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GETTING TO WORK: EXAMINING CHALLENGES AND SOLUTIONS IN THE COMMUTER RAIL INDUSTRY

(118–53)

HEARING

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

APRIL 17, 2024

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APRIL 12, 2024

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM: Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE: Subcommittee Hearing on "*Getting to Work: Examining Challenges and Solutions in the Commuter Rail Industry*"

I. PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Committee on Transportation and Infrastructure will meet on Wednesday, April 17, 2024, at 10:00 a.m. ET in 2167 Rayburn House Office Building to receive testimony at a hearing entitled, "*Getting to Work: Examining Challenges and Solutions in the Commuter Rail Industry*." The hearing will explore the state of the commuter railroad industry, challenges commuter rail providers face, and opportunities to address commuter issues. At the hearing Members will hear testimony from Mike Noland, President, Northern Indiana Commuter Transportation District; Debra Johnson, General Manager and Chief Executive Officer (CEO), Regional Transportation District (RTD)-Denver; David W. Dech, Executive Director, South Florida Regional Transportation Authority/Tri-Rail; Kevin Corbett, President and CEO, New Jersey Transit on behalf of the Northeast Corridor Commission; and Darren Kettle, CEO, Metrolink.

II. BACKGROUND

Commuter rail means "short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations."[1] It typically operates with higher-speed, higher-capacity trains with less-frequent stops and traveling longer distances than transit rail, and can operate on shared right-of-way with freight rail.[2] The average trip length on commuter rail measures 25.6 miles.[3] While the most heavily traveled commuter rail systems are in the Northeastern United States, 28 agencies operate commuter rail that service 25 states and Washington, D.C.[4] In

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[1] 49 U.S.C. § 24102 (3).
[2] AMERICAN PUBLIC TRANSPORTATION ASSOCIATION, 2023 PUBLIC TRANSPORTATION FACT BOOK at 7, [hereinafter *Fact Book*] *available at* https://www.apta.com/wp-content/uploads/APTA-2023-Public-Transportation-Fact-Book.pdf.
[3] *Id.* at 5.
[4] *Id.* at 39 (noting while APTA considers the Alaska Railroad to be a commuter railroad in this count, the Federal Railroad Administration generally does not consider the Alaska Railroad to be a commuter railroad).

2021, commuter rail agencies employed approximately 33,000 workers responsible for operations, maintenance, capital, and general administration.[5]

Following the COVID–19 pandemic, in 2020, commuter rail ridership dropped to roughly 66 percent from the previous year's ridership as office commuters worked from home.[6] While ridership has improved since the pandemic's end, the numbers remain below 2019 pre-pandemic figures. Specifically, commuter rail trips in 2019 totaled 510,443, while trips in 2023 totaled 316,293, or 62 percent of pre-pandemic numbers.[7]

III. COMMUTER RAIL FUNDING AND OPERATIONS

Operating Commuter Rail

The way that commuter rail service is provided can vary. For instance, some commuter rail agencies operate their own service over track the agency owns, and others contract with freight railroads for access to their track and dispatching services.[8] Several commuter agencies also partner with Amtrak for various services.[9] Other agencies contract out their operations and/or other services to private sector providers.[10] All shared use of rail corridors is based on voluntary agreements negotiated on a case-by-case basis to address corridor- and service-specific issues.[11]

Amtrak operates three commuter train services for state and regional authorities, the Maryland Area Regional Commuter (MARC) Penn Line; Southern California Regional Rail Authority (Metrolink); and Shore Line East (Connecticut).[12] Amtrak also provides maintenance-of-equipment services for Central Florida Commuter Rail Commission (SunRail); CTrail in Connecticut; MARC; Shore Line East; and Sound Transit in Washington, as well as maintenance-of-way and dispatching services for Massachusetts Bay Transportation Authority (MBTA).[13] Amtrak also provides access to its tracks (and in some cases, other services) for 10 agencies, including: CTrail; Long Island Rail Road; MARC Penn Line; NJ Transit; Southeastern Pennsylvania Transportation Authority (SEPTA); Delaware Department of Transportation; Rhode Island Department of Transportation; Shore Line East; Virginia Railway Express (VRE); and Metra in the Chicago area.[14]

Various private sector entities operate commuter rail services for state and regional authorities, including Peninsula Corridor Joint Powers Board (Caltrain); San Joaquin Regional Rail Commission (Altamont Corridor Express); South Florida Regional Transportation Authority (Tri-Rail); Trinity Railway Express (TRE); Trinity Metro (TEXRail); Denton County Transportation Authority (Texas); Rio Metro RTD (New Mexico Rail Runner Express); Massachusetts Bay Transportation Authority (MBTA); Virginia Railway Express (VRE); and Connecticut Department of Transportation (CTrail Hartford Line).[15]

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[5] *Id.* at 20.

