of railway reporter Christian Wolmar, "Privatisation, it had now become evident, had not freed government from the financial burden imposed by the railways; it had simply removed much of government's ability to control and limit that burden."

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It will be many years, if ever, before private train operators will be able to operate commercially successful passenger trains on American railroad infrastructure. To bring them in now will raise public expectations again--only to disappoint the public again and depress passenger rail's credibility even further at a time when everything must be done to strengthen it.

Premature privatization will also have another baleful side effect. As the train operators discover that obsolete infrastructure artificially raises the costs and diminishes the profitability of their operations, and as they come to realize too late that they have no control over this fundamental cost, they will focus their drive toward profitability increasingly and unfairly--on the one remaining area they see as under their control: labor. The result will be an ugly effort to out-source jobs to non-union suppliers and to force "give-backs" out of unionized employees. As a former Amtrak employee and union member who was supported by organized labor for appointment to the ARC, I cannot countenance any scenario which would leave management with union-busting as its only effective means of cost control. Passenger-train cost efficiency must be built in from the infrastructure up, not from the employees down. Privatization is not a universal solvent that makes all managerial problems, including labor costs, disappear, especially when the fundamental problem, lack of a modern rail infrastructure, continues to go untreated.

**PERMANENT CITIZENS' COMMISSION TO MONITOR PASSENGER RAIL**

Although I see flaws in the ARC's Final Action plan and in the ARC's origins in the self-sufficiency mandate, I conclude my service on the Council with essentially positive feelings about the panel, its members and its mission. So much so that I believe that Congress can best serve the cause of passenger rail service by establishing and funding a permanent independent citizens' commission to monitor the progress of rail passenger service in the U.S. and to report periodically to Congress on how it can best be improved. The British have a worthy model in their Central Railway Users Consultative Committee and its six regional chapters.

**CONCLUSION**

Amtrak is a failed experiment, but let's be clear about what exactly failed.

It is not passenger train technology that has failed. Modern passenger rail technology has not yet been tried in America.

Nor is it government ownership that has failed. The ownership format, whether public or private, is irrelevant if the owner fails to provide or obtain capital funding, and this a succession of Congresses has failed to do. As the British are learning to their pain, if a nation is determined to neglect its rail infrastructure, it matters little whether it is owned by the public or by private interests. The results of neglect are the same.

JM-ARC, Room 7105  
400 Seventh Street, SW

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Phone: (202) 366-0591  
Fax: (202) 493-2061

Washington, DC 20590

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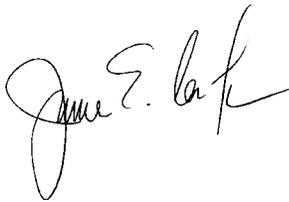
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But Amtrak management has failed because it did not notice or did not care enough to acknowledge these fundamental truths until it was too late. In the face of all evidence to the contrary, including a trillion-dollar Interstate highway system and a trillion-dollar civil-aviation infrastructure, it promised Congress it could operate old-fashioned passenger trains on old-fashioned tracks and do it without a subsidy.

That kind of thinking needs to change, and I am setting aside my objections and voting "Yes" to the Amtrak Reform Council's Final Action Plan, a thoughtful and useful report representing an enormous amount of hard work, as America's best hope for getting the process of change started.

Respectfully Submitted,



James E. Coston  
Coston & Lichtman  
407 S. Dearborn Street  
Chicago, IL 60605

**B. MR. WENDELL COX'S CONCURRING OPINION**



**Wendell Cox Consultancy**

demographia.com • publicpurpose.com  
PO Box 841 • Belleville, Illinois 62222 USA  
+1.618.632.8507 • Fax: +1.810.821.8134 • policy@publicpurpose.com

**Concurring Statement of  
Wendell Cox,  
Member, Amtrak Reform Council  
On the  
Amtrak Reform Council  
*Action Plan*  
7 February 2002**

**Background:** Amtrak has been granted billions in federal subsidies since 1971. As a monopoly, its unit costs have been exempt from the competition that has improved the performance of airlines, intercity buses and freight transport. Amtrak has also been a tool of politics. Unprofitable routes have been operated in response to the political agendas of members of Congress and even the Amtrak board itself.

The Amtrak Reform and Accountability Act (ARAA) of 1997 requires Amtrak to become operationally self-sufficient (no federal operating subsidies) by December 2002. That objective will not be met, which has made it necessary for the Amtrak Reform Council (ARC) to make the ARAA required finding that Amtrak will not achieve operational self-sufficiency. ARC is now issuing its *Action Plan* for a “restructured and rationalized national intercity rail passenger system,” as required by ARAA.

Amtrak does not appear to have taken the self-sufficiency requirement of ARAA seriously, having acted as if it were “business as usual.” Amtrak has, until very recently, perpetuated the charade that it was on a “glide-path” to self-sufficiency. But, under the leadership of new management and a “reform board,” Amtrak has failed to exercise the new and considerable flexibility accorded it under ARAA. It is true that Amtrak has improved its operating revenues somewhat. But it is just as true that Amtrak has outrightly neglected addressing its excessive expense structure. For post-ARAA Amtrak, it appears that the answer to every question has been “more money.” Today, as the *Action Plan* and US Department of Transportation Inspector General have concluded, Amtrak is no closer to operating self-sufficiency than it was before the ARAA.

Reform of Amtrak’s dysfunctional organizational and political structure is a prerequisite to both the operational self-sufficiency required by national policy and the improvement of passenger rail. The

ARC *Action Plan* proposes important reforms, such as transferring service authority to state-based corridors and implementation of competitive franchising. There is US precedent for competitive franchising, which has been used to provide commuter rail service in Boston, San Francisco, Los Angeles, San Diego, Miami-Fort Lauderdale-West Palm Beach, Washington, DC and Dallas-Fort Worth. In some cases, the franchises have been awarded to Amtrak itself. It is time, as the *Action Plan* indicates, for competitive franchising to be extended to intercity rail. I am pleased to be able to support the *Action Plan* because of these important improvements.

But the *Action Plan* does not go far enough. This concurring statement outlines proposals that would have improved the *Action Plan* and thereby increased the changes for intercity passenger rail to achieve its potential in the United States. These proposals are consistent with *Option 4: Competition and Local Accountability*, which was considered by ARC.

**More Fundamental Structural Reform is Required:** The *Action Plan* represents too timid a departure from the present structure. The National Passenger Rail Corporation (NRP) would continue to administer the passenger rail network, and Amtrak would survive as a subsidiary that operates service. This is unnecessary and creates the potential for continuing the failed policies of the past. The federal government does not own a commercial airline or a bus company. And, no public purpose justifies federal ownership of a passenger rail company.

Further, under the *Action Plan*, NRP could competitively franchise services, and its own subsidiary, the Amtrak operating company, could compete. It can be expected that managers and employees of the Amtrak operating company would exert their considerable influence (as before), both through NRP and the political process to skew franchise awards in their direction or even to prevent franchising. International and US experience has shown that fairness cannot be guaranteed when the organization administering a procurement is also a competitor (even a subsidiary).

Riders and taxpayers would be better served by establishing a federal Passenger Rail Transitional Board (PRTB) that would administer transfer of services to Regional Rail Operating Corporations (owned by states and interstate compacts). During the transitional period, PRTB would conclude the Amtrak operations company. The assets that Amtrak currently holds in trust for the riders and taxpayers would be transferred to the Regional Rail Operating Corporations for continued public service. The process outlined in *Option 4* could be implemented while preserving service to the riders and protecting the interests of employees.

***The Action Plan should have proposed more fundamental structural reform by transferring service oversight to Regional Rail Operating Corporations, while phasing out Amtrak.***

**Subsidies are Unnecessary:** The *Action Plan* indicates that passenger rail should receive “adequate and stable” funding. This is an appropriate objective, but only to the extent that funding is provided by intercity rail users. For example, Wal-Mart (and other firms) offers sufficient value in goods and services to its customers that they provide “adequate and stable” funding to pay the operating, capital, tax and return on investment needs of the company. Similarly, users of the nation’s intercity highways and commercial air transport systems receive sufficient value that they provide “adequate and stable” funding for building and maintaining required infrastructure. But, at least as currently

constituted, intercity passenger rail costs are so high that, even at passenger fare levels higher than that of intercity highways and airlines,<sup>37</sup> customers provide revenue that is neither adequate nor stable. The *Action Plan* inference is that “adequate and stable” funding should be provided by non-users. This would not be appropriate.

Subsidy by non-users is justified only where there is a compelling public purpose. For example, national defense, public welfare, education and a host of other programs provide societal benefits that justify general subsidies, and would be impossible to fund with user fees. For intercity rail to receive non-user subsidies would require identification of such a compelling public purpose.

*Trains are not a Substitute for Short Distance Air Travel:* ARC discussions and the *Action Plan* have considered short distance air market substitution as a purpose for subsidizing Amtrak. But, comparatively little short distance air travel in the United States can be diverted to rail, because demand is so dispersed and decentralized. Short distance travel markets are overwhelmingly private vehicle markets (automobiles and sport utility vehicles). Airlines account for only 0.3 percent of travel over 100 to 200 mile distances and 2.6 percent from 200 to 400 miles (Figure 1). Most current “high speed rail” proposals would operate at average speeds of barely 80 miles per hour. At such slow speeds, it is unlikely that the new rail services would be competitive with airlines for more than three-hour trips (225 air miles). Only 2.1 percent of US air travel is in such markets outside the Washington-New York-Boston corridor (which already has frequent rail service).<sup>38</sup> The genuine high-speed rail services of Japan and Europe operate from 40 percent to 100 percent faster. Even the 200 mile per hour proposed Florida Overland Express high speed rail system (canceled by Governor Jeb Bush due to its overly optimistic ridership projections and high taxpayer cost) would have, based upon promoter projections, permitted only a two percent reduction in commercial flights between airports in central and south Florida along the route.<sup>39</sup>

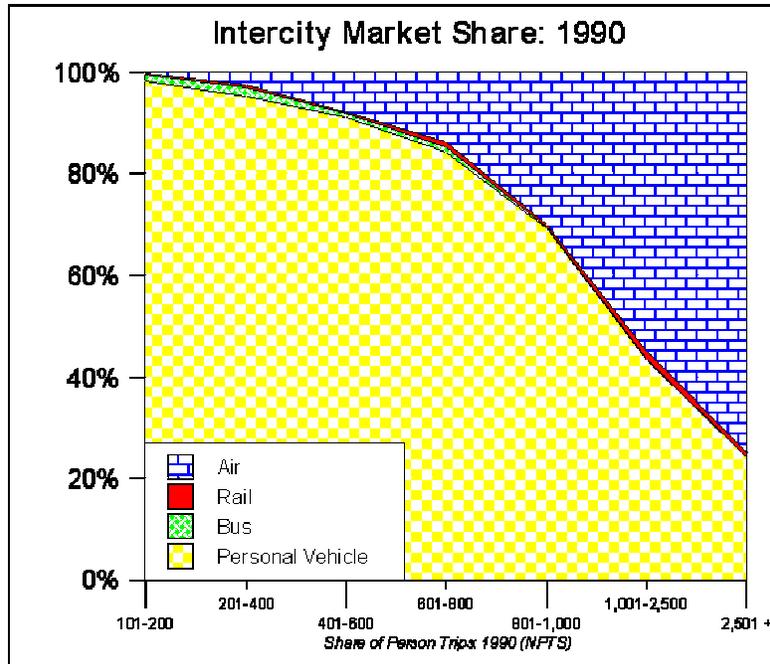
Today, Americans travel far more than ever before. Most of this travel is by airplane. The high volume of airline patronage was not taken from passenger rail; it was rather *created* by faster travel and the less expensive fares made possible through competition (deregulation).

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<sup>37</sup> Attributable infrastructure costs are included in airline and intercity bus fares.

