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**BEFORE THE COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION, SUBCOMMITTEE ON SURFACE TRANSPORTATION  
AND MERCHANT MARINE**

**U.S. SENATE**

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**Testimony from the  
AMTRAK REFORM COUNCIL**

Statement of  
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Amtrak Reform Council

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

**STATEMENT OF GILBERT E. CARMICHAEL,  
CHAIRMAN OF THE AMTRAK REFORM COUNCIL  
BEFORE THE COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION,  
SUBCOMMITTEE ON SURFACE TRANSPORTATION AND MERCHANT  
MARINE  
UNITED STATES SENATE  
FEBRUARY 23, 2000**

Madam Chairman, it is a pleasure to be here today on behalf of the Amtrak Reform Council to address the three issues on which you have requested comment: the Council's First Annual Report, issued on January 24, 2000; the delay in the delivery of Amtrak's new Acela Express equipment and the impact of that delay on Amtrak's financial performance; and the Council's most current assessment of Amtrak's financial performance vis-à-vis the goals of the Amtrak Reform and Accountability Act of 1997, which I will refer to as "the Reform Act." I am accompanied today by Tom Till, the Council's Executive Director.

With your permission, I will provide a summary of my views and will submit my full statement for the record.

### **The Objectives of the Council**

Madame Chairman, it is important that you and the members of your Subcommittee understand the Council's objectives. As we read the law, our purpose is to improve rail passenger service by evaluating Amtrak's performance and making recommendations to Amtrak for improvement. The law further provides, should the Council ever make a financial finding that Amtrak will not meet the goal of the Reform Act, the Council should recommend to the Congress an action plan for a restructured and rationalized national system of intercity rail passenger services.

The Council is *not* focusing on the issue of a finding, but is making every effort to identify and recommend strong measures that will help Amtrak meet the goals of the Reform Act and thus avoid any financial finding. We have begun that process, and it will continue as long as I am Chairman of this Council.

### **The Council's First Annual Report**

When Congress enacted the Amtrak Reform and Accountability Act of 1997, which requires that Amtrak operate without "Federal operating grant funds" by the end of

FY2002, the Congress established the Amtrak Reform Council as an independent, bipartisan oversight body of 11 members, charged with, among other tasks, monitoring Amtrak's progress in improving its financial performance to achieve the goals of the Act. The Council is required to report on its activities in annual reports to the Congress, the first of which it issued on January 24, 2000. The complete report is available on our website at ([www.amtrakreformcouncil.gov](http://www.amtrakreformcouncil.gov)) under the heading "First Annual Report" and printed copies are available by contacting the Council's office in Washington at (202) 366-0591.

In releasing this first annual report, the Council stated that "This year's report does not reach any conclusions about Amtrak's long-term future. It provides a picture of the Amtrak organization as it exists today, it presents the Council's perspective on Amtrak's performance to this juncture, and it raises questions and issues that the Council believes should be addressed in its future efforts and, ultimately, by the Congress." The report also made clear that it is a statutorily required Annual Report and not in any sense a finding, and, were the Council at some future date to make such a finding, it would be the subject of a separate report.

The major findings of the Council's report are indicated below.

*Amtrak's Broad Range of Complex Functions.* The Council's first annual report focused on understanding Amtrak as an institution and assessing its performance. The Council has determined – after careful analysis and deliberation – that Amtrak performs an exceptionally broad range of complex functions that go far beyond its core business of operating passenger, mail and express services. In addition to its transportation operations, Amtrak operates and maintains infrastructure, and it remanufactures and repairs passenger coaches and locomotives. Amtrak does substantial business as a contractor or potential contractor for domestic rail commuter services and foreign passenger services and it also functions as a real estate management and development company. Aside from these business functions, Amtrak also functions in certain respects as if it were a federal agency. The Council will address its concerns about Amtrak's need to focus on its core business in order to improve its financial performance.