[6] AMERICAN PUBLIC TRANSPORTATION ASSOCIATION, *Public Transportation Ridership Report Fourth Quarter 2020*, (Mar. 4, 2021) at 1, *available at* https://www.apta.com/wp-content/uploads/2020-Q4-Ridership-APTA.pdf.

[7] *See id*. at 1; *see also* AMERICAN PUBLIC TRANSPORTATION ASSOCIATION, *Public Transportation Ridership Report Fourth Quarter 2023*, (Mar. 4, 2024), at 1, *available at* https://www.apta.com/wp-content/uploads/2023-Q4-Ridership-APTA.pdf.

[8] ASSOCIATION OF AMERICAN RAILROADS, *Freight Rail & Amtrak, available at* https://www.aar.org/issue/freight-railroads-amtrak.

[9] *See e.g., Amtrak Awarded Five-Year Contract for MARC Penn Line*, MASS TRANSIT, (Feb. 28, 2018), *available at* https://www.masstransitmag.com/technology/facilities/shelters-stations-fixtures-parking-lighting/press-release/12400771/amtrak-amtrak-awarded-five-year-contract-for-marc-penn-line.

[10] *See e.g.*, HDR, *Eagle Public-Private Partnership Commuter Rail Design Build, available at* https://www.hdrinc.com/portfolio/eagle-public-private-partnership-commuter-rail-design-build.

[11] ASSOCIATION OF AMERICAN RAILROADS, *Freight Rail & Amtrak, available at* https://www.aar.org/issue/freight-railroads-amtrak.

[12] *Fact Book*, *supra* note 2, at 30.

[13] AMTRAK, *FY 2022 Company Profile*, at 8–9, *available at* https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/corporate/nationalfactsheets/Amtrak-Company-Profile-FY2022-020823.pdf.

[14] *Id.*

[15] *See* BAYRAIL ALLIANCE, *Peninsula Corridor Joint Powers Board, available at* https://www.bayrailalliance.org/pcjpb/; SAN JOAQUIN REGIONAL RAIL COMMISSION, *Altamont Corridor Vision, available at* https://www.sjrrc.com/altamont-corridor-vision/; TRI-RAIL, *Overview of SFRTA, available at* https://www.tri-rail.com/pages/view/overview; TRINITY METRO, *About Trinity Metro, available at* https://ridetrinitymetro.org/about/#:~:text=TEXRail%2C%20which%20operates%20between%20Fort,and%20operated%20by%20Trinity%20Metro; WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, *Metrorail, available at* https://www.wmata.com/service/rail/; DENTON COUNTY TRANSPORTATION AUTHORITY, *Rail & Bus Services: A-Train, available at* https://www.dcta.net/getting-around/rail-bus-services/a-train; RIO METRO REGIONAL TRANSIT

SAFETY OVERSIGHT AND FUNDING

The Federal Railroad Administration (FRA) is responsible for ensuring the safety of commuter rail through inspections, regulatory actions, and other operating practices.[16] While FRA regulates safety, Federal funding for commuter rail is generally provided by the Federal Transit Administration (FTA). Commuter rail agencies are eligible to receive FTA formula funds, including funding under 49 U.S.C. Section 5307 (Urbanized Area Formula Grants); 49 U.S.C. 5337 (State of Good Repair Grants); and 49 U.S.C. 5340 (High Density States Formula funds). These formula funds typically go to a regional transportation agency, the designated recipient, and are allocated by regional agreements to various transit agencies operating commuter rail, heavy and light rail, streetcars, ferries, and bus transit in the same urban area.[17] The Infrastructure Investment and Jobs Act (IIJA) (P.L. 117–58) authorized approximately $33.5 billion for Urbanized Area Formula Grants; $23.1 billion for State of Good Repair Grants; and $1.8 billion for High Density State Formula Funds from fiscal year (FY) 2022 through FY 2026.[18]

