STATEMENT
ON

AMTRAK AND RELATED ISSUES, INCLUDING THE AVAILABILITY OF FEDERAL FUNDING

BEFORE THE
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BY
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Good afternoon, Mr. Chair and Members of the Washington State Transportation Commission. It is a privilege to have the opportunity to address the Commission today on Amtrak and related issues, including the availability of federal funding to support intercity rail passenger service.

My current position, which I have held for just over two years, is Managing Director of the Cascadia Center for Regional Development of Discovery Institute in Seattle. Cascadia Center has had an active interest in regional passenger rail issues throughout its existence, a period of some 12 years or more. Cascadia Center continues that interest in the region's passenger and freight rail systems today.

Prior to my coming to Washington State, I have been involved in rail freight and passenger issues for more than 30 years, including assignments: (i) in the Office of the Secretary of Transportation; (ii) at the Federal Railroad Administration (FRA) as a civil servant in the late 1970s directing the division that dealt with Amtrak and later as director of rail freight industry studies and analysis; (iii) as a political appointee in the 1980s, serving as Deputy Administrator and Acting Administrator of FRA, and (iv) most recently, from 1999 through 2002, as Executive Director of the Amtrak Reform Council, which made major recommendations to the Congress for the reform of our national program for intercity passenger rail service. My career also contained several periods of private sector transportation consulting. In the 1990s, I served as a project manager for both the World Bank in Washington, D.C., and the European Bank for Reconstruction and Development in London, working on rail and transit projects in Russia, Ukraine, and Uzbekistan.

Mr. Chairman, I have a prepared statement, which I have provided to the Commission for the record. With your permission, I would like to present a brief summary of my statement to the Commission and then move into the discussion.

Let me also mention that I have under preparation a more thorough analysis of the overall program issues that arise from Amtrak's current situation and from the two major proposals for its reauthorization. If the Commission pleases, I would be willing to share that analysis when it is completed in a month or so.

Before I begin, I see that Mr. Lloyd Flem, the Executive Director of the Washington Association of Rail Passengers (WashARP), is on your agenda immediately following this presentation. I would like to commend Mr. Flem, and the many seasoned members of the Washington Association of Rail Passengers leadership, for their strong support over many years for an improved intercity passenger rail system here in the Pacific Northwest, and particularly in Washington state. Their dedication and vision in support of the program, together with the excellent efforts of the Washington State government, including this Commission and the state's rail office, have all been vital to the creation of what is widely recognized as the best of our nation's state passenger rail programs. Amtrak's Cascades service has been honored repeatedly for the highest quality customer service.

1. Background

Amtrak, formally known as the National Railroad Passenger Corporation (NRPC), was established by the Rail Passenger Service Act of 1970. Amtrak was created to lift the burden of some $750 million in annual losses from the private railroad industry, which was in dire financial condition in the 1960s.

Amtrak began operations on May 1, 1971, as a for-profit corporation. Its initial authorization was for some $40 million. Its network of services was established under a "basic system plan" developed by the U.S. Department of Transportation, creating a system of corridor and long-distance trains that cover most of the lower 48 states. Today, there is service in all of the lower 48 states with the exception of Wyoming and South Dakota. In 1976, the non-state-owned portions of the Northeast Corridor rail infrastructure were transferred to Amtrak by the United States Railway Association as part of the reorganization plan for the Penn Central and several other bankrupt northeastern and midwestern railroads.

2. Amtrak's Corporate, Program, Oversight, and Financial Structure

Amtrak, formally known as the National Railroad Passenger Corporation (NRPC), is a federally chartered corporation with the mission of providing intercity rail passenger service in the United States. Hough it is not a monopoly under law, its possession of a unique franchise makes it a *de facto* monopoly. That statutory franchise gives it access to the nation's rail network, at incremental cost, with priority over freight trains, and with indemnity.

Amtrak is governed by a board of directors that is nominated by the president and confirmed by the Senate; the board also includes two ex officio members: the Secretary of Transportation and the president of Amtrak, with the latter being a non-voting member.