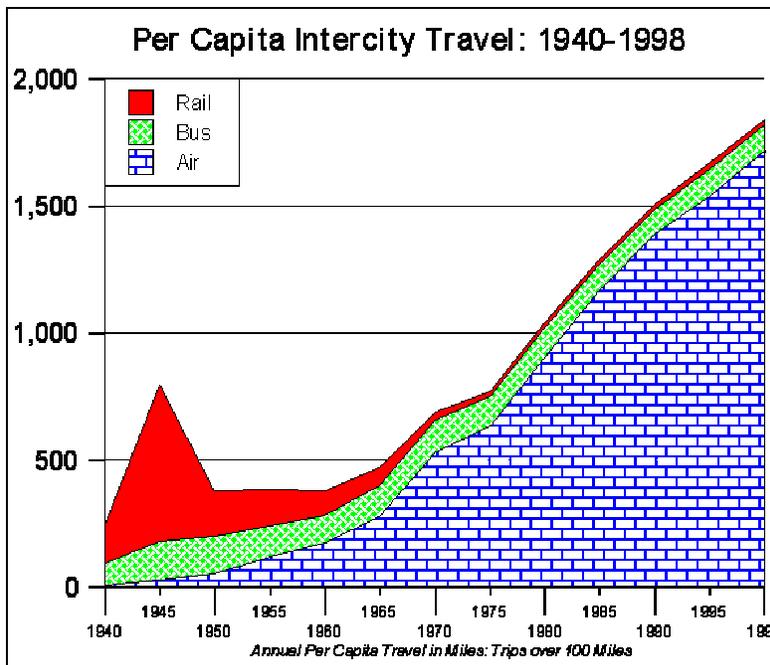
<sup>38</sup> [www.publicpurpose.com/icair-225.htm](http://www.publicpurpose.com/icair-225.htm).

<sup>39</sup> Wendell Cox, *Evaluation of the FDOT-FOX Miami-Orlando-Tampa High Speed Rail Proposal*, James Madison Institute, 1997.



**Figure 1**  
 Calculated from Nationwide Personal Transportation Survey data.

Indeed, air travel has been democratized, making it possible for the overwhelming majority of people to travel farther and more often than ever before. The increase in air travel demand has been more than *10 times* the loss in rail per capita travel since 1950 (Figure 2).<sup>40</sup>



**Figure 2**  
 Calculated from US Census Bureau and Department of Transportation data.

<sup>40</sup> [www.publicpurpose.com/ic-airallhist.htm](http://www.publicpurpose.com/ic-airallhist.htm)

*Trains are Not, in Themselves, Essential Transportation Service:* It was suggested that Amtrak’s long distance services provide mobility between small towns, and that this serves a need similar to that of the airline essential air service program.<sup>41</sup> In fact, however, Amtrak service is available only to the small percentage of the nation’s communities that are, by chance, located along the surviving historical passenger routes. Operating without subsidy, the nation’s intercity bus companies serve at least four times as many communities and five times as many passenger miles. The nation’s airlines serve more 30 percent more locations (700 commercial airports<sup>42</sup>) and nine times as many passenger miles.<sup>43</sup> If providing “essential transportation” were a genuine objective of public policy, then it would be best achieved by awarding competitive franchises to whatever mode, airline, bus or passenger rail, could provide the service for the least amount of subsidy.<sup>44</sup> Such a program would also be based upon objective criteria, such as service to all communities exceeding a particular population threshold, or a minimum distance from the commercial intercity transportation system (rail station, bus station or commercial airport). But to consider intercity rail itself as essential transportation service violates “equal protection of the law,” by placing the interests of citizens living in communities along passenger rail routes above those of the more numerous comparable communities not so fortuitously located.

*Costly Passenger Rail Cannot Provide Meaningful Redundancy:* A related argument is that the nation needs passenger rail for redundancy, especially in the aftermath of the September 11 terrorist attacks. This is a variation on the “essential transportation service” argument. To the extent that transportation redundancy may be required, intercity buses can provide four times the service as intercity rail under the present structure. There is insufficient public funding for meaningful levels of transportation redundancy to be provided by a passenger rail system that is so non-cost competitive.

*Operating Subsidies Violate the Intent of ARAA:* The *Action Plan* is inconsistent with Congressional policy on operating subsidies, in suggesting operating subsidies for long distance trains. The ARAA required that Amtrak achieve operational self-sufficiency. Congress did not require self-sufficiency by Amtrak in the expectation that the very organization formed to rule upon Amtrak’s failure, ARC, would itself propose an *Action Plan* violating the operational self-sufficiency test. Like other modes of intercity transport, long distance trains should be operated only if they are valued enough by their customers to pay for them. Today, intercity buses and airlines provide high levels of long distance service, without subsidy. There is, in addition, a robust, unsubsidized commercial market for long distance vacation travel, using charter buses, air packages and even commercial rail tours, following the successful model of ocean cruise lines.

*Envy is Not a Public Purpose:* An even less compelling justification for subsidizing passenger rail is envy. It is argued that passenger rail should be subsidized because other modes (highways and the commercial air system) are subsidized. This is, however, a fundamental difficulty with the “envy”

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<sup>41</sup> The essential air service program suffers from some of the same deficiencies as apply to the concept of passenger rail as essential transportation service.

<sup>42</sup> [www.bts.gov/publications/airactstats2000/intro.html](http://www.bts.gov/publications/airactstats2000/intro.html)

<sup>43</sup> Based upon information from *National Transportation Statistics*.

<sup>44</sup> As noted elsewhere, intercity bus and commercial airline costs per passenger mile are considerably lower than that of Amtrak.

justification --- at its core it is fallacious.<sup>45</sup> With the exception of Amtrak, US intercity passenger transport is unsubsidized, both operations and infrastructure. Federal expenditures on the intercity highway and commercial air transport systems<sup>46</sup> are fully supported with fees paid by users (such as the gasoline tax and the airline ticket tax). User fees are fundamentally different from public subsidies. This is illustrated by the example of a municipally owned electric utility. Customers of the utility pay for the service they consume. These payments are not subsidies; they are user fees. The fact that the electric utility is government owned does not make user payments a subsidy any more than payments to a privately owned utility are subsidies. Subsidies involve general taxpayer support of consumption by users. There is a simple test. A payment is a user fee if it is limited to the users of a good or service.<sup>47</sup> It is a subsidy if it is collected from the tax base in general, without regard to use. Those who use highways pay for them. Similarly, those who use airports pay for them. Those who do not use highways and airports do not pay for them. It should be the same for passenger rail.

If an amount equal to Amtrak's federal subsidy per passenger mile were applied to air travel, the annual cost would be more than \$35 billion (three times the present revenues provided by users). The same passenger mile subsidy rate would equate to more than \$300 billion annually for highways (nearly 15 times the federal revenue provided by personal vehicle users). Parity with the roadway and air modes would require imposition of a ticket tax or other user fee on *Amtrak* users. It is the other intercity modes, highways and commercial air transport that have intercity passenger rail to envy in terms of public subsidies. But envy is not a legitimate public purpose.

*A Cost-Competitive Passenger Rail System Would be Profitable:* Congressional intent under ARAA permits continued federal capital subsidies, but does not require it. Indeed, there is evidence that the national intercity passenger rail system *does not* need subsidies, operating or capital. Amtrak fares per passenger mile are *higher* than that of both airlines and intercity buses, neither of which is subsidized (Figure 3).<sup>48</sup> Amtrak costs per passenger mile are four times that of intercity buses and 3.5 times that of airlines. Passengers already pay fares well above those of competing intercity buses and airlines (above the market rate for intercity passenger transportation). The subsidies simply finance Amtrak's excessive, above market costs. *If Amtrak were cost-competitive, the present service levels could be operated with no subsidy at all.*

Moreover, Amtrak is losing ground in cost control. While airlines and intercity buses have improved their performance over the past 25 years, Amtrak has become less productive (Figure 4).

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<sup>45</sup> A related argument is that other modes of transport received direct government aid in their early years, and only later transitioned to user fee financing. In that vein, it was argued during ARC deliberations that the proceeds from a 1943 to 1962 rail ticket tax (approximately \$18 billion in 2000\$, estimated from *US Statistical Abstract* data), spent for general purposes, should be made available retroactively for passenger rail. Contrary to the perception, before the interstate era, federal highway user fees exceeded federal highway expenditures by more than \$100 billion (1921 to 1956, [www.publicpurpose.com/hwy-us1921.htm](http://www.publicpurpose.com/hwy-us1921.htm)). In fact, Amtrak has already received \$44 billion (inflation adjusted) in federal funding ([www.publicpurpose.com/amtrak-subys.htm](http://www.publicpurpose.com/amtrak-subys.htm)), nearly 2.5 times the ticket tax revenue. Finally, passenger rail service was the beneficiary of massive government support in its early years, through land grants and other subsidies. Taxpayers should not have to live in fear that special interests will successfully mine Treasury archives to justify new spending on the pretext of revisionist interpretations that are applied to repealed tax policies. This would make federal tax policy even less rational and fair.

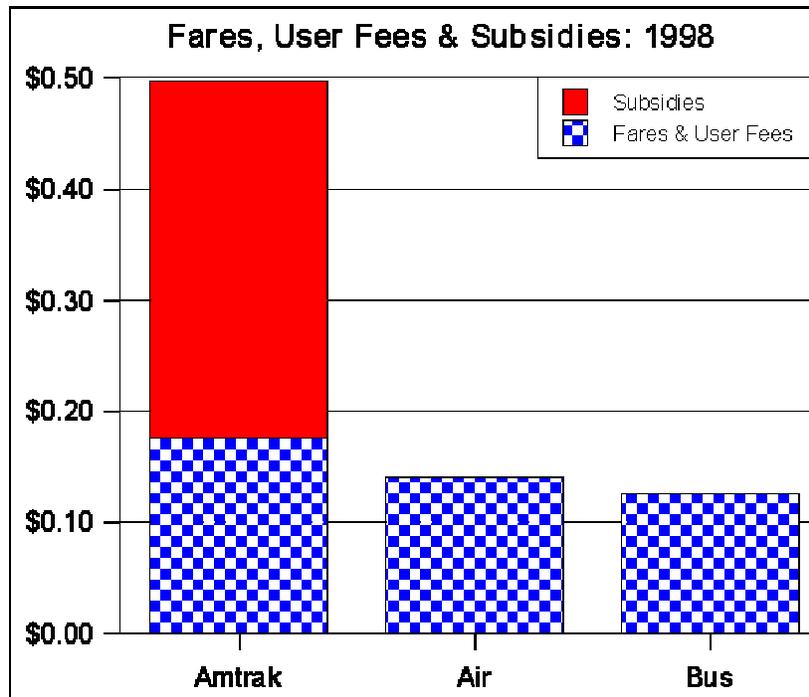
<sup>46</sup> Since 1999, federal air user fees have exceeded federal air expenditures. Small subsidies occurred before that time.

<sup>47</sup> It may be argued that the current highway and commercial air transport user fees may not be the most efficient form of pricing, and that the benefit received by users varies significantly in relation to payment. To the extent that this may be true, it would imply less than optimal distribution of fees among users, not the existence of subsidies.

<sup>48</sup> These airline and intercity bus revenues include profits, taxes and return on investment. Amtrak figures do not.

