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BEFORE THE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
U.S. SENATE

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Testimony of The AMTRAK REFORM COUNCIL

Concerning THE COUNCIL'S PROPOSALS FOR RESTRUCTURING THE NATIONAL INTERCITY RAIL PASSENGER SYSTEM AND THE NATIONAL DEFENSE RAIL ACT (S. 1991)

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Good morning, Mr. Chairman, and members of the Committee.

I am Gil Carmichael, Chairman of the Amtrak Reform Council. Thank you for the invitation to present the Council's views on S. 1991, The National Defense Rail Act, in the context of the Council's *Action Plan for the Restructuring and Rationalization of the National Intercity Rail Passenger System*, which was submitted to the Congress on February 7, 2002. With your permission, Mr. Chairman, I will summarize my statement and submit the full statement for the record.

The Council has submitted its recommendations to the Congress for reform. Other reasonable reforms will be proposed, Mr. Chairman, and both you and Ranking Member McCain have put your proposals on the table for this debate. The Council believes that reform is no longer an option. Reform is an imperative.

Between 1977 and 2001, Mr. Chairman, the growth rate of Amtrak's ridership has been lower than the growth rate of the US population. Contrary to a number of published reports, in the period between September 11, 2001, and the end of last year, Amtrak carried fewer passengers than it did in the comparable period of 2000. Amtrak is burdened with debt and debt service, and its assets are in poor condition. All of its routes lose money when depreciation is taken into account.

Regardless of whether one subscribes to the notion of self-sufficiency for rail passenger service, Amtrak is less efficient today than it was in 1997. And this is after the appropriation to Amtrak of more than $5 billion during the past five years, including $2.2 billion in capital funding under the Taxpayer Relief Act.

The continuing deterioration of Amtrak's performance since the Council was established led the Council to its finding that Amtrak would not achieve operational self-sufficiency by December 2, 2002, as required by the Amtrak Reform and Accountability Act of 1997. Without reform, FY 2003 will be business as usual for Amtrak – lower revenues and higher costs and greater losses than Amtrak will promise.

Why does Amtrak have this record of poor performance?

Amtrak has too much to do, and does little of it well. In this environment, **Amtrak has proven that it cannot concentrate on its core mission of running trains**. As it is chartered and organized today, **no agency has effective oversight of Amtrak's business plans, its funding requests, or its financial and operational performance. Our analyses and those of the DOT/IG and the GAO are all done in hindsight. No program can be successful without good, timely oversight.**

THE COUNCIL'S PROPOSALS FOR REFORM

The Action Plan the Council sent to Congress on February 7, 2002, thus recommends **a fundamental restructuring of the way we organize, fund, and operate the national rail passenger service program. If we are to have a modern rail passenger program that works, we have to separately organize and fund the passenger trains from the 20,000-plus miles of nationwide rail network that supports them, including some 366 miles of the Northeast Corridor's massive 460-mile rail infrastructure.**

Outside the Northeast Corridor, Amtrak's operations are governed by the covenant created in the Rail Passenger Service Act of 1970 between the freight railroads and the American people, through the government, that the national railroad passenger system would be given priority for its trains. The value of this covenant to the freight railroads, according to the testimony of the Association of American Railroads today before this Committee, is a savings to the freight railroads of $775 million in today's dollars.

The Council proposes that the two new companies be administered by a small federal agency, the National Railroad Passenger Corporation (NRPC). The NRPC should be restructured on the model of the United States Railway Association (USRA), created by Congress in 1973 to restructure Penn Central and 6 other railroads. USRA planned Conrail, enforced strict accountability on Conrail, and shielded Conrail from political interference. The Council believes a new National Passenger Rail Program needs a similar oversight organization. The Council is less concerned with where the agency is located than that it have the strong charter that it will need to be effective.

In this framework, **a new national train operating company could concentrate strictly on running trains**, with the resources to do so, under contract, with no unfunded mandates, and without political pressure on its management decisions.

The Council's proposal for a National Passenger Train Operating Company also recommends **introducing the possibility of competition through franchising into the provision of passenger train services**. In many countries around the world, reforms in the provision of both passenger and freight rail service have involved competitive bidding for contracts to provide public services.

Our recommendations also deal directly and strongly with **the parts of the Northeast Corridor and other infrastructure that Amtrak owns**. Today's Amtrak is a minority user of the Northeast Corridor – running only about 150 of the Corridor's 1200 trains – and its finances and management cannot bear the burden of maintaining and improving what is largely a commuter facility.

As an aside, Mr. Chairman, you have some very interesting figures in your own bill. Those figures make it clear that the annual cost of operating, maintaining, and improving the NEC infrastructure, which S. 1991 sets at $1.3 billion, is equal to the counterpart $1.3-billion cost of operating, maintaining, and improving the entire national passenger operating company. Those numbers are fairly consistent with the Council's current analysis. Your bill therefore sets two separate budgets, one for train operations and for the NEC infrastructure, Mr. Chairman, and it is a small step to put these two businesses into their own companies so that they can be effectively directed and managed.