Amtrak's federal funding is administered through the Federal Railroad Administration (FRA) of the U.S. Department of Transportation. FRA is also responsible for executive branch oversight of the corporation, though FRA has limited oversight authority.

Amtrak's legislative program oversight is provided by the Railroads Subcommittee of the House Transportation and Infrastructure Committee and by the Surface Transportation Subcommittee of the Senate Commerce Committee.

Amtrak is incorporated under the Corporation Act of the District of Columbia (even though that law provides that no railroads are to be incorporated under it).

Amtrak's common shareholders include private corporations that hold shares as a result of the formation of Amtrak by the private railroads in 1970.

Amtrak's funding for operations is made up of these components: 1) operating support for the "basic system," including NEC infrastructure, is all federally funded; 2) the operating losses of the state-supported trains are covered by the states, generally under fixed price (versus cost-plus-fixed-fee) contracts, as Amtrak's invoices have in some instances proven incapable of being audited.

Amtrak's capital funding is from these sources: 1) capital funding for the "basic system," including the Amtrak-owned portions of the NEC infrastructure, is all federally provided – inadequately, but there are some state "capital contributions" to the NEC infrastructure; 2) the capital costs of state-supported trains and related infrastructure investments are provided by the states, sometimes with negotiated contributions from Amtrak, and sometimes not.

Amtrak's financial statement comprises both its train operations and its NEC infrastructure operations. This confuses two very different lines of business and turns Amtrak's financials into what amounts to a slush fund. Imagine if Greyhound Bus bought the New Jersey Turnpike and mixed together the financial statements of the two entities rather than keeping each separate and then consolidating them to determine overall results. Under its current board, Amtrak is separating the financial statements of train operations and Amtrak's NEC and other infrastructure.

Amtrak owns the NEC from Washington, D.C., to Boston, MA, with the following exceptions: (1) New York State owns the section from the Connecticut state line to Shell interlocking, where Amtrak turns off to cross the Hell Gate Bridge across Long Island Sound to Penn Station New York; (2) Connecticut owns the portion from the New York state line to New Haven; and Boston owns the portion from the Rhode Island state line to Boston's South Station.

3. The Obstacles To Amtrak's Effective Financial Operations Under The Current Structure

A major problem with Amtrak's financial operations, perhaps the major problem, is the overall poor quality of its management systems, particularly those with major effects upon financial operations. Perhaps the best overall critique of Amtrak's management systems is provided in GAO's Report of October 2005 on five of Amtrak's critical management systems. In a two-year study, GAO researched and assessed the operations of five of Amtrak's management systems, all of which have major financial implications. The five areas are: 1) Strategic planning; 2) Financial reporting and financial management systems; 3) Cost containment; 4) Acquisition management; and 5) Accountability and oversight. Seasoned observers say it was one of the most critical reports that GAO has ever issued. Amtrak's management response in Summer 2005 did not seriously address any of the bulk of the substantive comments of the report, but indicated, in essence, that Amtrak knew what it was doing.

A second obstacle to effective financial operations under the current structure is the Northeast Corridor (NEC) rail infrastructure. To date, it has, because of statutory restrictions, been able to charge only inadequate user fees for its principal users in the commuter rail industry, which are the principal cause of congestion on the corridor. For virtually all of the 30 years of Amtrak's ownership of the NEC infrastructure, it has been unable to secure adequate federal capital funding for the renewal and improvement.

Amtrak's network of long-distance trains comprises a third obstacle. They suffer from Amtrak's endemic problem of poor cost control, together with inadequate revenues from operations and inadequate federal capital funding. Because these trains are not subjected to any competition for the right to provide the rail passenger services it operates, Amtrak has little incentive to become more efficient.

The state-supported trains, as is true with the long-distance trains, are also subject to the poor cost control that afflicts Amtrak's train operations. In the past, though it is not a problem that affects Amtrak's Cascades service, some states have encountered, because of Amtrak's inability to produce an auditable invoice, giving further testimony to the weakness of Amtrak's accounting systems and making it necessary to use fixed-price contracts. Without being subjected to competition for the right to provide the rail passenger services it operates, Amtrak has little incentive to become more efficient. On state-supported trains, however, the high level of state stewardship generally produces consistently better results in terms of service quality than are achieved on Amtrak's basic system trains.

