B. MR. WENDELL COX'S CONCURRING OPINION

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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 (NRPC) 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,* NRPC 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 NRPC 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,[37] 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).[38] 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.[39]

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).

[37] Attributable infrastructure costs are included in airline and intercity bus fares.
[38] www.publicpurpose.com/icair-225.htm.
[39] Wendell Cox, *Evaluation of the FDOT-FOX Miami-Orlando-Tampa High Speed Rail Proposal,* James Madison Institute, 1997.

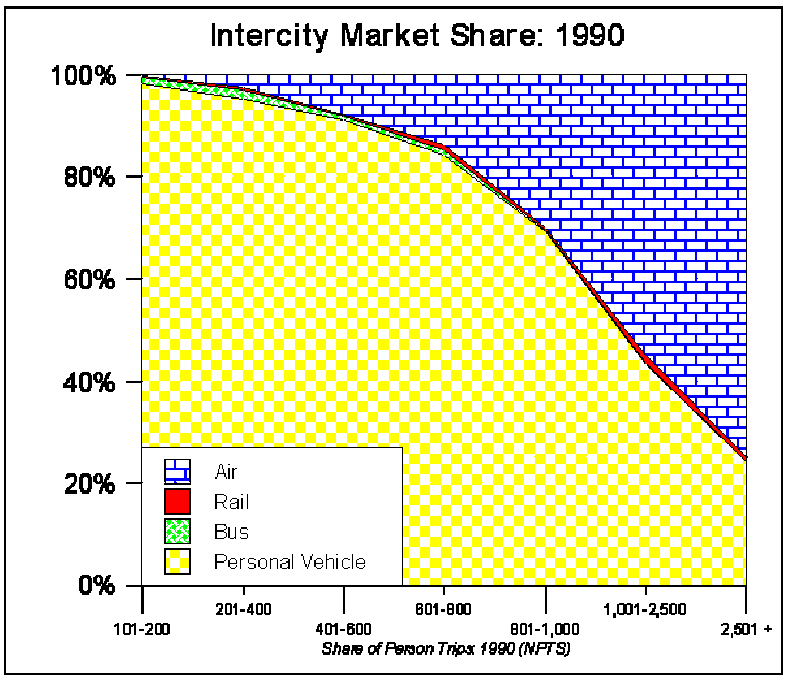

Figure 1
Calculated from Nationwide Personal Transportation Survey data.

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).[40]

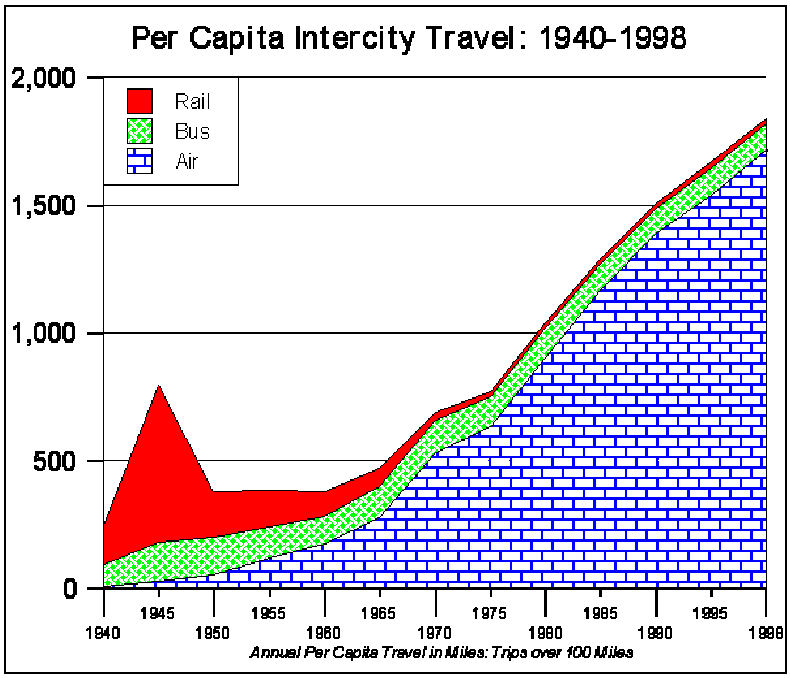

Figure 2
Calculated from US Census Bureau and Department of Transportation data.

[40] 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.[41] 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[42]) and nine times as many passenger miles.[43] 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.[44] 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"

[41] The essential air service program suffers from some of the same deficiencies as apply to the concept of passenger rail as essential transportation service.

[42] www.bts.gov/publications/airactstats2000/intro.html

[43] Based upon information from *National Transportation Statistics.*

[44] 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.[45] 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[46] 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.[47] 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).[48] 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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[45] 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.). In fact, Amtrak has already received $44 billion (inflation adjusted) in federal funding (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.

[46] Since 1999, federal air user fees have exceeded federal air expenditures. Small subsidies occurred before that time.

[47] 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.

[48] 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,*[49] 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.