*Measuring and Monitoring Amtrak's Financial Performance.* The Council's analysis of Amtrak's financial performance made it clear that although Amtrak's did meet its Plan for FY 1998 and FY 1999, this was not of great significance for two reasons. First, Amtrak's core business of passenger, mail, and express was below planned levels. Second, the major improvements that Amtrak must make in order to meet the financial goals of the Reform Act are back-loaded into the years FY 2000 and FY 2001. This is the reason for the Council's concern that Amtrak focus on raising the revenues and controlling the costs of its core business, which is essential to its meeting the plan. Because of its importance, I will discuss separately the standard by which the Reform Act

requires the Council to measure Amtrak's financial performance in meeting that Act's financial goals.

*The Three Statutorily-Assigned Tasks.* Amtrak was not able to provide to the Council in the timeframe necessary for the report the detailed information the Council needed to fulfill its statutory reporting requirements regarding productivity improvements and the evaluation of Amtrak's routes and services. We are working with Amtrak, and when the information is provided, the Council will prepare and submit reports to the committee.

Regarding Amtrak's use of TRA funds, because the Council did not have the resources to analyze the more than 81,000 transactions that Amtrak had carried out involving TRA funds through May of last year, the House Transportation and Infrastructure Committee requested the GAO to analyze this matter. Our report indicated that the Council had found, on a preliminary basis, that Amtrak had not, to that date, used a significant amount of funds for the high priority, high-return capital projects that will be needed to improve Amtrak's financial performance to meet the goals of the Reform Act.<sup>1</sup> After the GAO report is released, the Council will review its findings, and will submit a brief supplementary report to the Congress, if appropriate.

*Recommendations for Improvement that the Council has forwarded to Amtrak.* In November 1999, the Council made its first recommendations to the Amtrak Board including (i) setting up Mail & Express as a separate business unit or profit center; (ii) segregating the operations of the NEC fixed plant as a profit center within the NEC Business unit with its own income statement, balance sheet, and capital plan; and (iii) improving Amtrak's management and business planning process by identifying and quantifying risks and opportunities; developing contingency plans; identifying minimum business plan objectives; and implementing a program for annual cost savings in Amtrak's corporate overhead.

*Issues and Next Steps.* The Report identified key areas on which the Council intends to focus its work efforts over the coming year. In one sentence, Madam Chairman, the Council's program for this year will be to develop recommendations to assist Amtrak – in any way the Council can – to meet the Reform Act's financial performance goal. We will keep the Subcommittee informed of our major activities.

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<sup>1</sup> See pages 35 through 38 of the January 24, 2000 First Annual Report of the Amtrak Reform Council, "A Preliminary Assessment of Amtrak," for a discussion of the TRA funds. The Annual Report is available on our website at ([www.amtrakreformcouncil.gov](http://www.amtrakreformcouncil.gov)).

## **The Standard For Measuring Amtrak's Financial Performance Against the Goals of the Amtrak Reform and Accountability Act of 1997**

The Council believes, based on Section 203 of the Amtrak Reform and Accountability Act, that Amtrak's ability to operate "without federal operating grant funds" should be measured by using Amtrak's financial statements, which are prepared according to generally accepted accounting principles, and which assume that Amtrak is a "going concern" which will remain in business indefinitely at the same business volume and level of technology. Former Amtrak Chairman Graham Claytor, one of the most respected executives in the transportation industry of the last century, said it very well when he stated, "Any company that does not put in the capital to more than match its depreciation is slowly liquidating itself."

I have appended to my statement a legal and legislative analysis that provides the basis for the Council's position concerning the measurement of Amtrak's financial performance. The finding of this analysis is that the statute requires that the standard be based on Amtrak's income statements prepared using generally accepted accounting principles. The only exception is the exclusion of excess mandatory railroad retirement taxes from the self-sufficiency test because this provision was written into the Reform Act.

Amtrak proposes, instead, that federal appropriations acts and historical practices in place in FY1997, result in an implied test of operating self-sufficiency that literally depends on Amtrak's not needing cash from "federal operating grant funds" after FY2002. Amtrak's proposed test excludes the funding of several expenses, which are estimated to total \$567 million in FY2002, that have been (and Amtrak assumes will continue to be) funded by "federal capital grant funds," even though they are included as operating expenses in Amtrak's GAAP financial statements. Both approaches exclude federal funds authorized and appropriated to reimburse Amtrak for excess mandatory Railroad Retirement Taxes.

