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Passengers Voice Concern Over Serious Flaws In Passenger Rail Privatization Plan, Point to Opportunities For Directed Partnerships

In a statement for the record submitted yesterday, the National Association of Railroad (NARP) highlighted serious flaws in the privatization plan being put forward by the Chair of the House transportation committee, while recognizing that a directed and well-considered engagement between Amtrak and the private sector has the potential to benefit both parties involved and the public.

NARP President Ross Capon pointed to a number of factors that House Transportation & Infrastructure Committee Chairman John Mica's "*Competition for Intercity Passenger Rail in America*" proposal fails to take into consideration. These include the difficulty for private operators to gain access host railroads' tracks at competitive rates, prohibitively expensive indemnification agreements, the applicability of labor laws and the potential impact on the Railroad Retirement system, and the difference between fully allocated costs and avoidable costs, to name a few.

While unable to endorse Mica's plan as it is, Capon did encourage the Committee to look at specific examples of how Amtrak might engage more with the private sector to the benefit of both parties.

"Consideration should be given to a possible connection between the need for redundancy in the power grid and the potential to construct new transmission lines along the Northeast Corridor where local opposition likely would be minimal," wrote Capon. "A private sector consortium could profit from selling power both to the railroad and to utilities along the route." Capon argued this kind of public-private partnership would benefit passenger train operations—intercity and commuter—replacing antiquated infrastructure and making the trains more energy efficient and more reliable.

The statement, however, explicitly pushed back against Chairman Mica's assessment that "Amtrak has repeatedly bungled development and operations in the Northeast Corridor." A true apples-to-apples comparison of ridership trends on the "NEC Spine" (Boston-Washington) shows that Amtrak's ridership rose from 6.4 million in 1976 to 10.4 million in 2010—a 62.5 percent increase.

About the National Association of Railroad Passengers

NARP is the only national organization speaking for the users of passenger trains and rail transit. We have worked since 1967 to expand the quality and quantity of passenger rail in the U.S. Our mission is to work towards a modern, customer-focused national passenger train network that provides a travel choice Americans want. Our work is supported by over 22,000 individual members.

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Statement for the record of the June 22, 2011 hearing: "Competition for Intercity Passenger Rail in America."

Ross B. Capon, President & CEO
National Association of Railroad Passengers

Submitted: June 21, 2011

We appreciate and largely share your goals – improved intercity passenger train service both in the Northeast Corridor and nationwide.

I. Careful Study of Specific Private Sector Opportunities

With a view to opening on a positive note, the Committee might ask DOT or the Amtrak Board or some other entity to look at specific examples of how Amtrak might engage more with the private sector to the benefit of both parties.

For example, consideration should be given to a possible connection between the need for redundancy in the power grid and the potential to construct new transmission lines along the Northeast Corridor where local opposition likely would be minimal. A private sector consortium could profit from selling power both to the railroad and to utilities along the route. Meanwhile, passenger train operations—intercity and commuter—would benefit from replacement of antiquated electric traction infrastructure. This would make the trains more energy efficient and—especially considering constant tension catenary (overhead wires)—more reliable, particularly in hot weather. A salutary benefit to freight operations would result from the elimination of passenger train delays caused by catenary problems.

II. Our general view of the committee's draft bill

We do not believe the specific actions outlined in the draft legislation will lead to the identified, attractive outcomes. We do not agree with Chairman Mica's assessment that "Amtrak has repeatedly bungled development and operations in the Northeast Corridor, and their new long-term, expensive plan to try to improve the corridor is simply unacceptable."

Section numbers referred to here are those in the June 15 discussion draft of the Mica/Shuster bill "to develop high-speed rail in the Northeast Corridor through a public-private partnership, and to encourage private sector competition on intercity passenger rail corridors."

III. Access to host railroad tracks

As explained by Joyce Rose at your June 15 national briefing, Amtrak would retain its statutory right of access on an incremental cost basis. This presumably also means the right to seek redress by the Surface Transportation Board (STB). We support this.

Section 206 raises serious doubts as to whether any competitor to Amtrak could gain access to host railroads' tracks, and certainly at competitive rates. Both "the right of access" and the "cost

of such access, shall be subject to contract negotiation with the owner of that track," apparently with no measure of what is acceptable or provision for STB review.

The railroad industry has made clear its opposition to giving Amtrak's access rights to other parties. In fact, opposition to "rights extension" has been a key industry position. The draft respects the railroads' concerns but the likely result would be extraordinarily high costs for a prospective non-Amtrak carrier for either the short corridors or the long-distance ("interstate") routes.