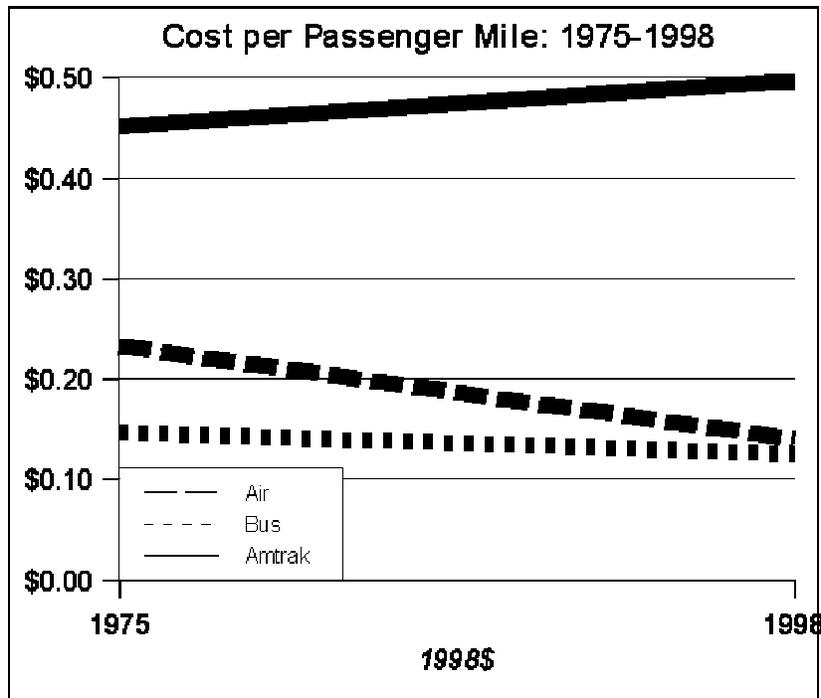
Amtrak has not been *under-funded*, it has been *over-funded*,<sup>49</sup> reflecting the reality that Amtrak's fundamental problem is not funding; it is cost control. The ARC *Action Plan* appropriately addresses excessive costs by proposing competitive franchising, but fails to recognize that, in the longer run, a cost competitive passenger rail system would not require subsidies.

***The Action Plan should have recommended phase out of subsidies (capital and operating) for intercity passenger rail.***



**Figure 3**  
Calculated from US Department of Transportation & Amtrak data.

<sup>49</sup> Calculated from 1998 Bureau of Transportation Statistics data (latest available)



**Figure 4**  
**Calculated from US Department of Transportation & Amtrak data.**

**Access to Infrastructure Should be Commercial:** The *Action Plan* would extend the current operational priority for Amtrak trains over freight rail rights of way. Further, the *Action Plan* would extend the federal requirement that Amtrak receive discounted pricing for infrastructure access, in effect taxing freight railroads to subsidize Amtrak.<sup>50</sup> Both of these provisions make freight railroads less competitive in their core business, reducing their capacity to handle freight volumes. Extending these provisions could force more rail freight business to trucks on the nation’s highways.

Among high-income nations, only the United States and Canada have significant freight rail operations. Even today, more ton mileage moves by rail than by truck in the United States and Canada, in contrast to elsewhere in the high-income world.<sup>51</sup> *There is little or no evidence that effective freight and passenger rail systems can share the same rights of way in a modern nation.*<sup>52</sup>

In the last 30 years, US freight rail companies have reduced their rate of market share loss to trucks by one-half. Rail ton mileage has nearly doubled. This has been possible because freight railroads have had to contend with much less interference from passenger trains since Amtrak began operations. It may be surprising that freight rail trends have improved in the era of interstate highways, during which it would have been expected that truck competitiveness would have accelerated relative to rail.

<sup>50</sup> This freight railroad subsidy to Amtrak is not included in the subsidy figures cited elsewhere in this statement.

<sup>51</sup> Wendell Cox, *Freight Rail’s Potential to Reduce Traffic Congestion*, Texas Public Policy Foundation, 2002 ([www.tppf.org](http://www.tppf.org)).

<sup>52</sup> In fact, genuine high-speed rail operations do not even share rights of way with conventional *passenger* trains, as in Europe and Japan.

The US experience is in stark contrast to elsewhere in the high-income world, where rail freight market shares *and* ton-mile volumes have fallen substantially. As a result, traffic congestion has become much worse --- trucks account for double the US share of all traffic Europe and five times the share in Japan. The high volume of trucks contributes to much higher urban traffic congestion in Europe and Japan<sup>53</sup>

American urban areas are already facing a serious highway traffic congestion crisis. Political pressures have made it virtually impossible to provide the urban highway capacity required to accommodate increasing travel demands. Federal Highway Administration projections indicate that truck volumes will double in the next quarter century, with a similar increase anticipated for freight railroads. Because they occupy the space of nearly four cars on freeways, trucks disproportionately contribute to urban traffic congestion. Moreover, despite the training of professional drivers, higher truck volumes retard highway safety. Trucks also contribute disproportionately to air pollution. Passenger rail pricing and access policies that drive rail volumes to trucks can only make the urban traffic congestion worse, with no material compensating benefit. To control urban traffic congestion, passenger rail policy should require access and pricing to be determined in the commercial market, not by legislative or regulatory fiat.

***The Action Plan should have recommended access and charges to be determined through commercial processes, to maximize the urban highway traffic reduction potential of freight railroads.***

**Effective Standards Should Apply to the Use of Air User Fees:** The *Action Plan* raises the potential of using air travel user fee revenues to support rail connections that would replace short distance air services. Such a program could be subject to abuse. As currently occurs in the transit program, local and state governments would be strongly pressured by the rail construction/railcar builder/rail consultant lobby to build systems that do not, in actual performance, achieve the purposes of the program. Regrettably, state and local governments have been inclined to build excessively costly infrastructure where federal funding is available.<sup>54</sup> Moreover, cost overruns, large subsidies and minimal impacts on traffic congestion have been typical with respect to rail infrastructure.<sup>55</sup>

A prerequisite to such use should be judicially reviewable findings that the rail system is likely to be commercially viable (would pay operating costs, capital cost and debt service from its own commercial revenues) and that substantial and sustainable commercial airline operation reductions would be achieved.<sup>56</sup> Further, the use of air user fees should be limited to securing debt. The local or state government airport owners<sup>57</sup> should be required to guarantee the self-sufficiency of any

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<sup>53</sup> [www.demographia.com/db-intltraffic.htm](http://www.demographia.com/db-intltraffic.htm).

<sup>54</sup> This is evident, for example, in federal clean water, wastewater and transit programs, where federal funding has been associated with unnecessarily expensive technologies.

<sup>55</sup> For example, Britain's under construction West Coast Main Line 140 mile per hour upgrade project has been reported to Parliament to have risen in cost from \$3.2 billion to nearly \$10 billion.

<sup>56</sup> These findings would be based upon planning studies, the projections of which would be financially guaranteed by airport owners as noted below.

<sup>57</sup> In the case of airports owned by regional authorities, the local government members would be required to provide full faith and credit financial guarantees.

such rail systems, paying any capital, debt service or operating shortfalls from their own general tax base (not airport user fees or federal funds).

The extent of air user fees that might be available for rail expansion is likely to be limited. Increasing burdens are being placed on air user fee revenue sources, with the need for expanding airports and improving security in the aftermath of the September 11 terrorist attacks. Finally, there is considerable question as to the potential for rail service to substitute for short distance airline operations (above).

***The Action Plan should have recommended strong safeguards to ensure that any use of air user fee revenues is consistent with the purpose of air substitution.***

**The Labor Provision is Unfair:** The *Action Plan* would require labor provisions beyond legal or contractual requirements. Amtrak employees already have among the strongest labor protections in the nation. Amtrak labor contracts provide for severance pay of up to 5 years, during which period Amtrak continues to pay for medical and dental insurance. In contrast, US Department of Labor surveys indicate that most US employees have *no* severance pay (Table 1), much less continuing health and dental benefits financed by former employers. Amtrak employees already have superior separation benefits,<sup>58</sup> which are ultimately guaranteed by taxpaying workers who typically have little or no coverage themselves.

Worse, the *Action Plan* would require the transfer of Amtrak labor contracts to new rail operators. A similar “successorship” provision was rejected by an Amtrak-union arbitration panel in 1999 and is *not* in current Amtrak labor contracts. Thus, the *Action Plan* would grant Amtrak’s unions special privileges that they were unable to win in the bargaining process. Further, the ARC labor proposal goes well beyond what even Congress has been willing to grant to Amtrak’s unions. Concerns have already been raised by Congressman James Oberstar, who offers wise counsel:

... the Council seems to have made promises to organized labor that it cannot possibly deliver. ... This would appear to greatly constrain the range of recommendations that the Council can put forth. I certainly hope that the Council would be wise enough to simply present its views, even if unpopular...<sup>59</sup>

Further, the *Action Plan* labor protection provision could sabotage state-based rail corridor projects intended to expand passenger rail services. As services are transferred to the states, the overly generous *Action Plan* provision would impose higher than competitive unit costs. This would necessitate larger subsidies, lower service levels or both.

Passenger rail’s potential can never be achieved if the interests of customers are subservient to those of employees (or management). In the private sector, businesses placing internal interests before customer interests fail. At Amtrak, operations continue, costs rise and inordinately large revenues

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<sup>58</sup> At average US employee compensation rates, this could approach a maximum advantage of up to \$200,000 for individual Amtrak workers (1999).

<sup>59</sup> Letter to Mr. Gilbert Carmichael, Chairman, Amtrak Reform Council, from Representative James L. Oberstar, Ranking Member, U. S. House of Representatives Committee on Transportation and Infrastructure, January 9, 2002.

are extracted from taxpayers for no public purpose. Amtrak employees should be entitled to no greater protection than their already superior benefits. More than that is both extravagant and unfair, especially in the era of Enron.

***The Action Plan should have simply recommended labor protection consistent with current labor contracts and applicable laws.***

Table 1 Amtrak & Average US Employee: Severance Pay				
Length of Employment	Amtrak Employees		Average US Employee	
	Wages	Medical /Dental	Wages	Medical /Dental
Under 2 Years	None	None	None	None
2 to 3 Years	0.5 Years	0.5 Years	None	None
3+ to 5 Years	1.0 Years	1.0 Years	None	None
5+ to 10 Years	1.5 Years	1.5 Years	None	None
10+ to 15 Years	2.0 Years	2.0 Years	None	None
15+ to 20 Years	3.0 Years	3.0 Years	None	None
20+ to 25 Years	4.0 Years	4.0 Years	None	None
Over 25 Years	5.0 Years	5.0 Years	None	None



Respectfully

submitted,  
Wendell Cox

C. MR. LEE KLING'S CONCURRING OPINION

☆ ☆ ☆ AMTRAK REFORM COUNCIL ☆ ☆ ☆

THE COUNCIL

February 4, 2002

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EXECUTIVE DIRECTOR

Thomas A. Till

Mr. Gilbert E. Carmichael  
Chairman  
Amtrak Reform Council  
400 Seventh Street, SW  
Washington, D.C. 20590

Dear Mr. Chairman:

I came on to the Amtrak Reform Council with no preconceived thoughts concerning Amtrak, nor necessarily any specific actions to be taken. Thus, I believe I have been able to take an open-minded and constructive view of the issues confronting Amtrak and the Amtrak Reform Council.

In the past few years, I have heard a lot and learned a lot more about passenger rail, and Amtrak in particular.

With this in mind, I support the Amtrak Reform Council's findings and the recommendations in this report.

I do believe, however, that while this suggested plan has considerable merit, this might not be the only plan possible, and changes and modification in it or a completely different plan might be in order, depending on what actions Congress might take.

Regardless of Congressional actions, if Amtrak in any form is to be funded and continued, changes in its operating manner must be made. I mean by this that Amtrak must operate on a more businesslike basis with greater fiscal controls, restrictions, and more accountability, with better financial planning for capital and operations and improved marketing programs and direction - whenever appropriate, Amtrak should consider and implement privatization.

☆ ☆ ☆ AMTRAK REFORM COUNCIL ☆ ☆ ☆

Mr. Gilbert E. Carmichael  
February 4, 2002  
Page Two

Congress, in its deliberation, should seriously consider eliminating political involvement and allow decisions to be made on what best makes operational sense. A national rail system is in our national interest, and needs to be adequately funded, but without political influence on day to day operational aspects.

The Council report speaks to modern train sets, fast train sets and greater track availability to accomplish modernization. This is what is needed to give our populous a means of moving through our country in a safe, fast and comfortable environment and one that will serve our disadvantaged and disabled citizens, as well as our more affluent. Of course, our national defense is a factor not to be overlooked in this equation, as well as the need for a more multi model means of transportation.