The Council is making a very important point, which is not aimed at Amtrak, but at the Congress: for measuring Amtrak, it is less important to focus on the words that are used to define the standard than it is to understand clearly what those words mean in terms of a necessary federal financial commitment to intercity rail passenger service. Whether it is called funds for capital or funds for operating expenses, our report points out that, by Amtrak's own projections, the Corporation will need \$752 million in federal funding in FY2003 to maintain or replace its existing assets and for other necessary expenses before the first dollar of capital for incremental capital additions or improvements can be provided. Whatever it needs in "new capital" will have to be provided on top of that.

The difference between the two approaches is demonstrated in the chart below. Under Amtrak's approach, Amtrak would meet the standard for operating self-sufficiency in FY2002 while still requiring federal grants of approximately \$752 million, which

includes, in addition to the authorized payment of \$185 million for excess RRTA, \$80 million for equipment maintenance, which is categorized as “progressive overhauls,” and approximately \$487 million for renewing and replacing its assets.

**Comparison of Amtrak's Interpretation of the Appropriate Measurement Test of Operating Self-Sufficiency with GAAP Accounting**

Amtrak's Interpretation of the Appropriate Measurement Test of Operating Self-Sufficiency					Assuming Full GAAP Accounting
	<u>FY 1999</u>	<u>FY2000</u>	<u>FY2001</u>	<u>FY2002</u>	<u>FY2002</u>
Revenues (a)	1,866	2,184	2,396	2,501	2,501
Expenses	(2,796)	(3,092)	(3,215)	(3,253)	(3,253)
Operating Profit/(Loss)	(930)	(908)	(819)	(752)	(752)
Progressive Equipment Overhauls	76	77	78	80	
Depreciation/Noncash Expenses (b)	370	469	499	487	
Budget Gap	(484)	(362)	(242)	(185)	(752)
Excess Mandatory Railroad Retirement Taxes (c)	166	172	179	185	185
Test For Self Sufficiency	<u>(318)</u>	<u>(190)</u>	<u>(63)</u>	<u>0</u>	<u>(567)</u>

(a) Financial projection amounts are taken from Amtrak's October 12, 1998 Strategic Business Plan

**FY 1999   FY2000   FY2001   FY2002**

(b) **Non-Cash Expenses**

Depreciation (Baseline Outlook Amounts)	360	459	489	477
Certain Employee Benefit Related Expenses	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>
Total Depreciation/Noncash Expenses	<u>370</u>	<u>469</u>	<u>499</u>	<u>487</u>

(c) Excess mandatory Railroad Retirement Taxes (RRTA) estimates prepared by Amtrak include the employees' share of excess mandatory RRTA. Other governmental entities believe that lower amounts of excess mandatory RRTA should be funded to Amtrak. However, Amtrak has indicated that it has calculated this amount using consistent methodology since 1991 in accordance with Congressional direction.

Madam Chairman, it is important for the Congress to recognize that, whatever its decision about the rules for permitting Amtrak to use capital funds for operating expenses, including the replacement and renewal of its capital asset base under depreciation, the federal funding must be provided to make that work.

It is against this backdrop that I can now provide comments on the issue of Acela and on Amtrak's current financial performance.

## **The Acela Delay and its Financial Impact on Amtrak's Financial Performance**

Our knowledge about the technical causes of the Acela delay is limited to information provided by Amtrak. Causes of delay are not a major focus of activity for the Council or its staff. Our focus is on the financial impact of the delay, and on actions Amtrak expects to take to offset that financial impact. Because we have not yet received Amtrak's most recent five-year Strategic Business Plan, which will provide Amtrak's projections on the impact of the Acela delay, we cannot present an analysis to the Subcommittee today. When we have the information and have made that assessment, we will provide it to the Subcommittee. We can say, however, that since the initiation of Acela Express service was expected to have significant financial benefits for Amtrak, the delay will almost certainly impose difficulties that will require Amtrak to make significant adjustments to lower its costs and to raise revenues from other sources. There is no doubt that Acela is critical to Amtrak's plans to achieve self-sufficiency.

