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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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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 (NRPC) 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.

# TABLE OF CONTENTS

<b>I. WHY AMERICA’S PASSENGER RAIL PROGRAM DOES NOT WORK AND WHAT IT NEEDS TO BECOME SUCCESSFUL.....</b>	<b>1</b>
A. INTRODUCTION.....	1
B. PROBLEMS OF A FLAWED INSTITUTION .....	2
C. ROOT CAUSES OF THESE PROBLEMS.....	5
D. THE COUNCIL’S VISION.....	6
<b>II. ISSUES GOING FORWARD .....</b>	<b>8</b>
A. THE SHAPE OF INTERCITY PASSENGER RAIL SERVICE.....	8
B. LEVERAGING IMPROVEMENTS IN INTERCITY PASSENGER RAIL PERFORMANCE .....	14
C. THE COUNCIL’S PERSPECTIVE ON THE U.S. FREIGHT RAILROAD INDUSTRY .....	16
D. PROGRAM COST ESTIMATES.....	17
E. AMERICAN AND INTERNATIONAL EXPERIENCE WITH RAIL REFORM.....	19
<b>III. PRINCIPLES AND KEY CHANGES UNDERLYING THE COUNCIL’S RECOMMENDATIONS.....</b>	<b>21</b>
A. PRINCIPLES.....	21
B. BASIC DESIGN—A NEW BUSINESS MODEL .....	22
C. KEY CHANGES TO IMPROVE THE INTERCITY RAIL PROGRAM.....	23
<b>IV. THE COUNCIL’S PROPOSED RAIL PASSENGER RESTRUCTURING PLAN .....</b>	<b>29</b>
A. A RESTRUCTURED NATIONAL RAILROAD PASSENGER CORPORATION AS THE FEDERAL PROGRAM MANAGEMENT AGENCY.....	29
B. A SEPARATE CORPORATION TO CONDUCT TRAIN OPERATIONS.....	33
C. A REGIONALLY-DIRECTED COMPANY TO OPERATE, MAINTAIN, AND IMPROVE THE NORTHEAST CORRIDOR INFRASTRUCTURE.....	35
D. OTHER ALTERNATIVES CONSIDERED BY THE COUNCIL.....	37
E. TRANSITION PLANNING TO IMPLEMENT THE COUNCIL’S PROPOSAL .....	42
<b>V. FUNDING OPTIONS .....</b>	<b>43</b>
A. FUNDING THE NRPC -- THE GOVERNMENT OVERSIGHT AGENCY.....	43
B. FUNDING THE OPERATING COMPANY .....	44
C. FUNDING RAIL INFRASTRUCTURE .....	46
<b>APPENDIX I: CONCURRING OR DISSENTING OPINIONS FROM COUNCIL MEMBERS .....</b>	<b>52</b>
A. MR. JAMES COSTON’S CONCURRING OPINION .....	52
B. MR. WENDELL COX’S CONCURRING OPINION .....	61
C. MR. LEE KLING’S CONCURRING OPINION .....	72
D. MR. CHARLES MONEYPENNY’S DISSENTING OPINION .....	74
<b>APPENDIX II: FINDING RESOLUTION .....</b>	<b>79</b>
<b>APPENDIX III: AMTRAK’S CAPITAL PLAN .....</b>	<b>91</b>
<b>APPENDIX IV: AMTRAK RIDERSHIP.....</b>	<b>92</b>
A. AMTRAK RIDERSHIP 1972 - 2001 .....	92
B. AMTRAK SEPTEMBER RIDERSHIP 2001 CHART .....	93
C. AMTRAK SEPTEMBER RIDERSHIP 2001 ACTUAL NUMBERS .....	94
D. ACELA RIDERSHIP SINCE DECEMBER 2000 .....	95
<b>APPENDIX V: AMTRAK’S 2001 PROFIT/LOSS OF INDIVIDUAL ROUTES .....</b>	<b>96</b>
<b>APPENDIX VI: INTERNATIONAL MODELS .....</b>	<b>97</b>