Having said all this, much work has been done by the Council members, its executive director and the staff in order to offer this analysis and report.

The report offers a well thought out, documented recommendation for propelling a sound national rail system. At its best the report will be accepted in its entirety. At the least, it will be a document to help let the debate begin.

Respectfully submitted,  
S. Lee Kling



Council member

\* I did not vote for the finding in November only because I thought the timing of the finding was inappropriate—not the fact.

## D. MR. CHARLES MONEYPENNY'S DISSENTING OPINION

### RAIL LABOR STATEMENT ON THE ARC "RESTRUCTURING PLAN"

Rail Labor has had a contentious relationship with the Amtrak Reform Council and its supporters since the day the ARC was formed. Among those named to the ARC at its inception were at least three individuals who had written about the need to end funding for Amtrak before they were put on the Council. Another freely admitted being a business competitor of Amtrak's. After reviewing this anti-Amtrak lineup Rail Labor predicted four years ago that this Council would recommend the destruction of Amtrak and the privatization of passenger rail in the USA. It is therefore hardly a surprise to us that they have done just that. What may surprise some is that there are some recommendations that the ARC has made with which Rail Labor can agree, either in whole or in part.

First and foremost, Rail Labor supports the Amtrak Reform Council's position that, should Amtrak be replaced by another carrier or carriers, that the new carriers would be required to take the existing Amtrak workforce, in seniority order, with their collective bargaining agreements intact. While Rail Labor has serious concerns about the wisdom of breaking up our national passenger rail system, and serious doubts about the interest and/or ability of any other passenger rail service provider, foreign or domestic, to qualify for this safety-sensitive operation, we appreciate the overwhelming majority of Council members who decided that Amtrak workers were not the problem.

Rail labor also supports the Amtrak Reform Council's call for more funding for passenger rail. The ARC has recognized that whoever is running the service will need both operating and capital subsidies. Had Congress afforded Amtrak the same recognition, there would be no need for this "restructuring plan." We disagree with the ARC majority's conclusion that private and even foreign corporations should be allowed the opportunity to access Federal funding on a scale that has never been afforded to Amtrak.

We also agree with the Council's recommendation that Congress properly fund those long-distance trains it wishes to keep. Rail Labor believes that the same recommendation ought to apply to our entire national passenger rail system. We have long found it disappointing that those in Congress who cry the loudest about having to fund Amtrak are among those who will fight the hardest to keep the train that runs through their state or district. Unfortunately, this is about where our list of things we agree on ends. The list of disagreements is a bit longer.

Rail Labor has made clear its belief that the Amtrak Reform Council acted unlawfully in reaching a "finding" on the issue of Amtrak's operational self-sufficiency. An unannounced vote on a "finding" motion which some Council members were allowed to see in advance while others were not, a motion on which the deciding vote was cast by a member who had to have it read to him over the phone, is not the way a body such as the council ought to do business.

We take particular exception to the Council's decision to quote selected portions of the DOT-OIG report on Amtrak. While the law clearly requires the Council to take this report into consideration, the ARC majority reached its decision on a finding two months before the report was even released. In addition the ARC staff, after being confronted, admitted at the January meeting that the DOT-OIG had in fact told them that there were circumstances under which Amtrak could reach operational self-sufficiency. This information was deliberately withheld from Council members by the Council staff.

Having reached its finding in peculiar fashion, the ARC has decided to send a set of recommendations which make no sense from either a political, railroad, or common-sense perspective.

The ARC, for instance has recommended separating the infrastructure of the Northeast Corridor (NEC) from train operations. This recommendation is made in spite of the testimony of every single state Department of Transportation in the Northeast Corridor that the ARC should not make such a recommendation. New Jersey for instance said, at public meetings called by the ARC, "(We) believe that the current structure for delivering intercity rail passenger service has served us well and should remain unchanged." Connecticut said that it, "could not concur with the recommendation calling for separating Amtrak operations and infrastructure." Pennsylvania warned of the dangers of creating more bureaucracy. "Two organizations having two purchasing departments, two accounting departments..." Massachusetts said that it "has long recognized Amtrak's pivotal role as a partner in the regional transportation network," and added that the ARC's proposal, "may make it easier to see the funding problems but would increase the complexity of identifying and implementing solutions." The State of Maine echoed the fears of New Jersey of a "Balkanized infrastructure."

After listening to this unanimous opinion from the states through which the NEC runs, the ARC majority inexplicably ignored their testimony and recommended separation of the infrastructure. Why? We believe that the answer lies in a news analysis of the rail privatization scheme in the United Kingdom, where the infrastructure was also separated with disastrous results. The BBC reporter concludes that the infrastructure was separated because it made the system "easier to privatize."

The ARC majority's preference for the UK model of privatization is best exemplified by a letter sent to the Associated Train Operating Companies (ATOC) in Great Britain by the Council's Executive Director, Thomas Till. In the letter, written a week before the Council's January meeting, Till implores these foreign corporations to express some interest in running American passenger trains. Of the twenty-six train operating companies in the association, Till told reporters that four wrote back expressing some interest. He has yet to identify any of the four to the Council. And, if letters were sent to any other companies, foreign or domestic, pleading with

them to show interest in running passenger trains, the Council staff has not shared them with the council members.

The ARC's reluctance to discuss their yearning for a UK solution is understandable. The British rail privatization scheme, upon which the ARC has clearly based its recommendation, is an absolute, unqualified disaster. Books are already being written in Great Britain lamenting the God-awful state of their rail system since privatization. To cite just a few news reports, The London Times reported last month that one of the Government's top ministers called Britain's trains "the worst in Europe." The Times quoted a local official concerning the common delays on the system. The official said that "Our railways are beginning to resemble the Bermuda Triangle." The news website Ananova and other sources report ongoing plans for a grass-roots passenger led call for a national boycott of the system. BBC News reported last year that some fares on the privatized routes have risen as much as 80% over the last three years, that the fares are now among the highest in the world, and that customer patience is at "near breaking point." The Economist reported in a story entitled "Back to the Steam Age" that "Journey times on some trains are back to what they were a century ago." And Great Britain's grand experiment of separating infrastructure (Railtrack) from train operations has ended in disaster. An official report on one of the more recent catastrophic train wrecks in the UK "condemned in measured, telling terms" the "safety culture" at Railtrack. London's Channel 4 news quoted one harricd employee as saying, "The priorities (before privatization) were safety, customer care, and revenue, now it is revenue, revcnuc, revenue." Rail labor absolutely rejects the notion that what failed so tragically over there will somehow work well over here.

Rail Labor finds just plain silly the recommendation that the new, franchised train operators should "be shielded from political influences." As long as Congress is appropriating monies for a national rail system, it is our belief that Congress will, and should, have something to say about where and how the trains run. The notion that a "private-sector, for-profit company," as described by the ARC majority, will take state and Federal funding and yet ignore the "political influence" of those who authorize and appropriate the money is nonsensical even for this group.

Rail Labor also asks that those who read this report note the difference in terminology in discussing who should run what trains. The ARC calls Amtrak a "monopoly structure", yet in recommending the option of implementing the UK privatization plan, the Council majority suggests that a "limited number of franchises" have "exclusive rights to operate services or routes", or, in other words, a monopoly. Rail labor believes that a franchisee with a contract monopoly for a given number of years will have little interest in improving equipment, training, and other aspects of the service since they may well not win the contract next time out. This limited-time-only monopoly seems to us to present the same long-term dangers to the safety and continuity of the service that have occurred in Great Britain.

Rail Labor has serious concerns about the extent to which the ARC's plan breaks up our national passenger rail service. The ARC majority recommends turning what once was Amtrak into three different operations, each of which could contract out any or all of its operation to one or more subcontractors. It is widely believed that those who administered the privatization plan in the UK deliberately broke the scrvicce up into so many pieces that it would be impossible to

“renationalize” it. Some of the most horrific accidents in recent British history have been caused primarily by confusion between different contractors with different goals and responsibilities. Our country should think long and hard before repeating that mistake.

Finally, Rail Labor wishes to remind those reading the report of an important fact that seems lost on the ARC majority. Passenger rail service was privatized in this country. Railroads ran both freight and passenger services until the late 60's and early 70's. Amtrak was created, by a Republican President to, in the words of the ARC majority “*relieve freight railroads from the financial burden of operating passenger rail service.*” (emphasis mine). Some railroads, such as Conrail, had to go back to Congress in the early 80's and plead to be relieved of the responsibility of running commuter service as well. The requirement to provide passenger service was so costly to the railroads that this nation might well have lost its rail freight system as well had not President Nixon created Amtrak. After more than four years of searching, the ARC majority has been unable to identify a single qualified railroad in this entire country willing to take on the burden of passenger rail service. This helps to explain their frantic last-minute attempts to reach British rail carriers to see if perhaps foreign corporations could do what our freight railroads (which the ARC reminds us are, “the best in the world”), could not do, run American trains at a profit.

In closing, let us state the obvious. There is no group which has given more to keep America's railroad running than Amtrak workers. The burden of the self-sufficiency goal has been carried for far too long by Amtrak's human capital, the men and women who keep the trains running every day. Years of wage freezes, job cuts and give-backs have left Amtrak workers with the lowest wages of any unionized rail workforce in the country. They are, as of this writing, working under contracts which expired more than two years ago. And yet we are no closer to the impossible dream of self-sufficiency

Five years ago, when the Amtrak Reform and Accountability Act was passed, many in Congress pointed the finger at rail labor as the real problem with Amtrak. Accordingly provisions of law which had covered Amtrak employees since the railroad was created were eliminated or modified, and our collective bargaining agreements were amended by Congress. Some assumed that this would solve the problem.

Five years later, the Amtrak Reform Council has decided that labor is not the problem at all. The finger is now pointed at Amtrak management. Vague attacks on the “corporate culture” at Amtrak are offered as evidence that if the management of the railroad is changed, then that would solve the problem. Having been the victim of that “blame game,” rail labor declines the opportunity to point the finger at Amtrak management as the cause of this railroad's problems.

In fact, when one cuts through the ARC majority's ideologically driven “solutions” to the passenger rail crisis, the Council's analysis of the real problem is one on which Council members, Amtrak workers, both labor and management, and Amtrak customers can all agree. “*The Council believes that long term sources of funding are needed to meet the operating and capital needs of the intercity passenger rail program.*” (ARC final draft, page ii, Executive Summary, emphasis mine) To that, we can only say, “No kidding.”

The workers and passengers who have worked so long and hard to keep Amtrak alive deserve better than some of the half-baked proposals contained in the ARC majority's report. Plans to create multiple divisions of our passenger rail system, contracted out to companies which the ARC majority can't even identify and may not even exist, add nothing to the debate about Amtrak's future, and needlessly frighten our members and our customers. Rail Labor remains committed to working with any and all interested parties in creating a "national intercity rail passenger system", as the law instructed the ARC to do. Rail Labor believes, however, that the ARC majority has failed completely in that assignment.