You may remember from your appearance at our outreach hearing in Dallas this past November, that there is a proposal before the Council that the Council recommend to the Congress that Amtrak's deadline for financial self-sufficiency be delayed by a year so that the financial results of a full year of Acela Express operations can be accurately measured before the Council determines whether Amtrak will meet the financial performance goals of the Reform Act. A final decision as to whether that recommendation be made to the Congress will be addressed at the Council's meeting next month.

## **Amtrak's Financial Performance vis-à-vis the goals of the Amtrak Reform and Accountability Act**

Amtrak's financial performance during the first two months of FY2000 follows the trends established in the past two years. That is, performance that, on the whole, meets the Plan supported by higher-than-planned financial performance by non-core business elements which make up for lower-than-planned revenues from Amtrak's core business of passenger operations.

Amtrak's November 1999 financial statements (which were prepared on or around January 27, 2000) reported that Amtrak was approximately \$2.1 million ahead of its Strategic Business Plan for the first two months (October and November 1999) of FY2000, during which time its expenses totaled approximately \$464 million and its revenues totaled approximately \$315 million. A positive variance of approximately \$2 million is immaterial relative to both revenues (approximately 0.6 percent of revenues) and expenses (approximately 0.4 percent of expenses). Furthermore, without a \$3.1 million positive variance from "Contributed Support Capital" (related to the progressive

overhaul program funded by portion of the approximately \$2.2 billion of the Taxpayer Relief Act (TRA funds)) during the first two months of FY2000, Amtrak's positive variance of approximately \$2 million would have been a negative variance of approximately \$1 million.

For the first two months of FY2000, Amtrak's total system ridership was 0.8 percent ahead of Plan and 1.2 percent ahead of FY1999. Passenger miles, seat miles, and load factor, however, were all below the Plan<sup>2</sup> for FY 2000 and below FY1999 actual levels, reflecting a trend towards shorter average passenger trips due to weaker long distance traffic. Increases in core revenue per seat mile reflect the shift to shorter average passenger trips and ticket price increases.

Madam Chairman, if the Council is to provide a perspective on Amtrak's financial performance, we also need to evaluate its estimates of future capital investment requirements for at least the next 3-5 years. We have gotten the first element of those estimates from Amtrak, which this week released its 25-year capital funding program for the southern portion of the Northeast Corridor, amounting to some \$12 billion, half of which Amtrak expects to come from the states. Additional estimates are needed, and we expect that at least some of them will be forthcoming, as part of its new Strategic Business Plan and the accompanying analysis of its routes and services using its new Market Based Network Analysis tool.

With this data, the Council will, for the first time, be able to provide the Congress with a clear picture of the capital and operating requirements that will be needed to support intercity rail passenger service for the future. Information and analysis of this type is essential if the Congress is to have a sound basis for policymaking about this vital issue.

Madam Chairman, this concludes my statement. I will be pleased to answer any questions you or the other members of the Subcommittee may have.

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<sup>2</sup> Although Amtrak's Board of Directors reportedly approved Amtrak's Strategic Business Plan (Plan) for the period starting October 1, 1999 (FY2000) in December 1999, it has not yet been provided (in any form, summary or otherwise) to the Council. The written Plan should include underlying business strategies and assumptions as well as monthly financial projections. Such strategic business plan detail is needed for the Council to evaluate the reasonableness of the Plan and the likelihood that Amtrak will achieve it, as well as facilitating the Council's evaluation of Amtrak's actual financial performance relative to its Plan for FY2000.

## APPENDIX

### **The Standard for Measuring Amtrak's Financial Performance Against the Goals of the Amtrak Reform and Accountability Act of 1997**

The Council has a statutory obligation under the ARAA to evaluate Amtrak's performance and make recommendations for achieving further cost containment, productivity improvements and financial reforms. ARAA Sec. 203(g). A major element of monitoring Amtrak's financial performance is determining whether, in the Council's judgment, Amtrak will be able to meet the statutorily-prescribed goal to "operate without Federal operating grant funds appropriated for its benefit" after FY2002. 49 U.S.C. 24101(d). In making its judgment, the Council must define a clear standard consistent with the requirements of the ARAA for measuring Amtrak's financial ability to operate on a sustainable basis without the need for federal operating assistance after FY2002.

