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Conditions Critical to Ensuring Vibrant Freight and Passenger Rail Systems in the United States Over the Next 30–50 Years

Panel Committee

Deborah Butler

Vice President, Customer Service
Norfolk Southern
Atlanta, GA 30303

William Crosbie

Senior Vice President, Operations
Amtrak
Washington, DC 20002

Warren Erdman

Director, Corporate Affairs
KCS
Kansas City, MO 64105

John Gray

Vice President and General Manager
Business Development
Union Pacific
Omaha, NE 68179

Jane O'Hagan

Assistant Vice President, Strategy
CP
Calgary, AB, Canada T2P 4Z4

Lester Passa

Senior Vice President, Strategic
Planning
CSX
Jacksonville, FL 32202

Karen Phillips

Vice President, US Government Affairs
CN
Washington, DC 20004

Peter Rickershauser

Vice President, Network Development
BNSF
Ft. Worth, TX 76131

Craig Rockey

Vice President, Policy and Economics
Association of American Railroads
Washington, DC 20001

Gordon Trafton

Vice President, Midwest Division
CN
Rosemont, IL 60018

Richard Timmons

President
American Short Line and
Regional Railroad Association
Washington, DC 20001

Arthur Guzzetti

Vice President, Policy
American Public
Transportation Association
Washington, DC 20006

Conditions Critical to Ensuring Vibrant Freight and Passenger Rail Systems in the United States Over the Next 30–50 Years

Comprehensive, reliable, and cost-effective rail transportation is, and will remain for the foreseeable future, critical to the United States. U.S. freight railroads form the world's most cost-effective freight rail system, serving nearly every industrial, wholesale, retail, agricultural, and mineral-based sector of our economy. Meanwhile, passengers took some 435 million trips on our commuter railroads in 2006 and millions more rode Amtrak for short trips and for journeys across the country. Both will play a heightened role in America's social and economic future.

According to the Population Reference Bureau, the population of the United States reached 100 million in 1915, some 150 years after the Revolutionary War. It took another 52 years (1967) to reach 200 million and only 40 years (2006) to hit 300 million. The U.S. population is expected to pass 400 million in approximately 36 years, with most of this growth to occur in metropolitan areas.

To serve this expanding population, the United States needs a transportation policy that recognizes and properly balances the respective strengths and synergies of rail, water, highway, and air transport. In this regard, our society and economy would benefit if railroads played a more prominent role. Railroading is safe, highly fuel efficient, environmentally friendly (including in terms of greenhouse gases), and can handle large volumes of traffic on limited land corridors. And with highways becoming ever more congested and costly to build and maintain, railroads can help manage the huge increases in freight and passenger traffic expected in the years ahead.

Capacity will be key. Freight and passenger railroads will need a significant amount of new infrastructure capacity just to maintain their share of the domestic transportation market. Increasing the rail share—which, given the extensive public benefits generated by rail transportation, should be a societal goal—will require even more capacity.

Below is a set of rail-related principles designed to guide policymakers in their efforts in this regard. If followed, they will help ensure that rail transportation capability will not be a limiting factor in our nation's growth in coming decades.

Promote Policies That Encourage Investment in Freight and Passenger Railroad Infrastructure

Promote an investment tax credit for freight rail infrastructure expansion.

Demand for freight transportation (and passenger operations on freight-owned track) will grow sharply in the future. To meet this demand, rail infrastructure investment must grow sharply too. Freight railroads are investing record amounts in their systems and will continue to fund the overwhelming majority of rail investment needs, but that will not be enough to take full advantage of railroads' potential to meet our transportation needs. Tax incentives for freight rail capacity enhancements, and, separately, tax incentives for infrastructure rehabilitation projects on regional and local railroads, would help bridge the funding gap by leveraging private investment, producing public benefits (including reduced highway congestion, maintenance, and construction costs; safer travel; enhanced mobility; and reduced fuel consumption) that would far exceed the cost of the tax incentives.

Tax incentives should be made available not just to railroads, but also to other entities, including shippers and intermodal interests, that invest in rail capacity enhancements. Such capacity expansion is critical for the growth and well-being of both rail freight and rail passenger operations.

Implement more public–private partnerships for freight railroad infrastructure improvement projects where the project provides public benefits or meets public needs.

The huge public benefits of freight railroading would accrue more quickly if more public–private partnerships for freight rail infrastructure projects were implemented, including strategic improvements which facilitated passenger operations. Partnerships reflect the fact that cooperation between interested entities is much more likely to result in timely, meaningful solutions to transportation problems than a go-it-alone approach. Without partnerships, projects that promise substantial public benefits in addition to private benefits are likely to be delayed (or never started at all) because it would be too difficult for either side to individually justify the full investment needed to complete them. In contrast, if a public entity shows it is willing to devote public dollars to a project equivalent to the public benefits that will accrue, the private entity is much more likely to more highly prioritize the private dollars (commensurate with private gains) necessary for the project to proceed.