4. Amtrak's General Arrangements For Receiving Non-federal Funding

The great preponderance of Amtrak's revenues from the federal government is provided in the form of annual appropriations from the general fund of the U.S. Treasury. Other principal sources of revenues include:

a. Revenues from Amtrak's passenger rail operations;
b. Payments to Amtrak from states for operating state-supported trains;
c. Real estate and related payments from Amtrak's fixed assets such as those in the Northeast Corridor, at Chicago Union Station, and elsewhere; and
d. Track use fees for commuter rail and freight rail use of Amtrak's Northeast Corridor rail infrastructure facilities and, to a small extent, elsewhere.

5. The Issues Involved In Determining Amtrak's Federal Funding Requirements

There are several major issues that affect the amount of federal funding that Amtrak can reasonably expect to receive.

The first is the structure of the federal transportation budget, which contains insufficient general funds to provide for all the various needs that must be funded from this source. General funds are funds outside of trust fund revenues, which are protected by "firewalls" from being spent for anything but prescribed uses such as highways or airports.

A second issue is Amtrak's history of opaque accounting and arbitrary rules for dealing with depreciation. These issues are the basis of what has been called "the Big Lie." In use until recently, the Big Lie is a dynamic under which the federal government – both the Executive and the Legislative branches – tell Amtrak how much they are going to provide and Amtrak says that that amount, which rarely covers any part of depreciation, is sufficient. It is the hallmark of federal unwillingness to face the full costs of Amtrak's operating and capital requirements. Put another way, it is the federal government's way of ignoring the fact that it is, in dealing with Amtrak, "burning the furniture to heat the mansion."

A third major issue is the impact of the NEC infrastructure acquisition, which added major costs to Amtrak's income statement without corresponding adjustments in revenues or grants or in reduced costs elsewhere. Approximately half of Amtrak's employees work on the Northeast Corridor. The NEC is a prime asset for which new sources of funding should be secured.

Fourth, Amtrak's cost structure, both its expense components and categories of operations/lines of business, has been immune both to effective reporting and to effective control.

Fifth, Amtrak has not demonstrated an ability to make significant improvements in its revenues from operation of passenger services and infrastructure. This has been a recurring source of criticism of Amtrak's operations.

There has been some reform, however. Amtrak's financial crisis in 2001, in which Amtrak had to borrow $300 million of long-term debt against its assets in Penn Station New York to pay for 90 days of operating funds, together with the efforts of the new board of directors, has brought in a new regime of transparent financial reporting and disclosure. After the arrival of David Gunn, Amtrak began to make clear Amtrak's overall annual funding needs for both operating grants and capital requirements. Under the current board of directors, Amtrak has, for the first time, broken out its overall grant request by major categories of train operations, financing requirements (i.e., debt service and working capital), and infrastructure operations.

6. Issues Of Equity And Program Structure

Amtrak's basic system versus state-supported trains. All of the capital and operating expenses of the basic system trains are borne by the federal government. The states carry the burden for the trains they support, which have been for much of the last decade the primary source of increased Amtrak ridership.

Acela Express acquisition. Aside from their poor economic and financial performance, the Acela Express trains were acquired with some combination of Amtrak's revenues, federal grants, and corporate debt or other obligations, without any assistance from the states of the Northeast Corridor. In contrast, the bulk of the equipment for Washington State's Cascades service, is financed by Washington state.

NEC infrastructure funding. The "non-cash" expense of depreciation is supposed to be funded by the federal government. The states are supposed to pay track use fees for their commuter rail operations and the full cost of any capital improvements needed to support their operations on the Northeast Corridor. Freight railroads are supposed to pay fully-allocated cost for their use of the NEC tracks.