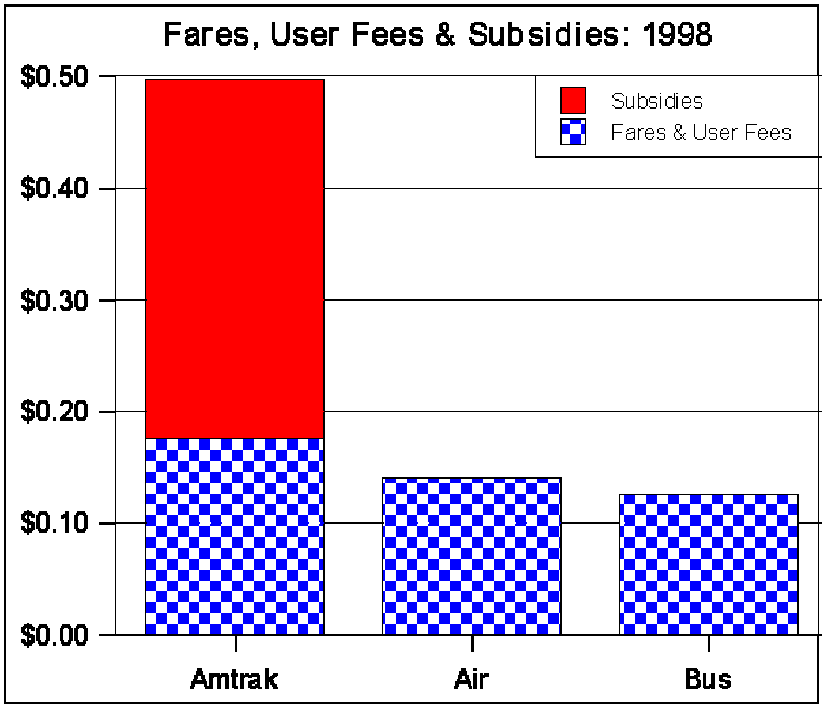

Figure 3
Calculated from US Department of Transportation & Amtrak data.

[49] Calculated from 1998 Bureau of Transportation Statistics data (latest available)

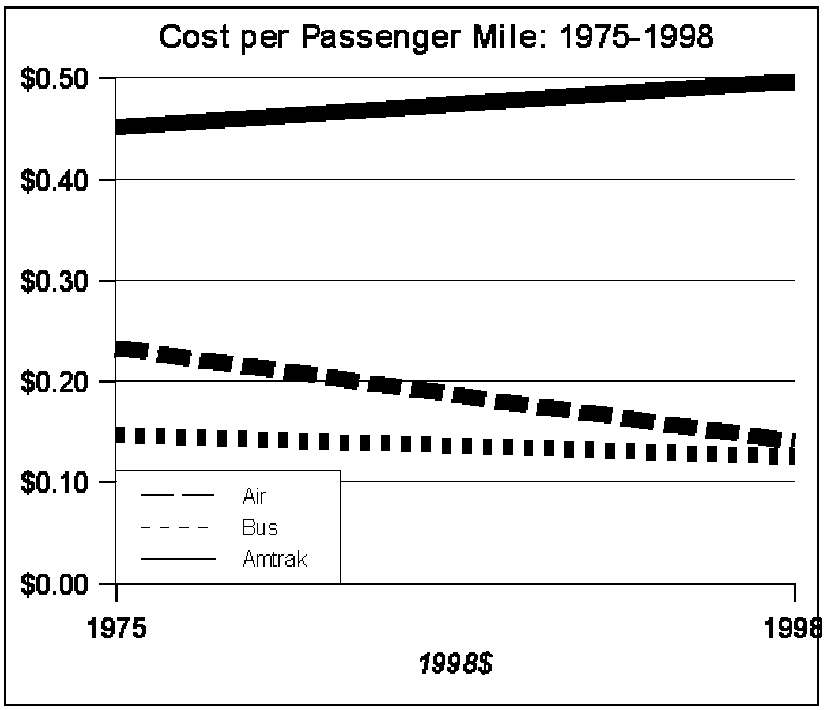

Figure 4
Calculated from US Department of Transportation & Amtrak data.

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.[50] 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.[51] *There is little or no evidence that effective freight and passenger rail systems can share the same rights of way in a modern nation.*[52]

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.

[50] This freight railroad subsidy to Amtrak is not included in the subsidy figures cited elsewhere in this statement.
[51] Wendell Cox, *Freight Rail's Potential to Reduce Traffic Congestion,* Texas Public Policy Foundation, 2002 (www.tppf.org).
[52] 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 [53]

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 professionalism 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.[54] Moreover, cost overruns, large subsidies and minimal impacts on traffic congestion have been typical with respect to rail infrastructure.[55]

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.[56] Further, the use of air user fees should be limited to securing debt. The local or state government airport owners[57] should be required to guarantee the self-sufficiency of any

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[53] www.demographia.com/db-intltraffic.htm.

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

[55] 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.

[56] These findings would be based upon planning studies, the projections of which would be financially guaranteed by airport owners as noted below.

[57] 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,[58] 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… [59]

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

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

[59] 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

Respectually submitted,
Wendell Cox