#### ***The ARAA establishes Generally Accepted Accounting Principles as the Appropriate Standard***

The Council believes that the ARAA specifically establishes the standard that the Council is required to use: generally accepted accounting principles (GAAP). Section 203(g) of the ARAA specifically requires that in making its evaluation and recommendations with respect to Amtrak's performance, the Council "shall consider all relevant performance factors, including...appropriate methods for adoption of uniform cost and accounting procedures throughout the Amtrak system, *based on generally accepted accounting principles....*" (Emphasis added.) Section 204 of the ARAA further requires that the Council "shall take into account... Amtrak's performance," as measured under the requirements of Section 203(g), in determining whether "Amtrak's business performance will prevent it from meeting the financial goals [of the ARAA]" or whether "Amtrak will require operating grant funds" after FY2002. The ARAA provides no standard other than generally accepted accounting principles by which the Council is to measure Amtrak's financial performance.

Further, the Council believes that GAAP is the appropriate standard for it to use to measure Amtrak's financial performance under the provisions of the ARAA. Amtrak prepares its financial statements in accordance with GAAP, and Amtrak's independent auditors have taken no exception with Amtrak's accounting and financial reporting practices in this regard. Moreover, GAAP is generally employed by the accounting profession and financial community to evaluate the financial condition as a going concern of for-profit corporations, which is Amtrak's status under its federal charter. 49 U.S.C. 24301(a).

***Progressive Overhauls are operating expenses under GAAP that cannot be federally funded after FY2002 under the provisions of the ARAA***

The ARAA provides that, after FY2002, “no funds authorized for Amtrak shall be used for operating expenses other than those prescribed for tax liabilities under section 3221 of the Internal Revenue Code...that are more than the amount needed for benefits of individuals who retire from Amtrak and their beneficiaries (i.e., “excess Railroad Retirement payments”). 49 U.S.C.24104(a). The ARAA makes no exception other than for excess Railroad Retirement payments from the prohibition against continued federal subsidy of Amtrak operating expenses after FY2002. As noted, the Council believes that it is required to use GAAP in applying the prohibition against federal operational subsidies of Amtrak after FY2002 as set forth in Section 24104(c).

Amtrak disagrees with the Council’s position that the Council is required to use GAAP in applying the prohibition against continued federal subsidization of Amtrak operating expenses after FY2002. Amtrak instead takes the position that its expenses for “progressive overhauls” of equipment can continue to be funded from federal capital funds after FY2002 even though these expenses are indisputably “operating expenses” under GAAP and are recorded by Amtrak as operating expenses in its financial reports. (“Progressive overhauls” are defined by Amtrak as routine annual car inspection and repair work and scheduled part replacements performed every 1 to 3 years; they are essentially maintenance (i.e., operating) expenses under GAAP).<sup>1</sup> Amtrak’s position is premised on the Congressional practice, commencing in FY1993, of including funds for Amtrak “progressive overhauls” of equipment in “capital grants” rather than “operating grants” even though the expenses for progressive overhauls are reported by Amtrak as operating expenses.<sup>2</sup>

The Council disagrees with Amtrak’s contention that there is an implied exception for continued federal subsidization of Amtrak operating expenses for “progressive overhauls” in the ARAA. First, the fact that progressive overhauls have been funded in recent years through capital grants rather than operating grants cannot be determinative of their status. If funds for Amtrak operating expenses could simply be included in federal capital grants after FY2002, the prohibition against future federal funding of Amtrak operating expenses would become meaningless: it would simply be a shell game of moving operating expenses into capital grants instead of funding them separately. (For FY2000, Amtrak in fact requested and received only a federal capital grant with flexibility to use it for certain operating expenses under the special Federal Transit Administration definition of capital expenditures.)