7. The Impact Of Alternative Proposals For Rail Passenger Service On The Ability To Secure Adequate Funding

These remarks are not meant to provide an overall assessment of the legislative and other proposals addressed, but to look at them from the standpoint of their ability to secure adequate funding to support state-supported rail operations. The problems of the status quo funding structure for intercity passenger rail service has already been addressed.

In my view, The Administration's Bill suffers from the following funding inadequacies. It has a totally unrealistic expectation of the ease with which states, especially several states, can organize interstate compacts and funding to provide operating support of the long-distance trains. The bill's proposal for track use fees to be paid to the freight railroads is illogical; it would grandfather existing trains at incremental cost-based fees and require all new trains to pay fully-allocated cost. There are also concerns by the states regarding the proposed capital programs for the federal-state investments as well as for the NEC infrastructure capital program.

There are also major flaws in the funding provisions of The Senate Bill, whose primary sponsors are Senators Lott and Lautenberg (D-NJ). The bill's funding provisions are based on unrealistic expectations of the availability of general funds in the transportation budget, and there is not a strong likelihood of securing approval of the expensive tax-credit bonds from either the Senate Finance Committee or the House Ways and Means Committee. In addition, this bill maintains Amtrak as a monopoly provider, which will hamper efforts to control the costs of passenger rail operations and capital investments.

There are two other proposals of some interest. In the Spring of 2005, the Amtrak Board approved a document entitled, Amtrak's Strategic Reform Initiatives, which forwarded Amtrak's federal grant request for FY2006 and for the first time broke out the request by major components of Amtrak's operations, capital needs, and other financing requirements. As a fitting prelude to the GAO report referred to at the outset of this presentation, the numbers indicated that they were, because of accounting issues, subject to revision. The second proposal of interest is the February 2002 report of the Amtrak Reform Council, an independent federal commission, sent to the President and the Congress in February 2002, entitled "An Action Plan for the Restructuring and Rationalization of the National Intercity Rail Passenger System." This report reflects both a different program structure for passenger rail and also a funding structure based on the assessment that the current approach to funding is simply unworkable and needs to be changed.

8. Conclusion

In response to the issue of what is likely to happen in Washington, D.C. this year on Amtrak funding, I would say that the most likely outcome this year is more of the same. Reauthorization is very difficult to achieve, especially in the current political environment.

If a significant reauthorization bill is enacted, it will almost certainly provide more funding than the current annual appropriations process, at least at the outset and probably for a transition period. The issues will be the ultimate funding structure of the bill and the amount of increased authority in the program structure for those most likely to be paying more – that is, the states. An intercity passenger rail program that is a true federal-state program will almost certainly be much more effective than the current incoherent structure in improving service quality and expanding the amount of service.

The issue with achieving reform is simple, but difficult. The traditional core of Amtrak's support is a coalition of NEC states and long-distance train states. To achieve reform, this coalition must be convinced that a new program structure for providing intercity passenger rail service is better – and more certain, especially with regard to funding – than the approach we have now. This will almost certainly require finding new sources of funds. A possible source would be for states in the NEC to secure matching federal transit capital funds to contribute to covering the depreciation of the NEC infrastructure attributable to commuter rail. If such an agreement can be reached, there is a chance for reform, which I believe is badly needed.

If the approach this year is simply to punt on reauthorization and seek another annual appropriation, the issue for states is not only the total amount of funding, but how much is available for operations. To keep Amtrak from doing what it usually does, which is to use all funds necessary for operating purposes, with any remainder being used for capital, this year's appropriations bill (FFY 2006) provides about $35 million less than Amtrak requested to support operations, and provides a specified amount for capital. This is a cut of about 7 percent compared to Amtrak's request, which is obviously intended to put pressure on Amtrak to reduce it operating losses by reducing its operating costs and raising its operating revenues. If this appropriations strategy is successful, and Amtrak does reduce its losses, then all should be fine. If Amtrak cannot reduce its deficit, it could seek to increase charges on its institutional customers, primarily the states.

Mr. Chair and Members of the Commission, that concludes my remarks. I will be happy to answer any questions or discuss any issues that you might wish to raise. Thank you for this opportunity to provide my views.