Additionally, commuter railroads may compete for discretionary grants under FTA's Capital Investment Grant (CIG) program, which funds capital investments in commuter rail as well as heavy and light rail, street cars, and bus rapid transit projects.[19] IIJA authorized $23 billion for the CIG program over five years.[20] Six commuter rail agencies are currently in the CIG pipeline seeking $12.2 billion.[21] Commuter railroad authorities may also compete for discretionary grants under the Department of Transportation's Local and Regional Assistance (RAISE) and National Infrastructure Project Assistance (Mega) grant programs, although eligibility under Mega is limited to public transportation projects done in conjunction with another mode.[22] IIJA advance appropriated $7.5 billion and authorized an additional $7.5 billion for the RAISE program and advance appropriated $5 billion and authorized an additional $10 billion for the Mega program over five years.[23]

RAILROAD CROSSING ELIMINATION (RCE) PROGRAM

IIJA authorized $600 million in annual advanced appropriations over five years, totaling $3 billion, to create the new RCE Program to address safety concerns at highway-rail or pathway-rail grade crossings Nationwide.[24] The grant program is administered by FRA and is open to projects that would separate or close grade crossings; would relocate tracks, install or improve protective or preventive measures at crossings such as signs or signals; and funds planning and designs for eligible projects.[25] Eligible recipients include states, political subdivisions of states, United States territories, Indian Tribes, local governments, port authorities, and metropolitan planning organizations.[26] Commuter rail grade crossing projects qual-

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DISTRICT, *New Mexico Rail Runner Express, available at* https://www.riometro.org/395/New-Mexico-Rail-Runner-Express; MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, *Commuter Rail, available at* https://www.mbta.com/schedules/commuter-rail; VIRGNIA RAILWAY EXPRESS, *available at* https://www.vre.org/; CONNECTICUT DEPARTMENT OF TRANSPORTATION, *CTrail: Passenger Rail Service in Connecticut, available at* https://portal.ct.gov/DOT/Publictrans/Bureau-of-Public-Transportation/CTrail.

[16] DOT, FRA, *Railroad Safety, available at* https://railroads.dot.gov/railroad-safety.

[17] DOT, FTA, *Urbanized Area Formula Grants—5307, available at* https://www.transit.dot.gov/funding/grants/urbanized-area-formula-grants-5307.

[18] *See* DOT, FTA, *Fact Sheet: Urbanized Area Formula Grants Program, available at* https://www.transit.dot.gov/funding/grants/fact-sheet-urbanized-area-formula-grants-program; *see also* DOT, FTA, *Fact Sheet: State of Good Repair and Rail Vehicle Replacement Program, available at* https://www.transit.dot.gov/funding/grants/fact-sheet-state-good-repair-and-rail-vehicle-replacement-program; *see also* DOT, FTA, *Section 5340 Growing States/High Density States, available at* https://www.transit.dot.gov/sites/fta.dot.gov/files/2024-02/Section-5340-Growing-States-High-Density-States-Program-BIL.pdf.

[19] DOT, FTA, *Capital Investment Grants Program, available at* https://www.transit.dot.gov/CIG.

[20] DOT, FTA, *Fact Sheet: Capital Investment Grants Program, available at* https://www.transit.dot.gov/funding/grants/fact-sheet-capital-investment-grants-program.

[21] APTA, *CIG Project Pipeline Dashboard, available at* https://www.apta.com/wp-content/uploads/APTA-CIG-Project-Pipeline-Dashboard-03.11.2024.pdf.

[22] Infrastructure Investment and Jobs Act, Pub. L. No. 117–58, §§ 21201 and 21202.

[23] *Id.*

[24] *Id.* at § 22305, 135 Stat. 695.

[25] DOT, FRA, *Railroad Crossing Elimination Program*, (last updated Oct. 2, 2023), *available at* https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/railroad-crossing-elimination-grant-program.