C. Moncypenny  
2/05/02

## APPENDIX II: FINDING RESOLUTION

### A Declaration by the Amtrak Reform Council

#### *Preamble*

*Whereas*, the Amtrak Reform Council is charged with oversight of Amtrak's performance under the Amtrak Reform and Accountability Act, and

*Whereas*, the Council has reached a judgment regarding Amtrak's performance, and

*Whereas*, the Council believes that passenger rail can and should have a bright future in America, and

*Whereas* the Congress has declared that a national system of intercity rail passenger service is essential to the overall transportation needs of America, and

*Whereas* there are a variety of ways to realize this end, and

*Whereas* the Council has studied Amtrak's institutional structure and performance and has concluded that Amtrak, as it is currently structured, funded, and operated, is not capable of delivering the improvements in passenger rail service that are needed, and

*Whereas* the Council will provide recommendations for reform that can be implemented by a transition that minimizes interruption of service and impact on the employees, and

*Whereas* there is indisputable evidence that throughout the years since enactment of the Amtrak Reform and Accountability Act, Amtrak has not made any significant progress toward operational self-sufficiency —

## *Resolution*

The Amtrak Reform Council on this 9<sup>th</sup> day of November 2001, resolves that –

1. Pursuant to Section 204 of the Amtrak Reform and Accountability Act of 1997 (Public Law 105-134) (ARAA), the Amtrak Reform Council, after taking into account and giving due and careful consideration to all the relevant factors set forth in that section, formally finds that Amtrak's business performance will prevent it from meeting the financial goals set forth in 49 U.S.C. 24101(d).
2. Pursuant to Section 204 of the ARAA, the Amtrak Reform Council, after taking into account and giving due and careful consideration to all the relevant factors set forth in that section, formally finds that Amtrak will require operating grant funds after December 2, 2002.
3. Pursuant to Section 204(a) of the ARAA, the Council shall immediately notify the President, the Committee on Commerce, Science and Transportation of the United States Senate and the Committee on Transportation and Infrastructure of the United States House of Representatives of the above findings.
4. Pursuant to Section 204 (c) of the ARAA, the Council shall develop and submit to the Congress an action plan for a restructured and rationalized national intercity rail passenger system within 90 days of the above findings.

## Statutory Factors Considered in Finding

The Amtrak Reform Council has reached its finding that Amtrak will not achieve operational self-sufficiency by the statutory deadline of December 2, 2002. Nor will Amtrak, with a flawed institutional framework and incentives, reach self-sufficiency by any reasonable later date. The Council has also found, for the same reasons, that Amtrak, as structured and operated today, will require operating grant funds after December 2, 2002.

As required by the Amtrak Reform and Accountability Act (ARAA), the Council has considered the following factors in reaching these conclusions.

### A. Amtrak's Performance

1. Amtrak's financial performance is worsening. Amtrak's FY2001 performance was worse than its performance in FY2000 and is in a weaker financial position than prior to passage of the ARAA.
2. Amtrak finished FY2000 more than \$100 million behind its own Strategic Business Plan. Its operating loss for purposes of the self-sufficiency test was \$290 million<sup>1</sup>.
3. For the first nine months of FY2001, the most recent period for which the Amtrak Reform Council has received Amtrak's financial statements, Amtrak was \$34 million behind its Strategic Business Plan, and Amtrak was also \$50 million behind its actual performance for the first nine months of FY2000.
4. Annualizing Amtrak's nine-month results suggests that for FY2001, Amtrak will report operating performance \$185 million worse than its business plan, resulting in a loss of approximately \$365 million for self-sufficiency test purposes. Because Amtrak's practice has been to heavily back-load projected operating improvements in its Strategic Business Plans to the final quarter of the fiscal year, the loss for purposes of self-sufficiency could be more than \$365 million.
5. Amtrak is not on a glide-path to operating self-sufficiency. The statutory deadline of December 2, 2002 for operational self-sufficiency is not a finish line. It is instead the starting point from which Amtrak must sustain operations over the long run without federal operating assistance. Amtrak's contentions to the contrary, simply meeting an annual target for reduced federal operating funding does not mean Amtrak is making meaningful strides toward self-sufficiency. Amtrak has been able to continue operations with more limited federal operating funds by using Taxpayer Relief Act (TRA) capital funds for operating purposes and by engaging in counterproductive practices and transactions that have weakened the overall financial and physical condition of the company. Federal operating grants for Amtrak may be

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<sup>1</sup> Importantly, this is the self-sufficiency test as it has been defined by Amtrak. This definition excludes depreciation and other non-cash items, capital funds used for certain equipment maintenance expenses that are actually operating expenses ("progressive overhauls"), and excess Railroad Retirement taxes. On a Generally Accepted Accounting Principles (GAAP) basis, Amtrak's loss was \$943 million in fiscal year 2000.

declining, but Amtrak's losses for purposes of operational self-sufficiency are increasing (see Attachment 1). Actions taken by Amtrak that are probative that it is not on a glide-path to operating self-sufficiency include, but are not limited to, the following:

- (a) Tripling Amtrak's debt in the past five years to about \$3 billion<sup>60</sup> including more than \$1 billion due to the sale, leaseback and financing of existing equipment and other assets. Specifically, three FY2000 sale-leaseback transactions totaling \$915 million raised \$124 million of additional funds not included in Amtrak's FY2000 Strategic Business Plan. These additional funds were used to offset cash flow shortfalls resulting from actual FY2000 performance that was approximately \$100 million below its Strategic Business Plan.
  - (b) Mortgaging a portion of Penn Station to obtain a \$300 million loan that was used to avoid running out of cash in FY2001.
  - (c) Deferring maintenance of way expenditures called for in Amtrak's Strategic Business Plan levels in FY2001. These reductions offset increases in other operating expenses, but they reduced Northeast Corridor maintenance below levels needed to sustain operational reliability.
6. Amtrak's assets are deteriorating from deferrals of maintenance expenses as evidenced by increases in numbers of hours of delay on the Northeast Corridor due to infrastructure problems (see Attachment 2).
  7. Amtrak has been unable to meet its goals for revenue growth and cost containment.
    - (a) Initiation of Acela Express service, Amtrak's showcase product and the linchpin for achieving operational self-sufficiency, was delayed more than a year. Even at this writing, only 14 of 20 Acela trainsets are in service. The ramp-up to expected ridership and revenue levels (incremental revenues of \$300 million annually and profit contribution of \$180 million) has also been slower than expected. Of most concern is that when it became apparent that Acela would be delayed, Amtrak did not implement a contingency plan to reduce costs or increase other revenues.
    - (b) Amtrak mail and express is growing more slowly than expected.
    - (c) Amtrak's ridership and revenues in FY2001, while up over FY2000, were 5.1 percent and 8.4 percent respectively below Amtrak's Strategic Business Plan.
  8. Amtrak's costs have been growing faster than its revenues. Amtrak has projected significant overall cost reductions in its strategic business plans since 1999. Amtrak, however, did not define specific cost reduction initiatives until FY2001, and those proposals total only \$75 million annually, exclusive of any savings from Amtrak's reduction in force currently being implemented, clearly inadequate to meet Amtrak's strategic business plan projections.

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<sup>60</sup> The approximately \$3 billion of debt includes almost \$1 billion of debt that is economically but not legally defeased. Even excluding such defeased debt, Amtrak's debt has more than doubled.

9. Amtrak first took action to reduce management overhead costs well into FY2001. This was more than three years after the self-sufficiency requirement was established and after Amtrak chose to take a \$300 million loan on a portion of Penn Station.
10. The Council is aware that Amtrak recently retained the consulting services of McKinsey and Company in an effort to improve its financial performance. Amtrak has not informed the Council of the scope of McKinsey's work (which, according to Amtrak, is not yet completed) and the Council thus cannot comment on it. However, to have had an impact on Amtrak's ability to reach self-sufficiency by December 2, 2002, McKinsey's recommendations would have needed to have been implemented at least one to two years sooner.
11. At the outset of this critical fiscal year, Amtrak had no Board-approved, strategic business plan in place. The Council believes that unless Amtrak has at least a preliminary business plan developed and in place well before the start of a fiscal year, with specific financial, operating and service goals identified and monitored by managerial responsibility center, Amtrak will not achieve its Strategic Business Plan objectives.
12. Amtrak does not use its strategic business plans effectively to manage Amtrak and bring about change. Amtrak's FY2000-FY2004 Strategic Business Plan, for example, contained a total of \$737 million in undefined management actions to reduce costs. Amtrak's FY2001 Business Plan was not released until the second quarter of the fiscal year.
13. Except with respect to certain statutorily-mandated changes in employee protection conditions, Amtrak has made no use of the reforms enacted under the ARAA. Although Amtrak was given authority to cut unprofitable routes, it has not done so. Although the Reform Act provided Amtrak with new authority to contract out operations where cost savings could result, it has not taken any such actions. Indeed, Amtrak did not even place the "contracting out" issue on the bargaining table until June 2000, although the statute required it to do so by November 1, 1999.
14. Amtrak has no standard in place by which to measure the productivity of its work force. As the GAO concluded, the development of such a standard is essential if Amtrak is to control its labor costs, which constitute over 50 percent of its operating costs. Amtrak also has no standards in place to measure the productivity of capital, energy, or materials, which constitute the remainder of its costs.
15. In the business judgment of the Council, Amtrak could have taken more effective measures to meet operational self-sufficiency. If Amtrak had been on top of its business plans earlier, it could have implemented contingency plans of corrective actions to offset the delay in the introduction of Acela Express. It also could have undertaken cost cutting measures, particularly overhead cost reductions. Amtrak has not made an effective attempt to achieve self-sufficiency.

B. The Findings of the Inspector General of the U.S. Department of Transportation

1. In his September 2000 report to Congress, the Inspector General of the U.S. Department of Transportation ("IG") concluded that "Without major corrective action Amtrak will not achieve operating self-sufficiency in 2003." The report noted that ridership and revenue trends were positive but that expenses were growing faster than revenues and had kept Amtrak's cash loss from declining. The IG concluded that Amtrak needed to curtail expense growth to achieve operational self-sufficiency "Amtrak's Plan projects operating self-sufficiency largely on the back of the \$737 million in undefined management actions... Time is running short to develop and put into place the meaningful actions needed to close the gaps we have identified."
2. In testimony before the Railroad Subcommittee of the House Transportation and Infrastructure Committee in July, 2001, the Inspector General stated that "Amtrak's financial performance has not met expectations and Amtrak's ability to meet its self-sufficiency mandate is in serious jeopardy. . . . Amtrak's window for incrementally improving its bottom line is rapidly closing. Amtrak has not been successful in closing significant portions of the gap each year, and now has very little time to reduce its annual cash losses by over \$300 million." The Inspector General went on to note that: "We have no doubt that Amtrak could make the kind of draconian cuts necessary to meet its self-sufficiency mandate on time, but it should not do so at the cost of the assets and human resources necessary to maintain a healthy railroad beyond 2003. Such a victory would be hollow and have serious repercussions for the future of intercity passenger rail." The Inspector General encouraged Congress to act sooner rather than later on the subject of Amtrak's future.
3. The Inspector General's office is expected to issue its report on Amtrak's actual performance and its FY2001 Strategic Business Plan at the end of November, 2001. Although the report itself is not available at this time, discussions regarding the report were recently conducted by the staffs of the Amtrak Reform Council and the Inspector General. Based on these discussions, it is evident that the Inspector General and the Council have reached comparable conclusions about Amtrak's performance in FY2001. The Inspector General's staff believes the terrorist attacks on September 11<sup>th</sup> may cause a sustainable increase in Amtrak ridership, particularly on the south end of the Northeast Corridor, but that this alone will not enable Amtrak to achieve self-sufficiency.

C. The Level Of Federal Funds Available For Carrying Out Amtrak's Financial Plan

1. The ARAA authorized appropriations for Amtrak totaling \$5.2 billion for the fiscal years 1998 through 2002. Amtrak's actual appropriations over this period total \$2.8 billion, or about 55 percent of the authorized amount. Amtrak, however, also received \$2.2 billion in grants under the Taxpayer Relief Act over this period, bringing Amtrak's total appropriations to \$5.0 billion, or about \$150 million short of the total funding authorized.
2. Amtrak did not effectively utilize the approximately \$2.2 billion of TRA funds it received. Although, Amtrak represented that TRA funds would be used primarily for high-return capital expenditures, about 25 percent of total TRA commitments were used for expenditures that

most companies and Generally Accepted Accounting Principles (GAAP) would treat as ordinary operating expenses.