The Council's final major recommendation is that the Congress enact measures to **provide stable and adequate sources of funding – separate sources for train operations and for infrastructure – for a restructured National Rail Passenger Program.** There are those who say that putting more money into the existing Amtrak – as S. 1991 provides – is all we need to do. The Council strongly rejects that notion. What we have today is an institution that, through more than 30 years of existence, has never had the full confidence of the Congress or the Executive regarding Amtrak's ability to spend money properly, regardless of which party controlled either of those branches. Effective oversight of a restructured program will correct that lack of confidence.

FUNDING A PASSENGER RAIL PROGRAM

Even then, the reality of government funding today poses important challenges to effective funding of passenger operating and capital needs, including infrastructure, especially at the unprecedented levels called for in S. 1991. Guaranteed spending programs, which today predetermine the appropriation of 75 percent of all federal transportation funds, have been very beneficial for highways, transit and aviation. But the rail mode of transportation is having a tougher time getting funds appropriated because there is no room in the transportation appropriations bill to fund major facilities such as the Northeast Corridor infrastructure, which needs at least $1 billion per year.

Funding Passenger Rail Infrastructure

Most important for the infrastructure needs of an improved passenger rail program are several bond bills that have been introduced. One is the High Speed Rail Investment Act, co-sponsored by Senators Daschle and Lott. A bill sponsored by House Transportation and Infrastructure Committee Chairman Don Young, **RIDE-21, provides $36 billion in tax-exempt bonding authority** (and $35 billion in loan guarantees) for railroad infrastructure investments. S. 1991 would provide appropriated funding of $1.3 billion for the NEC infrastructure and $1.5 billion per year to develop the infrastructure of the emerging high-speed rail corridors.

Under appropriate safeguards, the Council also recommends that states have flexibility to use highway and aviation funds for investments to improve the intermodal connectivity of the passenger network or to fund rail investments that would relieve highway or aviation congestion in short-haul corridors.

When such a program is enacted, these funds should be the engine for an effective federal-state rail infrastructure program, in cooperation with the freight railroads, to support improved passenger rail (and intermodal freight) service. The systematic and continuing improvement of railroad rights-of-way and tracks that this program will support is an essential element of the sound national rail passenger (and freight) program that America needs.

Funding Operations and Equipment

The issue of funding for operating subsidies and other needs for Amtrak's long-haul trains, as well as for the capital requirements of corridor trains, and also for operating assistance during a transition period, is more difficult. **The Council's Action Plan recommends that the government provide funding on the basis of a formula that will promote its efficient use**, not simply fund cash shortfalls resulting from inefficient, deficit-ridden operations. Funding under such a structure might be provided through appropriations or through some dedicated source of funding (some have suggested that a new penny might be added to the federal motor fuel tax that could go to rail uses if matched by a new state penny). **Under the program structure that the Council recommends, in which train operations would be provided under contracts, much of the funding for the passenger equipment investment needs of the operating company should or could come from private capital markets.**

Funding the Northeast Corridor Rail Infrastructure

Let me go back and address the Northeast Corridor infrastructure. **Separating the Northeast Corridor infrastructure – both organizationally and financially – from Amtrak's nationwide train operations is another way of narrowing the gap between the subsidy needs of Amtrak's national train operations and the uncommitted funds available in the budget.** There is little or no chance that Amtrak will be able to get the capital it needs to maintain and improve the NEC infrastructure out of appropriated funds. Clearly, responsibility for the NEC infrastructure needs to be shifted to a federal agency or authority that has better access to federal, state, and local guaranteed funding than Amtrak has.

Why? Because Amtrak has demonstrated that it has to use whatever cash is available to offset the operating losses of its trains. To fund operations, Amtrak raised $300 million for operating expenses last year by mortgaging future income from two concourses in Penn Station New York. Amtrak regularly charges portions of its oversized management overhead costs to capital projects, and it has deferred maintenance on the NEC infrastructure below levels needed for minimum operational reliability. Despite the $3.8 billion backlog of critical fire and life safety and other urgent capital projects on the Northeast Corridor, Amtrak did not request the full amount of appropriations authorized by the Congress under the Amtrak Reform Act.

Amtrak – as it is presently structured – cannot be an effective public steward for this vital toll road known as the Northeast Corridor.

A variety of funding sources, not all directly available to Amtrak, are accessible to NEC state governments (and the other states with emerging corridors) to assist in providing the investments to support their large NEC commuter operations, as well as Amtrak's high-speed operations.

Indeed, there is no single source that could provide all the necessary capital for the NEC. Thus, the Congress should look at a variety of sources, which may include:

- Bond bills that are pending before Congress (RIDE-21 and HSRIA) would help, and may be the principal way to fund all of the corridors.

