APPENDIX I: CONCURRING OR DISSENTING OPINIONS FROM COUNCIL MEMBERS

A. MR. JAMES COSTON'S CONCURRING OPINION

☆ ☆ ☆ AMTRAK REFORM COUNCIL ☆ ☆ ☆

February 4, 2002

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 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 <u>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.</u>

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 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 our 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 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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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.

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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,

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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, "Privartisation, 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."

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.

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,

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