3. In each of the first four years of the five-year period for achieving operational self-sufficiency, Amtrak received the amount of funding its Strategic Business Plans forecast as needed to achieve operational self-sufficiency. Amtrak did not suggest it needed, nor did Amtrak request, funding at the fully authorized level.<sup>61</sup> Amtrak's business plan for the period FY2001-FY2005 stated that Amtrak would need to receive a grant at the fully authorized level of \$955 million. Amtrak's actual appropriation is \$521 million or \$434 million less than requested for FY2002. Amtrak supported this lower appropriation, however, concluding that receiving the full \$521 million at the beginning of the fiscal year would be more valuable to Amtrak than receiving only 40 percent of \$955 million at the beginning of FY2002 and the remaining 60 percent at the end of the year.
4. It is arguable whether Amtrak would have achieved self-sufficiency as of December 2, 2002 if it had requested and received both the TRA funds and all authorized funds (a total of \$7.4 billion). In the business judgment of the Council, while another \$2.4 billion in funding over the period FY1998-FY2002 might have enabled Amtrak to start operations after December 2, 2002 without immediate resort to federal operating assistance, it would not have enabled Amtrak to sustain operational self-sufficiency over the long term. Based on Amtrak's use of TRA funds and Amtrak's lack of effective management tools and business focus, it is the business judgment of the Council that Amtrak would not have effectively spent the money on capital projects necessary to improve its bottom line. Indeed, Amtrak did not even define its long-term capital needs until fiscal year 2001. Moreover, Amtrak's capital needs are so vast that the \$2.4 billion, even if effectively spent, would only have covered a small percentage of Amtrak's essential needs, including deferred maintenance.

D. Acts Of God, National Emergencies, And Other Events Beyond The Reasonable Control Of Amtrak

1. The terrorist attacks on September 11<sup>th</sup> caused a brief spike in Amtrak's ridership. For the month as a whole, however, Amtrak's ridership was 6.4 percent lower than in September, 2000, and was 16.3 percent less than projected in Amtrak's Strategic Business Plan. It is too soon to tell whether Amtrak will attract additional riders in the coming months due to lengthier security procedures at airports.
2. Higher ridership and revenue could help improve Amtrak's financial condition. However, Amtrak has historically been unable to convert increases in ridership to bottom line profitability. This pattern is apparently not changing. As part of its initial request for \$3.2 billion in emergency funding, Amtrak said that it needed \$77 million to cover incremental

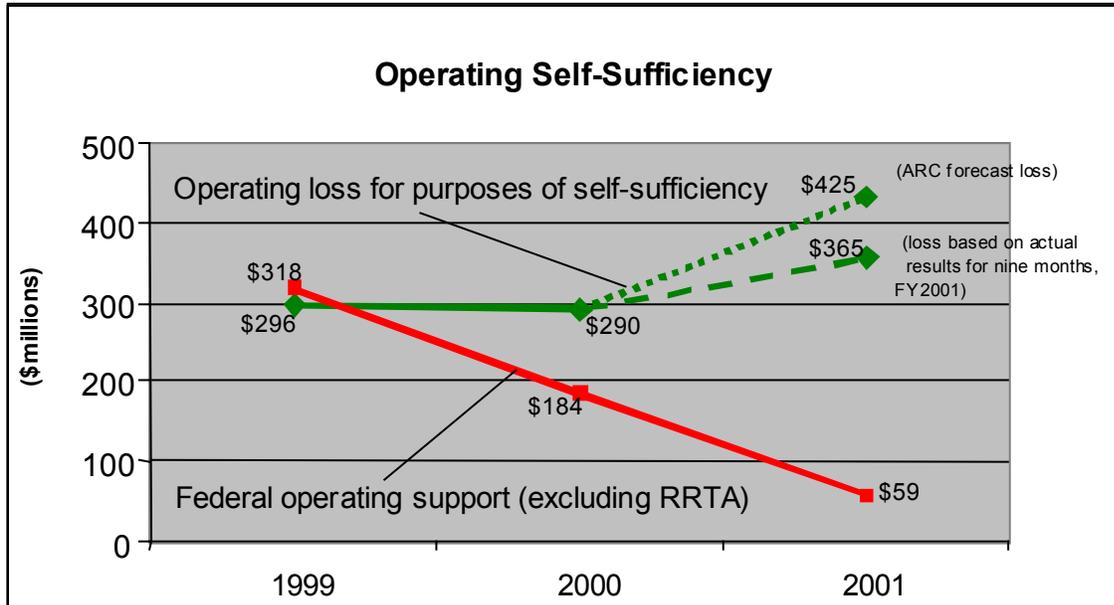
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<sup>61</sup> See Amtrak's Strategic Business Plan FY1999 - 2000, p. 51. Under key assumptions, Amtrak's plan assumes receiving the TRA funds and that a "Federal capital appropriation is equal to \$609 million for FY1999." See also Amtrak's Strategic Business Plan for FY2001 - 2005, p. 25. Key assumptions include "Amtrak receives \$521 million from a federal capital grant in FY2001, and a federal capital appropriation in FY2002 at or above Amtrak's authorized level of \$955 million."

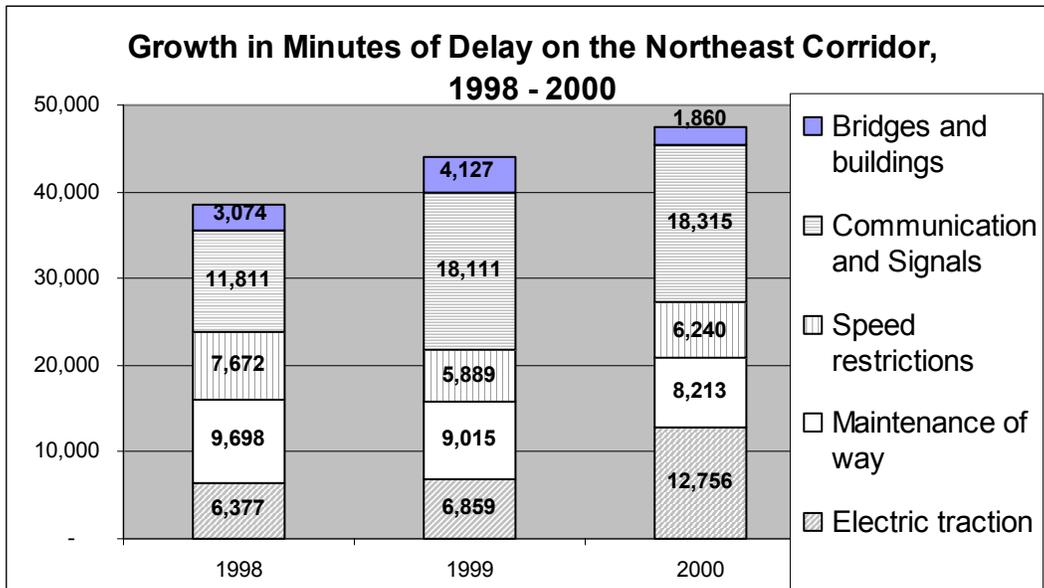
operating losses associated with in 15-20 percent increase in ridership after September 11<sup>th</sup>. These added costs were attributed to overtime, reservation services, and mechanical terminals, not to security-related expenses.

3. The events of September 11<sup>th</sup> are not the reason Amtrak will fail to achieve self-sufficiency. Amtrak will fail to pass the test because it will not have used the past five years to get its house in order by better managing revenues, expenses and productivity. September 11<sup>th</sup> has demonstrated, however, that rail passenger service can provide an important complement to other modes of transportation. It has become even more important to reform Amtrak, or replace it if necessary, to achieve efficient, productive and service-conscious passenger rail service in the United States.

Finding Resolution: Attachment I



Finding Resolution: Attachment II



☆ ☆ ☆ AMTRAK REFORM COUNCIL ☆ ☆ ☆

THE COUNCIL

November 12, 2001

Gilbert E. Carmichael  
*Chairman*

The Honorable George W. Bush  
President

Paul M. Weyrich  
*Vice Chairman*

United States of America

Bruce Chapman

The White House

Nancy Rutledge Connery

Washington, D.C. 20500

James E. Coston

Dear Mr. President:

Wendell Cox

Christopher K. Gleason

This letter transmits, as provided for in section 204 (a) of the Amtrak Reform and Accountability Act of 1997 (Reform Act), a finding by the Amtrak Reform Council that Amtrak will not be operationally self-sufficient by December 2, 2002, as the Reform Act requires. Also provided is a companion document that sets forth the grounds for the Council's decision.

S. Lee Kling

Hon. Norman Y. Mineta

Charles Money Penny

Hon. John O. Norquist

Amtrak's financial performance over the past four years has provided clear and indisputable evidence for this conclusion. Amtrak has made no significant progress toward self-sufficiency. But the problem goes much beyond financial performance.

EXECUTIVE DIRECTOR

Thomas A. Till

In the Council's assessment, there are major inherent flaws and weaknesses in Amtrak's institutional design. Amtrak simply cannot conceive and implement the improvements that are needed in intercity rail passenger service in the United States. America has a critically-flawed rail passenger company. America needs a sound passenger rail program.

A growing number of states, regions, and corridors are placing increased reliance on improved intercity passenger rail service in short- to medium-haul corridors. The challenges they face as they seek to expand economical and well-planned passenger rail services are complicated by the lack of a responsible program structure at either the state or federal level. A new program must encompass effective organizations and related funding mechanisms to support both train operations and the provision of adequate infrastructure.

This is why the Council believes that the reauthorization debate for passenger rail service in the second session of the 107<sup>th</sup> Congress must be like no other such debate before it. The coming debate must address root causes and real reforms, not simply apply more funding through an approach that has failed again and again.

The Council believes that, under a program that fosters imaginative and innovative approaches, intercity passenger rail transportation can and should play a larger and growing role in selected corridors.

The plan ("an action plan for a restructured and rationalized national intercity rail

JM-ARC, Room 7105  
400 Seventh Street, SW

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Phone: (202) 366-0591

Fax: (202) 493-2061

Washington, DC 20590

☆

*The ARC is an independent federal commission established under the Amtrak Reform and Accountability Act of 1997 (P. L. 105-134)*

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passenger system”) that the Council sends to the Congress within 90 days, as called for by the Reform Act, will provide the Council’s recommendations for the needed reforms.

Very truly yours,



Gilbert E. Carmichael  
Chairman

Enclosures

Identical Letters to: The Honorable Ernest F. Hollings,  
Chairman  
Committee on Commerce, Science and Transportation  
U. S. Senate

The Honorable Don Young  
Chairman  
Transportation and Infrastructure Committee  
U. S. House of Representatives