[26] *Id.*

ify for this program, with the ability for FRA to transfer qualifying commuter rail projects to the FTA to administer.[27]

RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

The Railroad Rehabilitation and Improvement Financing (RRIF) program was originally established by Congress in Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 and later amended in the Transportation Equity Act for the 21st Century (TEA–21).[28] RRIF offers long-term, low-interest loans for improving rail infrastructure, including for commuter rail.[29] RRIF-eligible projects include: acquiring, improving, and rehabilitating track, bridges, rail yards, buildings, and shops; preconstruction activities; transit-oriented development projects; and new rail or intermodal activities.[30] RRIF loans can cover up to 100 percent of a project's cost, with repayment periods of up to 35 years.[31] Under this program the Department of Transportation (DOT) is authorized to provide direct loans and loan guarantees up to $35 billion to finance development of railroad infrastructure.[32] To date, the RRIF program has provided $7.3 billion in financing.[33]

IV. COMMUTER RAIL CHALLENGES AND CONCERNS

FUTURE FUNDING

In May 2023, the American Public Transportation Association (APTA) surveyed its members on future potential operating budget shortfalls, also known as the "Fiscal Cliff" that many agencies are facing.[34] Fifty-one percent of 122 responding agencies say they are facing a Fiscal Cliff in the next five years.[35] Commuter rail authorities have expressed support for predictable Federal funding, to fully fund IIJA public transit and passenger rail investments in annual appropriations bills, including for CIG, RCE, and Federal-State Partnership for Intercity Passenger Rail grants.[36] Additionally, commuter railroad agencies have requested funding for the operations and maintenance costs of positive train control, a safety communications system Congress mandated for passenger and freight lines carrying certain hazardous materials in 2008, and that safety requirements placed on freight railroads in additional rail safety legislation are not inadvertently borne by commuter rail agencies.[37]

AMTRAK PREFERENCE AND ACCESS RIGHTS

Certain commuter rail interests have questioned whether Amtrak has access rights to rail lines that were not in operation when Amtrak was created, and whether it has preference over commuter rail lines as it does over freight railroad-owned lines.[38] The agencies assert commuter rail was never subject to the Rail Passenger Service Act of 1970 (RPSA) (P.L. 91–518) that granted Amtrak a right of track access or preference on track not owned by Amtrak.[39] The Commuter Rail Coalition (CRC) argued that as "non-RPSA" railroads, commuter railroads were not relieved

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[27] *See* Notice of Funding Opportunity for the Railroad Crossing Elimination Program, 87 Fed. Reg. 40335 (July 6, 2022) https://www.federalregister.gov/documents/2022/07/06/2022-14344/notice-of-funding-opportunity-for-the-railroad-crossing-elimination-program (noting grants under the RCE Program are not subject to the limitation in 49 U.S.C. 22905(f).

[28] *See* Pub. L. No. 94–240, 90 Stat. 257; Pub. L. No. 105–178, 112 Stat. 107.

[29] ROBERT S. KIRK & WILLIAM J. MALLET, CONG. RSCH. SERV., (R47573), FUNDING AND FINANCING HIGHWAYS AND PUBLIC TRANSPORTATION UNDER THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (IIJA), (May 24, 2023), *available at* https://crs.gov/Reports/R47573?source=search, [hereinafter, *Funding and Financing*].

[30] DOT, BUILD AMERICA BUREAU, *Railroad Rehabilitation & Improvement Financing (RRIF), available at* https://www.transportation.gov/buildamerica/financing/rrif [hereinafter *RRIF*].

[31] *Id.*

[32] *Id.*

[33] *Funding and Financing, supra* note 29.

[34] Policy Brief, APTA, *Public Transit Agencies Face Severe Fiscal Cliff*, (June 2023), *available at* https://www.apta.com/wp-content/uploads/APTA-Survey-Brief-Fiscal-Cliff-June-2023.pdf.

[35] *Id.*

[36] Fact Sheet, APTA, *Commuter Rail Legislative and Regulatory Priorities*, (Jan. 1, 2024), *available at* https://www.apta.com/wp-content/uploads/APTA-FACT-SHEET-Commuter-Rail-Priorities-01.01.2024.pdf.