The railroad industry accepted the 1970 creation of Amtrak and its access rights as a quid pro quo for being relieving of the railroads' intercity passenger train losses. Today, Amtrak is considered a known quantity which has paid its bills for over 40 years. By contrast, CSX predecessors Seaboard and RF&P suffered significant financial losses and even embarrassment dealing with the private intercity passenger 'tenant,' Auto-Train Corporation. See Appendix.

Amtrak has had longstanding agreements with the host railroads that include provisions regarding an allocation of responsibility. Any non-Amtrak operator would have to reach a separate agreement on allocating the responsibility for damages and indemnification with the host freight railroads, similar to the existing Amtrak-freight railroad agreements to indemnify, assuming the railroad is inclined to enter into such an agreement. Since current federal rail passenger liability limits apply only to passengers and damages to property of passengers, the freight railroads might seek to require new operators to cover third party damages.

Finally, a private operator would want some profit.

These factors—access rights; indemnification agreements; need for profits—have big cost impacts that must be factored into the equation when privatizing rail passenger operations. These issues do not bode well for compliance with section 301a, which applies to interstate routes and requires an "operating subsidy less than Amtrak's on average over the life of the contract," or for realizing the similar expectations this bill and its publicity have generated regarding subsidy requirements for state-supported routes.

IV. Applicability of Labor Laws

Three labor-related laws generally apply to railroads, including Amtrak:

- Railroad Retirement Act;
- Railroad Unemployment Insurance Act;
- Federal Employers Liability Act

However, these laws do not apply to Veolia, which operates Tri-Rail—the Miami-West Palm Beach commuter railroad—under contract to the South Florida Regional Transportation Authority. This is relevant to judging the significance of criticism of Amtrak for having been underbid by $70 million for the right to operate the Miami-West Palm service. Using the South Florida situation as the basis for repeated attacks on Amtrak also seems inconsistent with the

assurances we have heard that the new order as envisioned by the chairman would preserve existing labor agreements and rights.

If the chairman's vision of competition for the right to operate intercity routes includes exemption from these laws, then the entire railroad industry should be concerned about the potential impact on the Railroad Retirement system of such a large number of employees exiting the system. Amtrak accounts for more than 10% of railroad industry employees.

V. Flexibility of existing law

Section 202 calls out a number of functions which could be contracted out, including call centers. The implication is that this can't be done today. Actually, it is being done. As an example, the joint powers authority that administers Amtrak's California-funded Capitol Corridor has contracted with BART (Bay Area Rapid Transit) to run the call center. Thus, a different information telephone number is shown in Capitol Corridor timetables (including on pages 117, 119 and 120 of Amtrak's "Spring Summer 2011" system timetable). The joint powers authority also is housed within BART, taking advantage of the economies of scale inherent in using their administrative functions.

VI. Fully Allocated vs. Avoidable Costs

The route specific financial numbers which Amtrak is required to report show "fully allocated" losses. These numbers do not represent what would be saved by discontinuing a given route as they include many cost elements that would not change; the costs would simply be reallocated to routes that continued to exist. In other words, fully allocated losses are much higher than what could be saved by eliminating a given route or group of routes.

For example, the disappearance of the Sunset Limited would not change President Boardman's salary nor have a material impact on other departments including, but not limited to, legal, planning, and the Amtrak Office of Inspector General. The Sunset Limited, moreover, is a particularly poor example to cite because the Texas Eagle and Sunset Limited function as a single route due to the heavily-used through-cars that operate Chicago-San Antonio-Los Angeles. Eliminating the Sunset would immediately and drastically worsen the Eagle's performance, depriving the latter train of the significant share of revenues associated with trips between Eagle stations and points on the Sunset route west of San Antonio.

VII. Disposition of Amtrak Rolling Stock

We oppose the section 205 provision that effectively hands to a private entity the right to cherry pick Amtrak's fleet, determining both which cars and how many cars are needed to serve the route(s) the entity has won the right to operate.

"To the extent that an entity identifies Amtrak equipment or rolling stock to be required for the performance of the covered service…the entity and Amtrak shall enter into an agreement to purchase or lease such equipment or rolling stock."

If, for example, Chicago-based services are split among more two or more contractors, there would need to be:

- special equipment pooling agreements among the carriers;
- a dramatic reduction in spares ratios; and/or
- a larger fleet than currently exists, just to provide the same service level.

There appears to be no independent means to determine the outcome of conflicting and/or unjustified demands for the equipment. Of course, cherry picking of routes could parallel cherry picking of rolling stock, leaving Amtrak with the weakest routes and worst rolling stock.