## APPENDIX III: AMTRAK'S CAPITAL PLAN

### Summary of Passenger Service Funding Needs (FY2001 -- FY2020)

<b>Total Need</b> (millions of 2000 \$)
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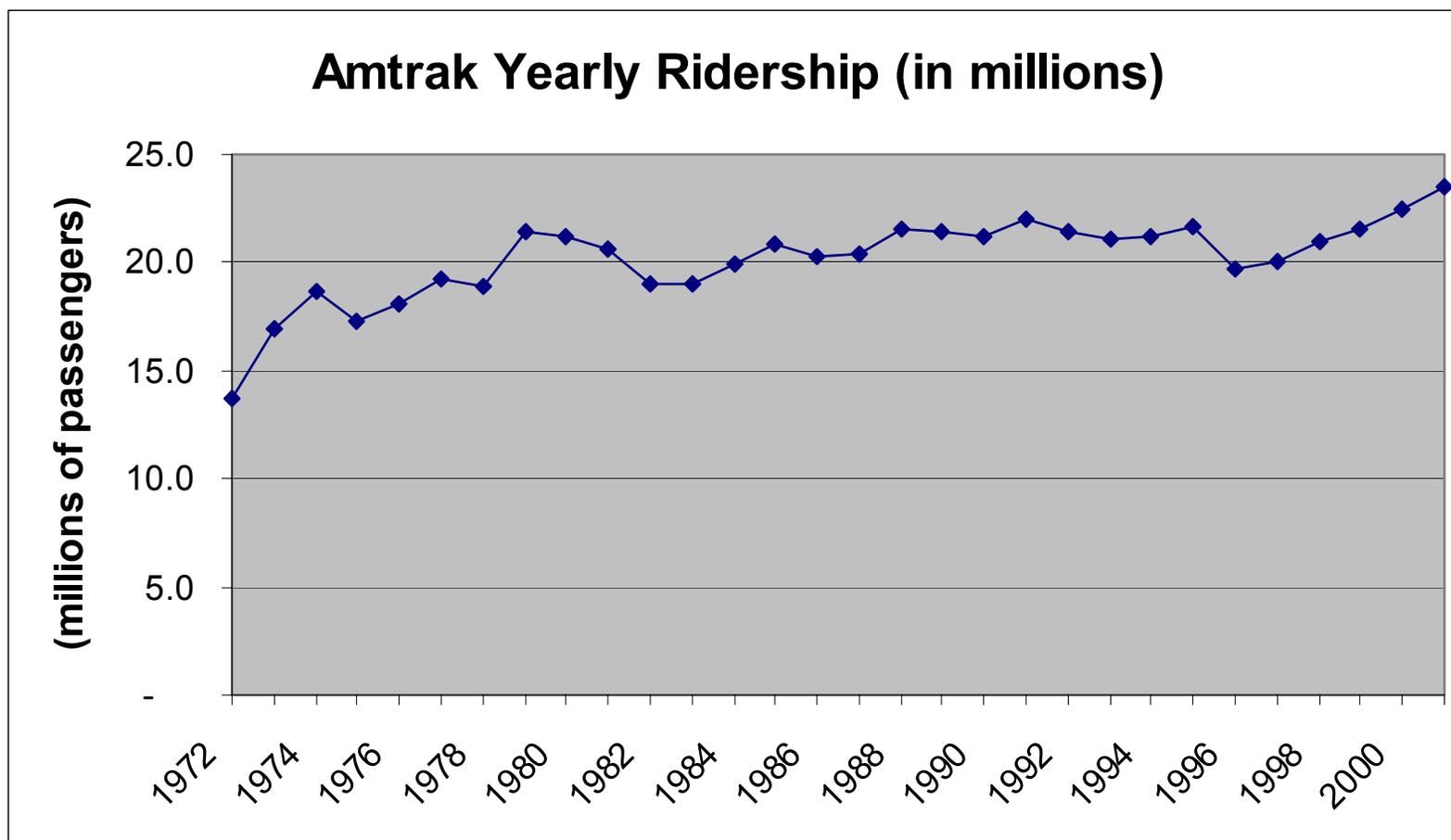
#### AMTRAK ESTIMATE

Capital Project Category
Northeast Corridor Infrastructure
Other Infrastructure
Other Corridors
Long-Distance Point-to-Point
Equipment
Stations/Facilities
Mail and Express
Information Technology
Debt Service
Program Management
<b>Grand Total</b>

Current Service Needs	Growth Service Needs	Total Need
\$ 6,949	\$ 15,830	\$ 22,779
\$ 2,734		\$ 2,734
	\$ 34,190	\$ 34,190
	\$ 8,865	\$ 8,865
\$ 5,985	\$ 10,980	\$ 16,965
\$ 2,590	\$ 3,160	\$ 5,750
\$ 1,015		\$ 1,015
\$ 1,330		\$ 1,330
\$ 2,790	\$ 155	\$ 2,945
\$ 200	\$ 400	\$ 600
\$ 23,593	\$ 73,580	\$ 97,173

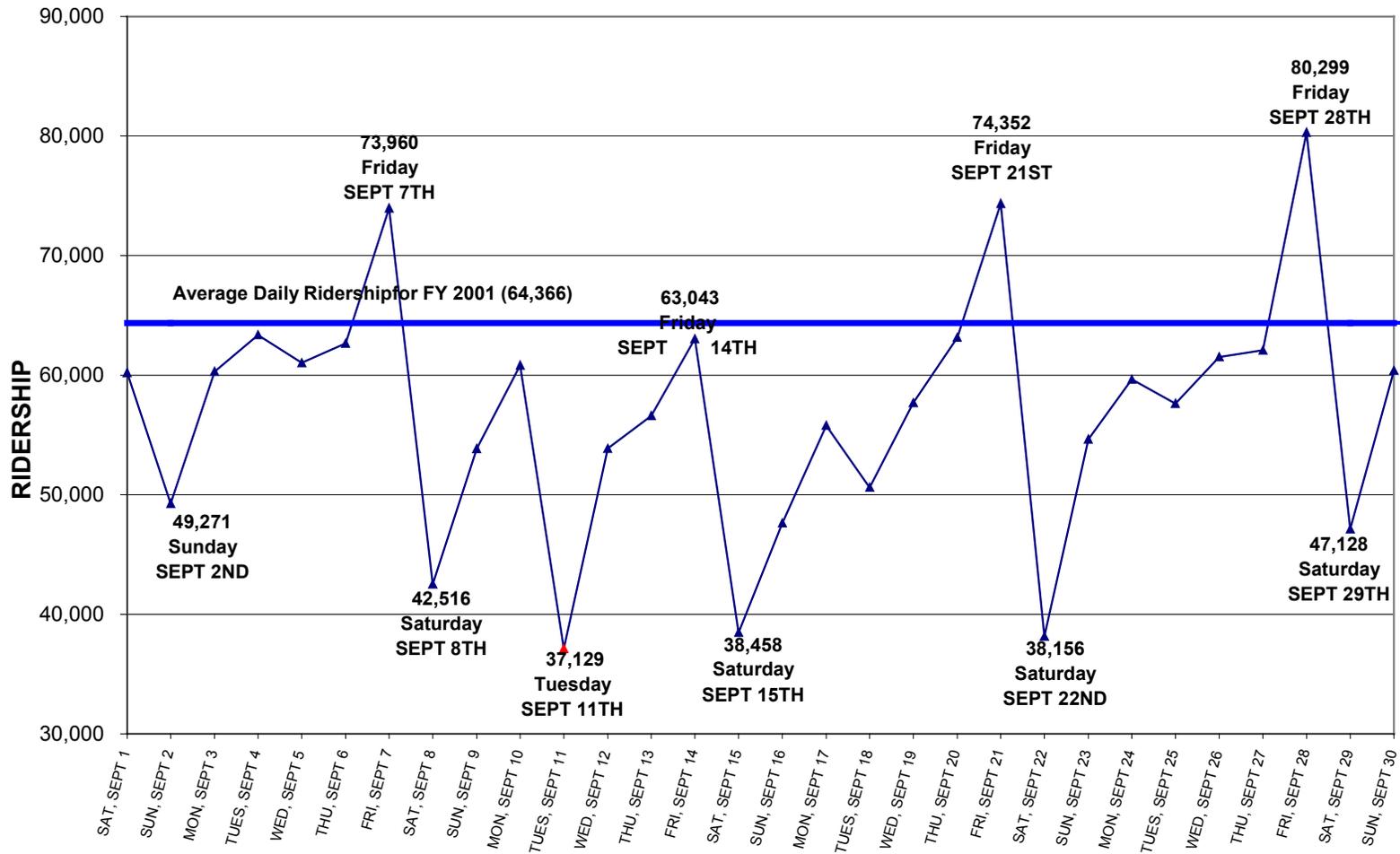
## APPENDIX IV: AMTRAK RIDERSHIP

### A. AMTRAK RIDERSHIP 1972 - 2001



**B. AMTRAK SEPTEMBER RIDERSHIP 2001 CHART**

**AMTRAK SEPTEMBER 2001 RIDERSHIP 6.4% Less Than Last Year**



C. AMTRAK SEPTEMBER RIDERSHIP 2001 ACTUAL NUMBERS

Date Of Departure		NEC SBU		Intercity SBU		Western SBU		TOTAL AMTRAK SYSTEM	
Date	Day	Riders	Revenue	Riders	Revenue	Riders	Revenue	Riders	Revenue
Sep. 01	Saturday	25,997	1,340,053	16,979	1,290,831	17,226	452,298	60,202	3,083,183
Sep. 02	Sunday	20,917	1,093,434	14,272	1,141,723	14,082	378,041	49,271	2,613,199
Sep. 03	Monday	30,464	1,906,222	14,889	1,093,853	14,957	524,391	60,310	3,524,466
Sep. 04	Tuesday	38,528	1,812,953	12,590	999,369	12,242	271,895	63,360	3,084,216
Sep. 05	Wednesday	38,347	1,876,089	10,997	974,508	11,680	249,496	61,024	3,100,093
Sep. 06	Thursday	39,649	1,991,643	12,052	1,033,994	10,963	242,626	62,664	3,268,263
Sep. 07	Friday	44,970	2,378,200	13,976	1,042,554	15,014	318,047	73,960	3,738,802
Sep. 08	Saturday	19,079	971,803	11,759	952,070	11,678	288,423	42,516	2,212,295
Sep. 09	Sunday	27,998	1,679,695	13,466	1,057,726	12,374	304,480	53,838	3,041,900
Sep. 10	Monday	39,498	2,057,775	9,992	829,381	11,323	298,629	60,813	3,185,785
<b>Sep. 11</b>	<b>Tuesday</b>	<b>19,371</b>	<b>934,877</b>	<b>9,840</b>	<b>1,019,189</b>	<b>7,915</b>	<b>188,203</b>	<b>37,126</b>	<b>2,142,269</b>
Sep. 12	Wednesday	30,982	1,784,984	13,477	1,562,306	9,414	237,306	53,873	3,584,595
Sep. 13	Thursday	31,179	1,695,743	15,528	1,760,161	9,881	268,169	56,588	3,724,073
Sep. 14	Friday	35,133	2,013,024	15,914	1,643,597	11,996	346,758	63,043	4,003,379
Sep. 15	Saturday	15,760	895,490	13,626	1,472,347	9,072	267,242	38,458	2,635,079
Sep. 16	Sunday	23,028	1,484,039	14,483	1,470,403	10,106	306,377	47,617	3,260,819
Sep. 17	Monday	34,092	1,657,175	11,024	1,141,100	10,661	290,737	55,777	3,089,012
Sep. 18	Tuesday	30,244	1,423,228	11,017	1,170,145	9,348	232,286	50,609	2,825,659
Sep. 19	Wednesday	36,174	1,912,999	11,372	1,154,977	10,137	238,998	57,683	3,306,975
Sep. 20	Thursday	39,468	2,162,883	13,127	1,180,458	10,552	229,007	63,147	3,572,348
Sep. 21	Friday	45,303	2,584,304	14,826	1,254,980	14,223	330,480	74,352	4,169,764
Sep. 22	Saturday	15,657	881,648	12,343	1,098,487	10,156	258,843	38,156	2,238,977
Sep. 23	Sunday	27,929	1,814,845	15,268	1,265,881	11,432	302,467	54,629	3,383,193
Sep. 24	Monday	38,974	2,187,078	10,771	972,521	9,905	231,121	59,650	3,390,719
Sep. 25	Tuesday	38,371	2,186,150	10,067	981,896	9,193	204,263	57,631	3,372,308
Sep. 26	Wednesday	40,321	2,262,914	11,128	1,007,583	10,072	220,914	61,521	3,491,411
Sep. 27	Thursday	38,495	2,062,323	13,100	1,112,165	10,487	224,665	62,082	3,399,152
Sep. 28	Friday	50,264	2,863,838	15,261	1,250,944	14,774	307,892	80,299	4,422,674
Sep. 29	Saturday	19,904	1,110,558	14,357	1,242,807	12,867	295,428	47,128	2,648,793
Sep. 30	Sunday	32,422	2,166,539	15,180	1,220,098	12,764	314,315	60,366	3,700,952
Totals		968,518	53,192,503	392,681	35,398,053	346,494	8,623,797	1,707,693	97,214,353
Average Ticket Price			\$54.92		\$90.14		\$24.89		\$56.93