Second, and most determinative, the prohibition in Section 24104 against federal funding of Amtrak operating expenses is specific and categorical, and provides for only one exception: excess railroad retirement payments. The categorical prohibition also directly squares with the legislative intent of the ARAA, which was to require Amtrak to become

“operationally self-sufficient” after FY2002.<sup>3</sup> Implicit exceptions to specific statutory commands are not favored in the law, and the Council believes that if Amtrak expected to continue to request federal funding for progressive overhauls after FY2002, it was incumbent upon it to obtain a specific exception for such operating expenses, such as that applicable to excess railroad retirement payments.

The Council would also point out that continued federal funding of Amtrak operating expenses for progressive overhauls after FY2002 is not only counter to the statutory goal that Amtrak wean itself from federal operating subsidies, but is, as Amtrak has specifically acknowledged, counterproductive in the long run with respect to Amtrak’s need for continued federal capital funds to renew and expand its infrastructure and equipment. As Tom Downs, former President of Amtrak observed “ [S]hifting some equipment overhaul costs...from the operating to the capital budget...is akin to eating your seed corn—using scarce capital dollars to maintain, rather than replace, worn out assets—and undermines our ability to invest in our future.”<sup>4</sup>

Amtrak also contends that, because its “glidepath to self-sufficiency” and Strategic Business Plans were before the Congress during the ARAA deliberations and assumed continued federal funding of progressive overhauls, that Congress must be presumed to have endorsed Amtrak’s assumptions. This argument, however, ignores the statutory scheme. Congress did not in fact endorse (or implicitly incorporate into the ARAA) any specific assumptions of Amtrak’s “glidepath” nor the Strategic Business Plans upon which it was based. Congress in fact delegated an evaluation of Amtrak’s Strategic Business Plan to an “independent assessment” to be conducted by the Department of Transportation, Inspector General (DOT/IG). ARAA, Section 202. After reviewing Amtrak’s Strategic Business Plan, the DOT/IG criticized many of the assumptions underlying the Strategic Business Plan. The DOT/IG also specifically concluded in its assessment that “progressive overhauls” could not be federally funded after FY2002 under the provisions of the ARAA.<sup>5</sup>

(The General Accounting Office also concurs that Amtrak may not use federal funds for progressive overhauls after FY2002 under the ARAA.<sup>6</sup>)

***Depreciation is also an operating expense under GAAP that must be recovered for Amtrak to be operationally self-sufficient after FY2002***

The Council also believes that the cost of depreciation is an operating expense under GAAP that Amtrak must recover after FY2002 for it to be found “operationally self-sufficient” under the ARAA. Amtrak agrees that depreciation is an operating expense under GAAP. Amtrak, however, takes the position that this expense must be ignored for purposes of the operational self-sufficiency test because it “is a non-cash expenditure” and “is not funded as part of a federal operating contribution.”

The Council disagrees with Amtrak's position that the cost of depreciation can be ignored under the ARAA. Under GAAP accounting, there is a recognition of the cost of capital associated with an enterprise in the form of depreciation. Depreciation is a non-cash charge against revenues designed to represent the estimated value of capital assets consumed or made obsolete during the period of time that the revenues were generated. In theory, an enterprise reserves a portion of its revenues equal to the depreciation charge to fund the repair and/or replacement of its capital assets. These investments are essential if an enterprise is to remain a going-concern at its current level of activity and technology. If an enterprise cannot cover its cost of depreciation, it is self-liquidating.

This point has been expressed most forcefully by Amtrak itself. As Graham Claytor, former president of Amtrak has testified: "Any company that does not put in the capital to more than match its depreciation is slowly liquidating itself..."<sup>7</sup>

The Council accordingly believes that it is absolutely essential that Amtrak make provision for and recover its depreciation expenses after FY2002 if it is to be considered "operationally self-sufficient" in any meaningful sense of the term. If these expenses are not recovered, Amtrak will not be able to operate on a sustainable basis after FY2002; instead, it will be slowly liquidating itself.

The Council, however, recognizes that, unlike "progressive overhauls" which can only be viewed as an operating expense under GAAP, federal grants to Amtrak to replace assets consumed can also be categorized as true capital investments because they are used to purchase capital assets. Federal funds for Amtrak asset replacements have, to the Council's knowledge, always been provided through capital grants.