VIII. Northeast Corridor

Northeast Corridor Executive Committee: It is hard to imagine a "five-member public-interest body" able to make key decisions effectively. Of particular concern is the absence of any requirement that intercity passenger rail interests or expertise be represented. One important advantage of the present set-up is that, with the intercity carrier (Amtrak) dispatching and owning most of the Corridor, the danger is minimized that decision making would be hijacked by people who place more value on specific commuter train scheduling concerns than on creating optimum pathways for intercity trains, whose expeditious passage requires coordination with commuter schedules in multiple metro areas. The intercity concern includes, but is not limited to, maintaining the hourly ('clockface') memory pattern that is key to Acela's marketability. There is also the possibility that real estate development pursuits would trump transportation and/or transportation safety concerns.

Logistical Challenge: In October, 2005, the Amtrak Board voted to split the Northeast Corridor into a separate subsidiary. One of the reasons this was not pursued was the huge complication involved in transferring the thousands of titles of everything in the Corridor even just to a subsidiary. As the Amtrak Board's own April, 2005, resolution put it: "the costs, complexities and risks of such a split within Amtrak outweigh the benefits."

Express Service Goals: Section 106 anticipates maximum two-hour run time NYP-WAS and 2:30 NYP-BOS, doubling the existing frequency, and doing so within 10 years. Clearly, this involves relying primarily or exclusively on a brand-new railroad, as the Northeast Corridor Infrastructure Master Plan for the existing railroad (at page 21) foresees average "express service" travel times in 2030 of 2:21 NYP-WAS ("2-stop 2:15") and 3:08 BOS-NYP. There is no enforcement mechanism and, again, no solid basis for believing that the goals can be accomplished.

Private and federal funding: Amtrak's vision for the 'new' Northeast Corridor does include private participation to the maximum extent feasible. Conversely, any privately-managed alternative development likely would be dependent on substantial federal investment. Again, the project would have to have a significant stream of revenues that would justify any private sector investment. Finally, there is no hard evidence that demonstrates why any private entity would be interested in taking over responsibility for infrastructure and/or equipment without being able to show that such an investment would not be damaging to shareholders.

Amtrak's Stewardship: In general, Amtrak has done an impressive job of managing the Northeast Corridor. Key elements of the infrastructure are antique. The B&P Tunnel (south approach to Baltimore) and Union Tunnel (north approach) both opened in 1873; the New York-Washington electrification entered service in 1935. These make the nation's oft-lamented air traffic control system look modern by comparison; many Amtrak workers would consider it a luxury to work with 1950s-vintage facilities.

I recall a meeting with President & CEO Joseph Boardman early in his tenure at Amtrak. There had recently been a major power failure on the NEC, and Boardman—a Republican who served as Federal Railroad Administrator under President George W. Bush—was filled with praise for the skill of the Amtrak power directors and other Amtrak employees responsible for managing the aftermath of the failure in a way that minimized both the recovery time and damage to the system.

We were disappointed to notice that the "Flat Northeast Corridor Ridership" table at page 3 of A New Direction apparently is unchanged from the table shown at your May 26 hearing, notwithstanding information readily available from Amtrak and included in Rep. Brown's letter of June 2. As I wrote in our comments for the record of your May 26 hearing:

There has been much discussion of NEC ridership trends over the past 34 years, and the suggestion that this "proves" Amtrak has been an unworthy steward of the NEC. As indicated by the attachments to Rep. Brown's June 2 letter, on an apples-to-apples basis, ridership on the "NEC Spine" (Boston-Washington) rose from 6.4 million in 1976 and 6.8 million in 1977 to 10.4 million in 2010. Thus, 2010 ridership was 62.5% higher than the 1976 level and 52.9% above 1977.

These figures are constrained by three, related factors.

- Amtrak has been mandated to maximize revenues, not ridership.
- The size of the available fleet could not support the significant traffic growth that lower fares would produce.
- Infrastructure "choke points" that partly stem from the tripling of NEC commuter trains since 1976. These important services consume a considerable amount of track capacity.

IX. United Kingdom and Separating Tracks from Carriers

At the June 15 briefing, reference was made to a $10 million investment, half from the private sector. It was stated that Virgin got $300 million from the government in 2004, contrasting with Virgin in 2010 paying the government "a quarter of a billion dollars." National Rail Trends published by the UK Office of Rail Regulation shows that Virgin Rail received government support for its West Coast intercity franchise in every year from 1998 through 2010 with the exception of 2009. Support ranged from between £332 million in 2004 and an estimated £52.5 million in 2010. Payment to the government in 2009 was £71.6 million. (British fiscal years end March 31.)