Ensure that proper attention is paid to intermodal solutions.

Connecting modes and allowing them to work together in a unified national system is a key to our transportation future. This theme is ripe for policy attention for both passenger and freight services.

Today, by and large, there is insufficient policy impetus to support intermodal generally. For example, some cities and states are extremely supportive of intermodal terminals, while others are not. Because of the significant benefits that intermodal brings, government policy should facilitate intermodal systems.

Funding for intermodal connectors—public roads averaging less than two miles in length that lead to/from major intermodal terminals—has not been adequate, meaning that these critical components of the freight transportation system are often deficient. Policymakers should support the investments needed to improve our ability to handle intermodal traffic efficiently, while limiting impacts on surrounding communities in terms of congestion, noise, and air pollution. Targeted investment in these “last mile” segments would reap significant economic and environmental benefits compared to the associated costs.

Intermodalism is relevant in the passenger realm as well. Adequate airport-rail connections, for example, would facilitate passenger mobility.

Ensure sufficient investment in passenger rail.

Demographic and social trends point to the need for increased rail passenger operations. As our population increases and the need for solutions to the problems of highway and street congestion, mobility, community livability, and urban sprawl becomes more urgent over time, passenger rail must be allocated adequate resources. As demands on limited airport and airspace capacity become increasingly tight, passenger rail travel becomes an increasingly important option.

It is also important that, where it is possible for freight railroads to accommodate passenger rail over freight-owned infrastructure, government support include sufficient funding for infrastructure improvements—as well as appropriate regulatory and legislative policies—to ensure that passenger service does not impede freight rail operations.

Create a “level playing field” by ensuring that freight transportation modes do not receive market-distorting subsidies in the form of under-valued fees or taxes, or via limitations on participation in government transportation programs.

All transport modes depend to some degree on public transport-related infrastructure (e.g., highways, bridges, border crossing facilities, port authorities, inland waterway locks, etc.) Freight rail is distinguished from other modes by its much greater reliance on privately-owned and financed infrastructure.

In fact, current user fee and tax policies favor other modes over freight rail. According to U.S. DOT studies, rail-competitive trucks pay significantly less than the cost of the damage they cause to our highways, while waterways users also do not come close to covering the costs of the publicly-provided infrastructure they use. In contrast, freight railroads rely on their own earnings and borrowing to pay for the installation and maintenance of the rights-of-way and infrastructure over which they operate. Freight railroads must also pay local taxes on those investments. These inequities lead to an inefficient use of scarce resources. Liberalizing truck size and weight limits without addressing the underpayment issues would significantly exacerbate the existing inequity.

Participation in government transportation-related programs (for example, the Congestion Mitigation and Air Quality Improvement Program and the National Corridor Planning and Development Program) should, to the extent practicable, be open to whatever transportation modes (including intermodal) have the potential to help solve the transportation problem at hand.

Ensure that public investment policies do not discourage private investment.

It is appropriate for the private and public sectors to cooperate and jointly fund transportation infrastructure enhancement projects. However, policymakers should ensure that substituting public investment for private investment does not unfairly favor one private company over another. If not properly structured, government support for infrastructure projects could actually result in a net reduction of overall investment by driving away private investments that cannot compete against public investments.

Nor should railroads be expected to fund investments for which they derive little or no benefit for passenger or goods movements. The benefits of rail-highway grade crossing separations or line relocation projects, for example, are overwhelmingly public benefits, so the public should fund such projects. Railroads have limited funds available for investments. Forcing them to fund projects for which they derive insufficient benefits would necessarily mean reduced private investment and diminished rail capability.

Maintain an Appropriate Regulatory and Legislative Environment

Preserve the deregulatory structure that has made U.S. freight railroads the world leader in efficiency and cost-effectiveness.

By the 1970s, the cumulative effect of decades of stifling and outdated government regulation had crippled the U.S. rail industry. Rates and accident levels were rising, rail infrastructure was deteriorating, and numerous major railroads were in bankruptcy. Nationalization was seriously considered.

Partial economic deregulation in 1980 transformed the freight railroad industry. Policy changes gave rail managers greater operational and commercial freedom. Since then, traffic volume, productivity, and safety performance have skyrocketed, profitability has improved from anemic levels, and average rail rates have plummeted.