**D. ACELA RIDERSHIP SINCE DECEMBER 2000**

**ACELA Express Ridership & Ticket Revenue Through December 2001**

Month (FY2001)	ACTUAL RIDERSHIP & REVENUES			Actual Equivalent Number Of Acela Express Trainsets In Service	Implied Acela Express Revenues & Riders Based On \$300 Million Revenues From 18 Trainsets In Service & \$120 Average Fare		
	Ridership	Ticket Revenue	Average Revenue Per Passenger		Implied Ridership	Projected Ticket Revenue	Projected Revenue Per Passenger
December 2000 (Acela #1 on 11th)	8,848	1,024,513	115.79	0.68	7,841	940,860	120.00
January 2001	12,138	1,383,449	113.98	1.00	11,574	1,388,889	120.00
February 2001	12,324	1,410,726	114.47	1.00	11,574	1,388,889	120.00
March 2001 (Acela # 2 & 3 on 5th)	22,151	2,717,868	122.70	2.74	31,735	3,808,244	120.00
April 2001 (Acela #4 & 5 on 29th)	24,611	2,952,109	119.95	3.20	37,037	4,444,444	120.00
May 2001	50,414	5,792,290	114.89	5.00	57,870	6,944,444	120.00
June 2001	52,197	6,002,097	114.99	5.00	57,870	6,944,444	120.00
July 2001 (Acela #6 & 7 on 9th)	72,096	7,947,024	110.23	6.48	75,045	9,005,376	120.00
August 2001 (Acela # 8 & 9 on 13th)	96,037	10,551,523	109.87	8.23	95,206	11,424,731	120.00
September 2001 (Acela # 10 & 11 on 30th)	110,980	13,073,935	117.80	9.07	104,938	12,592,593	120.00
<b>Totals Through September 30, 2001</b>	<b>461,796</b>	<b>52,855,534</b>	<b>114.46</b>		<b>490,691</b>	<b>58,882,915</b>	<b>120.00</b>
October 2001	201,176	24,066,716	119.63	11.00	127,315	15,277,778	120.00
November 2001	193,859	22,968,788	118.48	11.00	127,315	15,277,778	120.00
December 2001	175,089	20,323,039	116.07	11.00	127,315	15,277,778	120.00
<b>Totals Through December 30, 2001</b>	<b>1,031,920</b>	<b>120,214,077</b>	<b>116.50</b>		<b>872,635</b>	<b>104,716,249</b>	<b>120.00</b>

**MEMO: Combined Metroliner/Acela Express FY2001 vs. FY2000 - 12 Months Through September 30**

Oct. 1, 2000 to September 30, 2001	2,652,358	263,040,815	99.17
Oct. 1, 1999 to September 30, 2000	2,408,244	216,350,046	89.84
Change In Metroliner/Acela: FY2001 vs. FY2000	244,114	46,690,769	9.34

**MEMO: Metroliner EXCLUDING Acela Express: FY2001 vs FY2000 - 12 Months Through September 30**

Oct. 1, 2000 to September 30, 2001	2,190,562	210,185,281	95.95
Oct. 1, 1999 to September 30, 2000	2,408,244	216,350,046	89.84
Change In Metroliner Only: FY2001 vs. FY2000	(217,682)	(6,164,765)	6.11

**MEMO: Combined Metroliner/Acela Express - October, November and December 2001 vs. 2000**

Oct./Nov./Dec. 2001 Combined Metroliner/Acela Express	894,600	99,880,200	111.65
Oct./Nov./Dec. 2000 Combined Metroliner/Acela Express	648,000	61,520,800	94.94
Change In Combined Metroliner/Acela: Oct. Through Dec. 2001 vs. Oct. Through Dec. 2000	246,600	38,359,400	16.71

**MEMO: Metroliner EXCLUDING Acela Express - October Through December 2001 vs October Through December 2000**

October, November, & December 2001	324,476	32,521,657	100.23
October, November & December 2000	639,152	60,496,287	94.65
Change In Metroliner Only: Oct./Nov./Dec. 2001 vs. 2000	(314,676)	(27,974,630)	5.58

# APPENDIX V: AMTRAK'S 2001 PROFIT/LOSS OF INDIVIDUAL ROUTES

2001 Route Profitability System Report*								
	Ridership (000)	Revenue Excluding State Payments (millions)	State Payments (millions)	Total Revenue (millions)	Total Costs excluding depreciation (millions)	Profit/Loss on Full Costs (millions)	Loss per Rider (Full Costs)	Operating Ratio - expenses divided by revenues (revenues include state subsidies)
<b>Corridor Trains</b>								
Keystone & Clocker Service (Rts. 13, 14)	3,021	42.4	2.8	45.2	65.6	(20.4)	\$ (6.75)	1.45
Route 01 Metroliner/Acela Express	2,652	271.2	0.0	271.2	220.0	51.3	\$ 19.33	0.81
Route 03 Ethan Allen Express	42	2.0	0.2	2.2	4.5	(2.2)	\$ (52.91)	1.99
Route 04 Vermonter	69	4.3	1.5	5.8	6.4	(0.6)	\$ (9.09)	1.11
Route 05 NE Direct/Acela Regional	6,262	328.6	0.0	328.6	400.1	(71.5)	\$ (11.42)	1.22
Route 15 Empire Service	1,304	52.5	0.0	52.5	89.0	(36.5)	\$ (27.97)	1.69
Route 20 Chicago-St.Louis	254	7.8	3.8	11.5	27.7	(16.1)	\$ (63.63)	2.40
Route 21 Hiawathas	424	7.6	5.1	12.6	26.0	(13.3)	\$ (31.47)	2.06
Route 22 Chicago-Pontiac	295	9.7	0.0	9.7	30.9	(21.2)	\$ (71.95)	3.20
Route 23 Illini	105	3.5	2.4	6.0	9.1	(3.1)	\$ (29.75)	1.52
Route 24 Illinois Zephyr	100	2.7	2.8	5.5	8.2	(2.7)	\$ (27.09)	1.49
Route 29 Heartland Flyer	58	1.2	4.6	5.8	5.2	0.6	\$ 9.93	0.90
Route 35 Pacific Surfliner	1,716	31.0	21.5	52.5	78.6	(26.1)	\$ (15.21)	1.50
Route 36 Cascades	565	15.5	16.3	31.8	38.1	(6.3)	\$ (11.21)	1.20
Route 37 Capitols	1,073	11.7	18.4	30.2	34.6	(4.4)	\$ (4.11)	1.15
Route 39 San Joaquins	712	19.8	23.2	43.0	52.0	(9.0)	\$ (12.62)	1.21
Route 40 Adirondack	100	4.4	2.7	7.1	7.8	(0.7)	\$ (7.29)	1.10
Route 41 International	105	3.4	3.7	7.1	10.0	(2.9)	\$ (27.47)	1.41
Route 56 Kansas City-St.Louis	177	4.5	6.1	10.5	12.6	(2.1)	\$ (11.75)	1.20
Route 65 Pere Marquette	59	1.9	2.2	4.1	6.6	(2.5)	\$ (42.61)	1.61
Route 67 Piedmont	51	0.7	3.2	4.0	5.0	(1.0)	\$ (20.35)	1.26
<b>Totals, corridor trains</b>	<b>19,146</b>	<b>826.4</b>	<b>120.4</b>	<b>946.9</b>	<b>1137.9</b>	<b>(191.1)</b>	<b>\$ (9.98)</b>	<b>1.20</b>
<b>Long Distance Trains</b>								
Route 16 Silver Star	266	30.7	0.0	30.7	60.8	(30.0)	\$ (112.86)	1.98
Route 17 Three Rivers	134	26.5	0.0	26.5	59.3	(32.8)	\$ (244.69)	2.24
Route 18 Cardinal	68	4.4	0.0	4.4	17.1	(12.6)	\$ (186.91)	3.85
Route 19 Silver Meteor	252	28.5	0.0	28.5	49.8	(21.2)	\$ (84.12)	1.74
Route 25 Empire Builder	398	53.3	0.0	53.3	98.7	(45.4)	\$ (114.14)	1.85
Route 26 Capitol Limited	154	21.4	0.0	21.4	45.6	(24.2)	\$ (157.33)	2.13
Route 27 California Zephyr	361	51.7	0.0	51.7	103.7	(52.0)	\$ (143.93)	2.01
Route 28 Southwest Chief	265	65.9	0.0	65.9	128.7	(62.8)	\$ (236.76)	1.95
Route 30 City of New Orleans	187	15.3	0.0	15.3	39.1	(23.7)	\$ (126.81)	2.55
Route 32 Texas Eagle	149	22.4	0.0	22.4	60.7	(38.4)	\$ (258.25)	2.72
Route 33 Sunset Limited	110	17.7	0.0	17.7	56.1	(38.3)	\$ (347.45)	3.16
Route 34 Coast Starlight	494	41.2	0.0	41.2	87.1	(45.9)	\$ (92.98)	2.11
Route 45 Lake Shore Limited	293	30.6	0.0	30.6	72.4	(41.9)	\$ (142.65)	2.37
Route 48 Silver Palm	219	28.3	0.0	28.3	57.0	(28.7)	\$ (131.31)	2.01
Route 52 Crescent	265	30.8	0.0	30.8	65.8	(35.0)	\$ (132.37)	2.14
Route 54 Kentucky Cardinal*	29	1.4	0.0	1.4	7.6	(6.2)	\$ (211.65)	5.39
Route 57 Pennsylvanian	90	9.2	0.0	9.2	35.4	(26.3)	\$ (292.34)	3.87
Route 63 Auto Train	214	54.6	0.0	54.6	66.4	(11.8)	\$ (54.96)	1.22
Route 66 Carolinian	242	13.5	2.7	16.2	20.2	(4.0)	\$ (16.37)	1.24
<b>Totals, long-distance trains</b>	<b>4,190.0</b>	<b>547.5</b>	<b>2.7</b>	<b>550.2</b>	<b>1131.4</b>	<b>(581.2)</b>	<b>\$ (138.71)</b>	<b>2.06</b>
<b>Grand Total, all trains</b>	<b>23,335.7</b>	<b>1374.0</b>	<b>123.1</b>	<b>1497.1</b>	<b>2269.3</b>	<b>(772.2)</b>	<b>\$ (33.09)</b>	<b>1.52</b>
Source: Amtrak; excludes special trains and \$4.3 million in unallocated labor expense								
* Kentucky Cardinal classified as a long-distance train because it is an overnight train with sleeping accom								

## APPENDIX VI: INTERNATIONAL MODELS

### Precedent Passenger Rail Restructuring Models Worldwide

	Infrastructure separated from Operations	Open Access	Franchise Operations	Regional Focus	Subsidized	Privatized
Japan	X	X	X	✓	X *	✓
United Kingdom	✓	X/✓***	✓	✓	✓	✓
Sweden	✓	X	✓	✓	✓	X
Italy	✓	✓****	✓	✓	✓	X
Hong-Kong	X	X	✓	✓	X	✓
Singapore	X	X/✓** **	✓	✓	✓	✓
Australia	*** **** ✓	X	✓	✓	✓	**** ✓**
Amtrak	X	X	X	X	✓	X
Amtrak Reform Council Recommendation	✓	X	<i>Optional</i>	✓	✓	<i>Optional</i>

✓ Exhibits the attribute, e.g. separates infrastructure from operations

X Does not exhibit the attribute; e.g. does not separate infrastructure from operations

\* Costly capital projects are undertaken by the Japan Railway Construction Corporation (a state-owned entity) and subsequently leased to the JRs over a very long period.

\*\* In Great Britain, operators must compete for franchises; thereafter, in most cases, the operator enjoys exclusive access.

\*\*\* Italy is contemplating limited on-rail competition.

\*\*\*\* Singapore - Government develops infrastructure; competition for network operations

\*\*\*\*\* Australia: Infrastructure leased to operators

\*\*\*\*\* Some Australian states to have a form of separation

Source: UBS Warburg, with Sweden and Amtrak Reform Council recommendations added