

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 9th 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 million¹.
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

¹ 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 billion⁶⁰ 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.

⁶⁰ 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 11th 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.⁶¹ 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

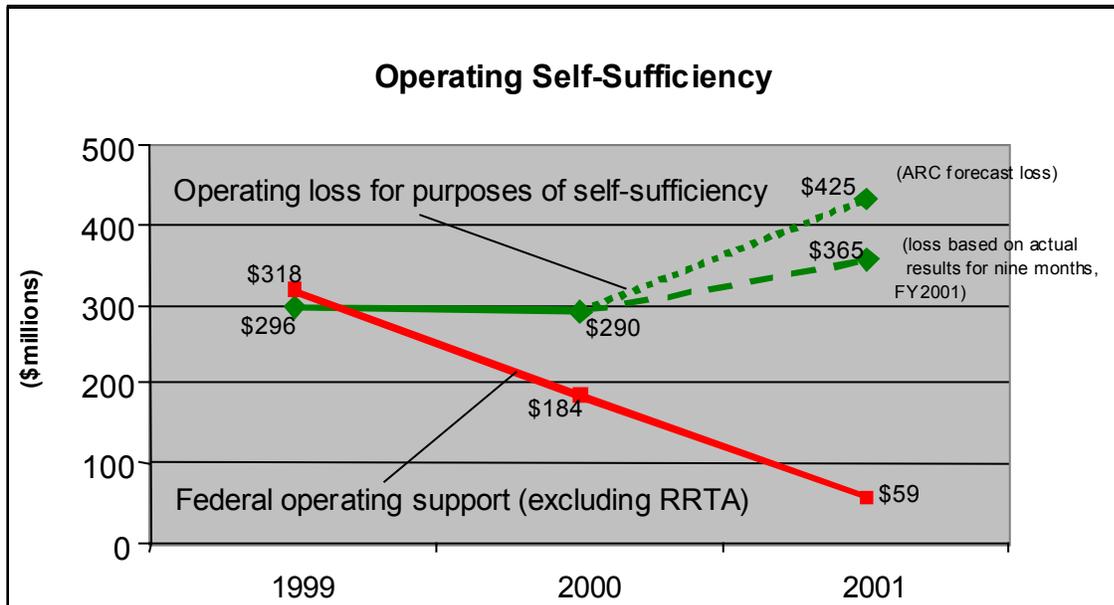
1. The terrorist attacks on September 11th caused a brief spike in Amtrak's ridership. For the month as a whole, however, Amtrak's ridership was 6.4 percent lower than in September, 2000, and was 16.3 percent less than projected in Amtrak's Strategic Business Plan. It is too soon to tell whether Amtrak 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

⁶¹ 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."

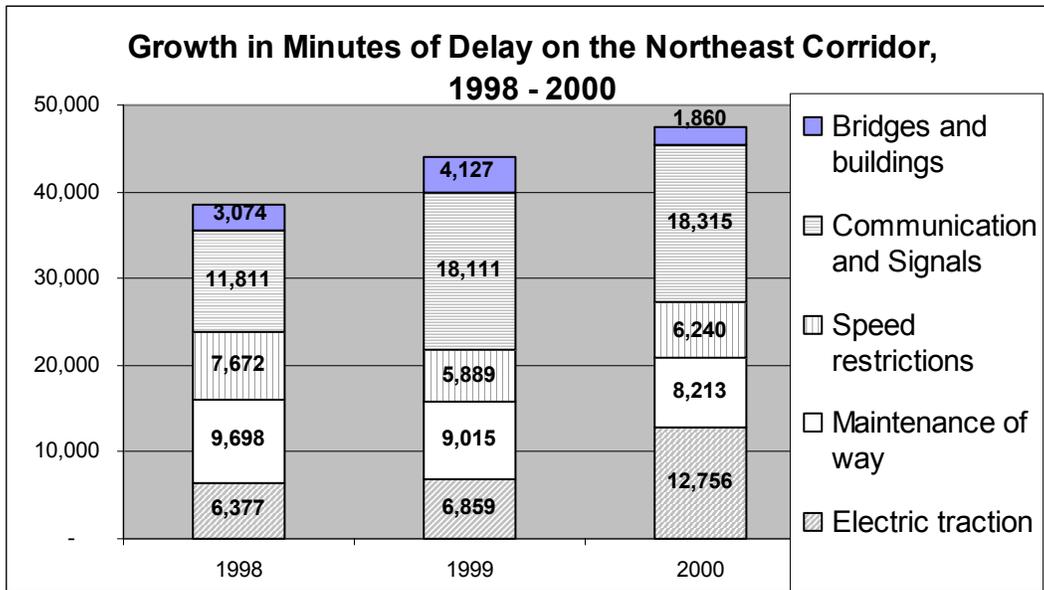
operating losses associated with in 15-20 percent increase in ridership after September 11th. These added costs were attributed to overtime, reservation services, and mechanical terminals, not to security-related expenses.

3. The events of September 11th 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 11th 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

Paul M. Weyrich
Vice Chairman

Bruce Chapman

Nancy Rutledge Connery

James E. Coston

Wendell Cox

Christopher K. Gleason

S. Lee Kling

Hon. Norman Y. Mineta

Charles Money Penny

Hon. John O. Norquist

EXECUTIVE DIRECTOR

Thomas A. Till

The Honorable George W. Bush
President
United States of America
The White House
Washington, D.C. 20500

Dear Mr. President:

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.

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.

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 107th 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

89

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)

☆ ☆ ☆ AMTRAK REFORM COUNCIL ☆ ☆ ☆

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