Perhaps most importantly, deregulation gave freight railroads an incentive to reinvest in their systems. From 1980 through 2006, Class I railroads invested more than \$370 billion (and short line and regional railroads spent additional billions of dollars) to maintain and improve their infrastructure and equipment. After accounting for depreciation, U.S. freight railroads are spending \$16 billion to \$17 billion each year—equal, on average, to more than 40 cents out of every revenue dollar—to provide the high-quality assets they need to meet shippers' goods movement needs and to operate safely and efficiently. Freight rail investments today are higher than ever before.

It is no exaggeration to say that rail deregulation has been one of the most successful transportation-related legislative initiatives in history and a model for successful deregulation among all industries. Continued success will depend on railroads' continued freedom to adapt to changing transport requirements and reconfigure rail operations and networks to meet market needs.

Unfortunately, despite deregulation's enormous successes, freight railroads face continual pressure from those who want to once again give the government ultimate

control over vital areas of rail operations. Under reregulation, railroads would be unable to earn enough to adequately maintain their existing systems, much less make the huge investments in new capacity needed in the future to meet our transportation needs. Reregulation would mean *less* rail capacity when we need much *more*. Rail service would become slower, less responsive, and less reliable—outcomes that are incompatible with a healthy, growing U.S. economy. Under reregulation, passenger transportation would suffer as well because disinvestment would negatively impact parts of our rail network used by passenger trains and because freight would be diverted to already overcrowded highways.

Ensure that policies to promote passenger rail operations also enable passenger and freight railroads to grow together.

Passenger rail operations (both commuter and intercity Amtrak operations) take place on tracks owned by passenger rail authorities and on tracks owned by freight railroads. Accordingly, partnerships with freight railroads are integral to some passenger rail operations.

America’s economic health and global competitiveness demand the free flow of people and freight. The goals of reducing pollution and highway congestion, enhancing the mobility that is so important to our quality of life, and integrating regional economies cannot be realized if the current rail system is not able to accommodate growing and continuing demands for passenger and freight service.

The growth in passenger and freight traffic will cause inevitable passenger-freight conflicts. Focus should be on facilitating “win–win” environments in which freight and passenger rail can both prosper.

Reduce or Remove Statutory, Regulatory, and Institutional Barriers to Efficient Transportation Infrastructure Construction and Operations

Streamline environmental permitting.

Today, multiple and often duplicative Federal laws and regulations unnecessarily delay environmental review of transportation projects. Congress recently streamlined the environmental review process for highway infrastructure renewal by urging more collaboration between various agencies, running environmental impact studies concurrently as opposed to sequentially, and effectively outsourcing some environmental impact studies to state DOTs.

Reforms like these should be encouraged and expanded to freight and passenger railroad capacity projects. It is important that there be a vehicle for multi-jurisdictional analysis and decisionmaking, since rail projects, by their nature, are often regional in scope.

Ensure that environmental mandates strike a proper balance between cost and benefits.

No one disputes that environmental concerns should be addressed. However, there is a real danger in “allowing the perfect to be the enemy of the good.” Measures affecting

transportation, including railroads, that are aimed at creating some environmental benefit must be reasonable and cost-effective.

Maintain Federal preemption related to operations, safety, enforcement of national environmental laws, security, and other pertinent issues.

Railroads could not operate effectively as a national system under a patchwork of laws from 50 different states and thousands of localities. That is why they have long been preempted from various state and local laws. Preemption ensures that interstate commerce and interstate transportation are not stopped at the door of a local jurisdiction.

On some issues, though, Federal preemption is being threatened. For example, state and local entities are increasingly citing environmental justifications to attempt to block rail efforts to increase capacity or improve operations. Reasonable efforts to protect environmental interests are understandable, but they should not be allowed to unreasonably impede transportation improvements.

States and localities sometimes also try to force railroads to modify their operations in ways they claim will enhance safety. Railroads are already subject to comprehensive Federal Railroad Administration (FRA) national safety regulation. Forcing railroads to adhere to state-specific laws and regulations would degrade the national rail network. Likewise, the clarity and efficiency that uniform national standards bring would be lost if local and/or state governments could ban certain types of rail freight (e.g., hazardous materials) from passing through their jurisdictions.

Railroads sometimes need to use the power of eminent domain to advance national transportation interests. This power is exercised judiciously, mostly as a lever to cooperative negotiations with local communities to ensure that key projects are progressed responsibly, and should be retained.

Many barriers like those described above are the result of excessive “NIMBYism.” More effective means to counter this unfortunate and growing trend must be adopted. One way to do this might be to increase the formal use of cost-benefit analyses as part of the evaluation process for public infrastructure investment decision-making, thereby recognizing the value of transportation infrastructure toward economic development.