- The private market will likely provide bond funding to a separated NEC infrastructure;

- For vital fire and life safety projects on the NEC, federal appropriations might be used to reauthorize the Northeast Corridor Improvement Program or provide part of the funding needed to establish a trust fund to pay off bonds issued by a new Northeast Corridor Authority.

- Loans or guarantees under TIFIA and/or RRIF can also help. A restructured National Railroad Passenger Corporation and the states might work with Regional Transmission Organizations, to undertake one of the major infrastructure projects south of New York – the replacement of the electric traction system.

- Expanding the flexibility provisions in current transportation trust funds to include the NEC projects that would reduce highway and air traffic congestion.

- Civil works projects can be implemented by the Army Corps of Engineers with federal transportation funds to replace rail bridges spanning navigable waterways.

- Special purpose mechanisms for ownership and control of such NEC assets as the Penn Station Complex, which by itself has total needs of more than $4 billion over the next 20 years, might be more effectively handled under some kind of appropriate regional umbrella.

- Federal and/or state tax incentives, such as tax credits, might be developed to encourage the private sector to make investments in the corridor.

COMMENTS ON THE NATIONAL DEFENSE RAIL ACT (S. 1991)

Mr. Chairman, let me take the opportunity to contrast the thrust of certain of the proposals that you put forward in S. 1991 with the comparable proposals from the Council's Action Plan.

At the outset, I would make an observation about the title of your bill. Using the word "defense" in the title is correct because of the fact that it will help develop the high-speed corridors for both passenger and freight. This is the missing part of our 21st Century transportation system. And it gives this country extra security should another 9-11 happen.

Oversight. Mr. Chairman, S. 1991 does not provide badly needed improvements to the oversight of Amtrak. The Council suggests you give due consideration to strengthening oversight provisions. Amtrak's track record both for developing timely and effective business plans and for timely and complete quarterly and annual reporting of its financial performance is poor.

Corporate and Board Structure. Following on from improved oversight, S. 1991 does not propose any substantive changes in board or organizational structure for Amtrak. A major reason for the structural changes the Council proposes is to provide effective corporate governance for the three major functions that today's Amtrak carries out. These are: National Rail Passenger Program direction, direction and management of national rail passenger operations, and direction and management of the Northeast Corridor rail infrastructure. Each of these functions is a major task in its own right and is very different from the others. They each require different skills and different representation. The Council would suggest that the Committee give due consideration to appropriate changes in the rail passenger program's board and organizational structure.

High-Speed Rail Corridors. The Council strongly supports the development of the emerging high-speed rail corridors. Our proposal, however, would be to base such a program on federal-state cost-sharing rather than on 100 percent federal funding. First, we doubt that sufficient federal funds exist to carry the entire burden. Second, where freight railroads get major benefits from the investment, the Council believes they should make an appropriate contribution. The Council would also support having the funding priority of the Corridors determined by the Secretary of Transportation, rather than by federal law. And while transitional federal operating assistance might be warranted, basing the corridors on permanent federal operating support is likely to be fiscally and economically untenable.

Transportation-Related and Non-Transportation-Related Profits. Without organizational separation, and without the application of depreciation, the Council believes there is reason to doubt that Amtrak's current accounting systems and practices can effectively determine whether Amtrak's activities are indeed profitable. Unless profitability can be accurately determined, issues of fairness arise if a subsidized government agency is to compete with private firms for various contracts.

Assuming that profits could be accurately determined, another problem arises. If profits have to be given away, then not much in the way of profits may materialize. This is true for both transportation-related and non-transportation-related activities. This is what happened under the Transportation Act of 1920, which required that the profitable railroads subsidize the unprofitable railroads. All profits suddenly went away, as if by magic. This provision of S. 1991 also has the aura of a kickback to states that hire Amtrak for various non-transportation-related contracts, which would also disadvantage private firms bidding against Amtrak to supply services.

Efficiency. S. 1991 does not contain any incentives to improve the efficiency or customer satisfaction of Amtrak's corporate overhead functions, train operations, or supporting services.

Amtrak's needs strong incentives to get its costs under control, increase its revenues, and improve its service quality. To improve the performance of train operations, one measure that the Committee might consider is franchising selected routes or groups of routes. If the Committee decides against franchising, then Amtrak's operations might be conducted by two or three different government corporations so that inter-company comparisons could be made, and the best practices in any particular area could be replicated in the other companies.

CONCLUSION

With all due respect to your proposals, Mr. Chairman, the Council believes its own recommendations are strong and sound. The chronic difficulties that Amtrak experiences – year in and year out – are not due principally to lack of funding. They spring primarily from an organization that does not inspire confidence and thus desperately needs to be redesigned. Effective reform will beget funding. Funding alone will not beget reform.

For these reasons, the Council strongly recommends that the Congress first adopt badly needed institutional reforms, which could very easily be included in S. 1991, before providing major new funding for passenger rail service.

On behalf of the Council, I thank you, Mr. Chairman, for the opportunity to address the Committee. I will be pleased to answer any questions.