[37] *Id.*

[38] Letter from Chuck Baker, President, American Short Line and Regional Railroad Association and KellyAnne Gallagher, Chief Executive Officer, Commuter Rail Coalition to Martin J. Oberman, Chairman, Surface Transportation Board, (Dec. 11, 2023), *available at* https://www.stb.gov/wp-content/uploads/ASLRRA-and-CRC-letters-to-STB-Regarding-AMTRAK-Expansion-Plans-December-11-2023.pdf.

[39] *Id.*

of their passenger common carrier obligations under the RPSA.[40] Therefore, they harbor no obligation to give Amtrak preferential treatment on commuter railroad tracks and that doing so would burden publicly-funded commuter rail operations.[41] The CRC stressed the need to "continue to realize the full, long-term value of the public investment"[42] in commuter lines and facilities "to protect their valuable passenger service."[43]

Amtrak stated that the access rights granted to Amtrak in RPSA do apply to commuter rail and that the Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission have consistently held that the RPSA applies to both "railroads" and "regional transportation authorities."[44] Amtrak stated that it does not have statutory priority on commuter rail lines, as it does on freight railroad routes, though does claim it is generally an international best practice for transportation agencies to give some level of priority to intercity passenger rail trips over local trains when they run on the same tracks.[45] Amtrak further asserted that commuter rail can benefit from Amtrak's presence on commuter tracks because Amtrak can access certain FRA grants for shared-use infrastructure that commuter railroad-only projects usually cannot, such as the Consolidated Rail Infrastructure and Safety Improvements (CRISI) and Federal-State Partnership for Intercity Passenger Rail (FSP) Grant Programs.[46] Additionally, Amtrak claimed that a number of the commuter railroad-owned lines that carry Amtrak service were acquired after its creation with knowledge that Amtrak had statutory rights of access.[47]

ACCIDENT LIABILITY INSURANCE

Most commuter rail agencies self-insure against risks between $2 million and $7.5 million.[48] In order to insure against larger losses, commuter rail agencies purchase policies from the private markets. Total annual price increases on premiums have ranged from 20 percent to 80 percent in the past five years.[49]

In 1997, Congress enacted the Amtrak Reform and Accountability Act, which limited overall damages from all passenger rail claims arising from a single accident to $200 million, including punitive damages and required Amtrak to carry this level of accident liability insurance.[50] Congress amended this provision in the Fixing America's Surface Transportation Act (FAST Act) by requiring the Secretary of Transportation to adjust the ceiling based on the change in Consumer Price Index, with revisions required every five years.[51] The Secretary adjusted the rail passenger liability cap to approximately $295 million in February of 2016.[52] On February 25, 2021, the Secretary updated the liability cap to the current amount of approximately $322.86 million.[53] The next increase is expected in February 2026.

While commuter rail agencies are not required by law to obtain an insurance policy that covers a loss up to that ceiling, they often are required by host railroads or Positive Train Control vendor contracts to maintain the statutory minimum level of liability insurance.[54] Commuter rail agencies can experience difficulty with the 30-day window to acquire coverage following each liability cap increase every five years.[55] Dozens of commuter railroads and Amtrak compete in a narrow market to

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[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] Letter from Stephen Gardner, Chief Executive Officer, Amtrak, to Martin J. Oberman, Chairman, Surface Transportation Board, (Feb. 7, 2024) *available at* https://www.stb.gov/wp-content/uploads/Amtrak-letter-to-Chairman-Oberman__2.7.24.pdf.
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] APTA, PUBLIC TRANSPORTATION GETS US THERE: APTA RECOMMENDATION ON COMMUTER RAIL LIABILITY INSURANCE, at 15 *available at* https://www.apta.com/wp-content/uploads/APTA-Commuter-Rail-Liability-Insurance-Final-Report-July-2021.pdf.
[49] *Id.* at 16.
[50] Pub. L. No. 105–134, § 28103.
[51] Pub. L. No. 114–97, § 11415.
[52] *See* Adjustment to Rail Passenger Transportation Liability Cap, 81 Fed. Reg. 1289, (Jan. 11, 2016), *available at* https://thefederalregister.org/81-FR/1289/2016-00301.pdf.
[53] Adjustment to Rail Passenger Transportation Liability Cap, 86 Fed. Reg. 11571, (Feb. 25, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-02-25/pdf/2021-03886.pdf.
[54] AMERICAN PUBLIC TRANSPORTATION ASSOCIATION, APTA RECOMMENDATION ON COMMUTER RAIL LIABILITY INSURANCE at 7, *available at* https://www.apta.com/wp-content/uploads/APTA-Commuter-Rail-Liability-Insurance-Final-Report-July-2021.pdf.
[55] *CRC: Liability Insurance Issues Remain Problematic*, RAILWAY AGE, (Jan. 31, 2024), *available at* https://www.railwayage.com/news/crc-liability-insurance-issues-remain-problematic.