Ensure that security mandates strike a proper balance between security and providing for the free flow of commerce.

It is an unfortunate reality that the global war on terror will be with us for many years to come. That means that enhanced attention to security will continue to occupy a front-and-center role in transportation, including rail. However, there is an unavoidable tension between the need for transportation efficiency and the assurance that our transportation systems are adequately protected from terrorist and other threats. Using risk-based security regulations, policymakers must strike a proper balance between protecting our country’s transportation assets and its citizens (and assuming the proper responsibility for funding that protection), and providing for the free flow of goods and people. As former Secretary of Transportation Norm Mineta once remarked, “What we don’t want is for our checkpoints to become chokepoints.”

Ensure that new residential developments do not unduly hinder efficient freight and passenger rail operations.

Rail operations and capacity enhancements are often hindered by opposition from residents of new developments built near existing rail facilities who then object to the noise or other impacts of the rail operations. Zoning restrictions or other tools should be used to ensure that new developments are not built too close to rail facilities, so that rail operators are more likely to have the space and the operational flexibility necessary to function efficiently and expand capacity as necessary to meet transportation demand.

Address the untenable current situation regarding the transport of highly-hazardous materials.

The current environment for the rail transportation of highly-hazardous materials, especially toxic inhalation hazards, is untenable. Today, the Federal government, through railroads' common carrier obligation, requires railroads to transport these materials, whether railroads want to or not. But every time a railroad does so, it faces potentially ruinous liability. If the government continues to require freight railroads to transport highly-hazardous materials, railroads' liability in the event of an accident should be limited. Alternatively, the government should rescind railroads' common carrier obligation to carry this traffic.

In addition, the development and use of improved technologies for transporting highly-hazardous materials, such as improved tank cars, should be accelerated. Efforts should be continued to reduce hazmat risk through initiatives such as product substitution, route risk assessments, reducing dwell time, and route/market rationalization.

Strengthen and enhance efforts to close unneeded highway-rail grade crossings.

While some states have developed effective programs to work with railroads to close highway-rail grade crossings that no longer are necessary for vehicular traffic or for which viable alternatives exist nearby, it is difficult in many jurisdictions to get crossings closed. Railroads have made tremendous safety gains since 1980, but accidents at grade crossings remain a significant concern. States should have comprehensive crossing closure programs with aggressive crossing closure targets. Such programs and the resulting closures of unnecessary crossings would enhance safety and promote more efficient freight and passenger rail operations.

Arrest Escalating Liability Costs for Passenger Rail Service

The threat of terrorism and other factors are contributing to escalating passenger liability costs. Reasonable remedies that protect all parties' interests are needed to allow critical rail passenger projects to move forward.

Support the Evolution of Rail Systems to New Technologies

Ensure that laws and regulations do not impede innovation by “locking in” existing designs, technologies, and ways of thinking. Provide a fertile environment for technological innovation.

Transportation-related laws and regulations must be sufficiently flexible to allow appropriate incorporation of innovative technologies and processes.

For example, for many years, an FRA rule required railroads to remove railroad freight car wheels that showed four or more inches of discoloration, on the grounds that such discoloration could portend wheel failure. However, research demonstrated conclusively that discoloration in heat-treated, curved-plate wheels did not portend failure. Despite this evidence, the FRA took more than a decade to exempt such wheels from the requirement. During this period, railroads had to discard perfectly safe wheels at a cost that reached \$100 million per year.

One way to reduce the potential for “locking in” existing technology is to adopt risk-based performance standards in place of rigid design-based rules to regulate railroad safety. Performance standards focus on the goal of improved safety, not the method by which it would be achieved. Under performance standards, railroads would have the opportunity and incentive to achieve safer operations as efficiently as possible. Such standards would rely on the superior knowledge of railroads and their employees and would allow railroads to experiment with new technologies and processes to improve safety. The result would be superior safety performance at a lower cost.

Numerous new technologies are now or could soon be coming on line in the rail industry—including electronically-controlled pneumatic (ECP) brakes and positive train control (PTC) systems—that could dramatically improve various aspects of rail operations. In the coming years, policymakers should ensure that the regulatory environment is receptive to economically-rational implementation strategies to help ensure that these technologies are employed quickly and efficiently.

Avoid premature government mandates regarding technology.

Extreme care should be taken to avoid imposing unproven and uneconomic technology that does not improve transportation safety or efficiency.

For example, several major railroads are now developing and testing train control systems that can, in certain circumstances, prevent accidents by automatically stopping or slowing trains before they encounter a dangerous situation. These systems are extremely complex and require lengthy, comprehensive evaluation and modification before they can be considered functional. Premature mandates requiring their use would be counterproductive and inappropriate.