However, no such discussion would be complete without acknowledgment of the British government's far larger infrastructure investment which made Virgin's performance possible. That investment was £8.9 billion (US$14.4 billion). The numbers mentioned at the briefing do not reveal what portion of Virgin's true infrastructure costs the company's payments covered.

The following passages from Railway Gazette International Editor-in-Chief Christopher Jackson June "Comment" column may be of interest:

"Sir Roy McNulty's Rail Value for Money Review published on May 19 raises serious questions over the effectiveness of the UK's fragmented model, and postulates a return to something like vertical integration [common ownership of infrastructure and train operator]. Pointing out that the cost to the UK taxpayer has increased five-fold since privatization, McNulty says unit costs per passenger-km have been rising as traffic has increased, rather than falling as one would expect from economies of scale…

"The pro-separation lobby, including the independent infrastructure managers and many politicians at all levels, believes that competition is good for customers, driving costs down and quality up. Integrationists argue that the very essence of railway technology requires unified control of track and trains to optimize the system…

"Addressing the argument that separation facilitates competition, the authors [Jeremy Drew and Chris Nash, in a Working Paper published by the Institute for Transport Studies at the University of Leeds] point out that competition is not an objective in its own right but simply a means of achieving a more efficient railway. Any efficiencies gained must be set against 'higher transaction costs between infrastructure manager and operator, reduced pressure on costs and the negative impact on decision making, particularly for investment.'…

"A key factor is the degree of government support for infrastructure investment…Thus they feel 'on existing evidence there is no reason to conclude that vertical separation improves rail performance.' The jury is still out."

As I have previously noted, a May 25 *Financial Times* report, "UK rail reform poses 'big test' for operators," said, "Train operators could take over the running and maintenance of the tracks, ending the separation between track and train management that has been blamed for many of the network's failings." FT said operator Stagecoach "supports the integration of track and trains."

Thank you very much for this opportunity to present our views.

APPENDIX: AUTO-TRAIN CORPORATION

As reported in the May 4, 1981, *Washington Post* "Washington Business" section:

"Seaboard and RF&P [CSX predecessors] are believed to be the biggest losers in the Auto-Train bankruptcy, although a complete listing of the railroad's debts has not been made public.

"…executives of the two railroads have been embarrassed by losing several million dollars in the bankruptcy.

"Not only does Auto-Train owe the railroads millions of dollars for services, but also the two roads were forced to pay off $2.6 million of Auto-Train's other debts. They co-signed an Auto-Train bank loan. When the loan was not paid, Seaboard had to put up $2 million and RF&P $600,000. Marriott Corp., which provided food on Auto-Train, guaranteed $400,000 of the company's borrowings and lost that money along with what the company lost on unpaid food bills.

"The two railroads were so anxious to be rid of Auto-Train that they agreed to put up $800,000 each to pay for Auto-Train's final week of operations and to finance expenses involved in shutting down the company entirely.

"In return for the $1.6 million, Auto-Train bankruptcy trustee Murray Drabkin agreed not only to stop the train but also to cancel the long-term contract with the railroads, freeing them from future obligations…

"Amtrak already runs trains over the Auto-Train route and could run its own Auto-Train service for much less than it would cost an independent railroad." [Note: Auto-Train Corporation's last departure from Lorton, VA, was May 1, 1981; Amtrak's AutoTrain began service October 30, 1983.]

Wall Street Journal reporter Robert S. Greenberger's cover story, "Once I Had a Railroad: How Auto-Train Ran Off the Rails," appeared in the May-June 1981 issue of Regardie's, The Magazine of Washington Business & Real Estate. Here is one passage: "Angry creditors also confronted the company. By September 1980, Auto-Train would owe more than $5 million to Seaboard Coast Line Railroad, on whose tracks the train ran. It also owed $400,000 to Marriott Corp., Auto-Train's food supplier. Further, the train owed nearly $700,000 in refunds to passengers. The Interstate Commerce Commission and other government agencies issued complaints because of this use of customers' money to finance operations."

Later, Trustee Drabkin sued Auto-Train's auditor Alexander Grant & Co., contending "that the company's financial difficulties were misrepresented for years to stockholders and the board of directors and that Auto-Train, with equipment that was rusting away for lack of spare parts, was trying to expand when it should have been consolidating its assets…In late 1979, more than half the company's equipment was inoperable…" [The Washington Post, March 1, 1983]. Auto-Train, of course, relied on used equipment and did not purchase new cars, which would have considerably increased costs.