acquire additional insurance.[56] Accordingly, commuter rail agencies seek legislative solutions to make obtaining insurance easier and more affordable, such as extending the amount of time commuter authorities have to acquire additional insurance or to create a Federal liability insurance pool.

V. WITNESSES

- Mr. Michael Noland, President, Northern Indiana Commuter Transportation District
- Ms. Debra Johnson, General Manager and CEO, RTD-Denver
- Mr. David W. Dech, Executive Director, South Florida Regional Transportation Authority/Tri-Rail
- Mr. Kevin S. Corbett, President and CEO, New Jersey Transit, *on behalf of the* Northeast Corridor Commission
- Mr. Darren Kettle, Chief Executive Officer, Metrolink

[56] *Id.*

GETTING TO WORK: EXAMINING CHALLENGES AND SOLUTIONS IN THE COMMUTER RAIL INDUSTRY

WEDNESDAY, APRIL 17, 2024

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10 a.m. in room 2167 Rayburn House Office Building, Hon. Troy E. Nehls (Chairman of the subcommittee) presiding.

Mr. NEHLS. The Subcommittee on Railroads, Pipelines, and Hazardous Materials will come to order.

I ask unanimous consent that the chairman be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

And as a reminder, if Members wish to insert a document into the record, please also email it to DocumentsTI@mail.house.gov.

I now recognize myself for the purposes of an opening statement for 5 minutes.

OPENING STATEMENT OF HON. TROY E. NEHLS OF TEXAS, CHAIRMAN, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Mr. NEHLS. At today's hearing, we will discuss the state of commuter passenger rail, with a focus on developing commuter rail to ensure it is safe, efficient, cost effective, and that it meets the demands of the public.

Investments and innovation in our rail infrastructure are essential to building a robust and competitive American transportation system. We must ensure that Federal policies and spending are balanced with a realistic analysis of consumer demand for commuter rail and the best use of taxpayer dollars.

Technology has now made it possible to work remotely. Many workers have responded by purchasing homes farther from the cities and forgoing their daily work commute. This naturally affects commuter rail ridership and demand.

Commuter rail service is primarily designed to address a high volume of passengers traveling to and from cities, operating in metropolitan, suburban, and exurban areas. These systems can be a cost-effective transportation alternative for these longer commutes. Several local and regional agencies operate their own service, while others contract with Amtrak or private-sector companies. These private-sector providers help lower costs, improve services, and increase ridership.

I look forward to hearing from today's witnesses about the challenges and opportunities for commuter rail services, as well as best practices to improve service, realize efficiencies, and increase fare revenues.

[Mr. Nehls' prepared statement follows:]

Prepared Statement of Hon. Troy E. Nehls, a Representative in Congress from the State of Texas, and Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Today's hearing will discuss the state of commuter passenger rail, with a focus on developing commuter rail to ensure it is safe, efficient, cost effective, and that it meets the demands of the public.

Investments and innovation in our rail infrastructure are essential to building a robust and competitive American transportation system. We must ensure that Federal policies and spending are balanced with a realistic analysis of consumer demand for commuter rail and the best use of taxpayer dollars.

Technology has now made it possible to work remotely. Many workers have responded by purchasing homes farther from cities and foregoing their daily work commute. This naturally effects commuter rail ridership and demand.

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Mr. NEHLS. Before I recognize Mrs. Foushee, I would like to take a moment to say we wish Ranking Member Payne a quick recovery. I look forward to seeing him return to work with us here in the subcommittee soon.