The difficulty as the Council sees it, however, is that the ARAA makes no specific provision for continued funding of Amtrak's capital needs, including to replace its assets. If the Congress were to speak clearly on the issue and commit itself through authorizing legislation to provide sufficient capital grant funds on a reliable, long-term basis to cover Amtrak's cost of capital consumed (i.e., depreciation), then the Council would recognize such funding commitments in determining if Amtrak will be operationally self-sufficient after FY2002.

## Endnotes to the Appendix

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<sup>1</sup> See Department of Transportation and Related Agencies Appropriations for 1995, Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, Part 4, at 741.

<sup>2</sup> Congressional funding of “progressive overhauls” through capital grants originated from the exigencies of Amtrak’s enormous deferred equipment overhaul backlog in the early 1990’s and from furloughs or planned furloughs of equipment maintenance employees at that time for lack of funds. See Department of Transportation and Related Agencies Appropriations for 1993, Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, Part 5, at 754; Department of Transportation and Related Agencies Appropriations Bill, 1993, House Report, Committee on Appropriations, H. Rep. 102-639, at 136; Department of Transportation and Related Agencies Appropriation Bill, 1993, Senate Report, Committee on Appropriations, S. Rep. 102-351, at 149; Senate Report, Committee on Appropriations, Supplemental FY1993, S. Rep. 103-54, at 33. To avoid further furloughs and increasing backlogs of heavy overhauls, Congress chose to fund both capital and non-capital overhauls through capital grants. Reflective of the purpose of such funding, the Committee report language at the inception of this practice does not refer to “progressive overhauls” as such, but rather uses broad language to describe the expenses as “long-term equipment overhaul work”(Senate Report 102-351, at 149 (FY1993 Amtrak appropriation), *supra*); “capital equipment overhauls” (House Report 103-105, at 1 (Second Supplemental Appropriations, FY 1993)) or as necessary to “avoid further furloughs of employees at Amtrak’s Indiana and Delaware maintenance and car overhaul facilities.” (Senate Report No. 103- 54, at 33 (Amtrak Supplemental Appropriations, FY1993)).

<sup>3</sup> S. Rep. 105-85, at 1; see also Congressional Record, at S11930 (“At the end of 5 years there will not be operational subsidies by the taxpayers of Amtrak. We have all agreed to that.”) (remarks of Sen. Hutchison).( daily ed.11/7/97)

<sup>4</sup> Senate Hearing Before Subcommittee of Committee on Appropriations, FY1995, S. HRG 103-810, Pt.1 at 590 (3/24/94); see also *id.* at 592-593, 621; House Hearing Before Subcommittee of Committee on Appropriations, FY1997, Pt. 2, at 735-736 (noting Mr. Down’s goal of moving expenses of progressive overhauls from capital account to operating account beginning in FY1997.)

<sup>5</sup> See November 23, 1998 DOT/IG Summary Report on the Independent Assessment of Amtrak’s Financial Needs Through Fiscal Year 2002, at 3, 21, n.14; see also DOT/IG October 28, 1999 testimony Before the House Subcommittee on Ground Transportation, at 2, 4, 6; DOT/IG March 10, 1999 testimony before Senate Subcommittee of Committee on Appropriations, FY 2000, S. HRG. 106-221, at 197-198.

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<sup>6</sup> See July 1999 GAO Report, Intercity Passenger Rail, Amtrak's Progress in Improving Its Financial Condition Has Been Mixed, at 12, 22.

<sup>7</sup> Hearing Before the House Subcommittee on Transportation and Hazardous Materials, Serial No.102-111, at 45; see also Senate Hearing Before a Subcommittee of the Committee on Appropriations, FY1993, S.HRG. 102-725, Pt.2, at 124 (4/9/92); see also exchange between Sen. Lautenberg and Gil Carmichael (FRA Administrator), id. at 236-237 (concurring with Claytor statement that "if you invest less than your depreciation you are liquidating" and characterizing this observation as a "truism").