And with that, Representative Foushee, you are recognized for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. VALERIE P. FOUSHEE OF NORTH CAROLINA, VICE RANKING MEMBER, SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

Mrs. FOUSHEE. Thank you, Chair Nehls, for holding this hearing today.

The Research Triangle expects to add more than 1 million people by 2050, and we need to provide good mobility options. I am hopeful that commuter rail can be a part of that solution.

On the passenger rail front, I do have two State-supported Amtrak routes in my district, the Carolinian and the Piedmont, which carried more than 600,000 people last year. The Piedmont saw a

36-percent increase in ridership after North Carolina and Amtrak added a fourth daily round trip.

In early December 2023, the U.S. Department of Transportation announced a $1 billion grant to develop a new intercity passenger rail route between Raleigh, North Carolina, and Richmond, Virginia, along the CSX S-Line that will connect North Carolina with Virginia, Washington, DC, and other destinations along the Northeast Corridor.

I am proud to see this historic investment, which will bolster transportation options for North Carolina's residents. I championed this investment long before arriving to Congress and appreciate the work my predecessor, former Transportation Appropriations Subcommittee Chair David Price, did to develop this intercity passenger rail route.

This generational investment, made possible by the Bipartisan Infrastructure Law, will make historic changes in my district. I look forward to working with you, Mr. Chair, and with our committee to ensure that this type of investment continues in the future.

Let me now turn to rail safety. I am hopeful that this committee will focus on this important matter because we have not yet held a hearing on the Norfolk Southern derailment that happened in East Palestine, Ohio, or the 1,000 or so other derailments that occurred across the country last year.

Last month, Secretary Buttigieg sent a letter to the Class I freight railroad association that expressed concern with the freight railroads' resistance to improving safety. He highlighted that the Federal Railroad Administration statistics do not show safety improving significantly over the past decade. He encouraged the railroads to join with Congress and regulators to improve safety, rather than continue to fight against proposed safety reforms.

I ask consent to put Secretary Buttigieg's letter into the record.

Mr. NEHLS. Without objection.

[This document appears after Representative Foushee's prepared statement.]

Mrs. FOUSHEE. There are several legislative proposals that have been introduced in the House that could serve as the basis for us to address rail safety.

Furthermore, the National Transportation Safety Board, or NTSB, has 190 outstanding rail safety recommendations from prior accidents and incidents. The Chair told us this in January and reiterated it again last week during her renomination hearing. I hope when the NTSB's final East Palestine report comes out in June that we will be able to quickly turn to this issue.

At the same time the safety regulator is expressing concern, the economic regulator is also raising red flags. Surface Transportation Board Chair Martin Oberman stated at a February conference for rail shippers that the freight rail workforce has declined dramatically over the past decade. While some railroads have refocused efforts on making capital investments and rehiring people to make improvements, others continue to cut workers and cut their capital expenditures.

I ask consent to put STB Chair Oberman's speech into the record.

Mr. NEHLS. Without objection.

[This document appears after Representative Foushee's prepared statement.]

Mrs. FOUSHEE. Freight rail is essential to our Nation's economy, but over the last 10 years, freight rail movements declined. If we want to see the environmental and safety benefits of moving freight by rail, it seems nearly impossible to do so if the railroads do not have enough people or are not making enough investments in their infrastructure.

Turning back to commuter rail, we have been discussing in my district introducing commuter rail to Durham since the early 1990s, but we don't yet have it.

I look forward to learning more about commuter rail services around the country from our witnesses, and Mr. Chair, I yield back.

[Mrs. Foushee's prepared statement follows:]

Prepared Statement of Hon. Valerie P. Foushee of North Carolina, Vice Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Thank you, Chair Nehls, for holding this hearing today.

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I look forward to learning more about commuter rail services around the country from our witnesses.

I yield back.

Letter to Mr. Ian N. Jefferies, President and Chief Executive Officer, Association of American Railroads, from Hon. Pete Buttigieg, Secretary of Transportation, U.S. Department of Transportation, Submitted for the Record by Hon. Valerie P. Foushee

THE SECRETARY OF TRANSPORTATION,
WASHINGTON, DC 20590.

MR. IAN N. JEFFERIES,
President and CEO,
Association of American Railroads.

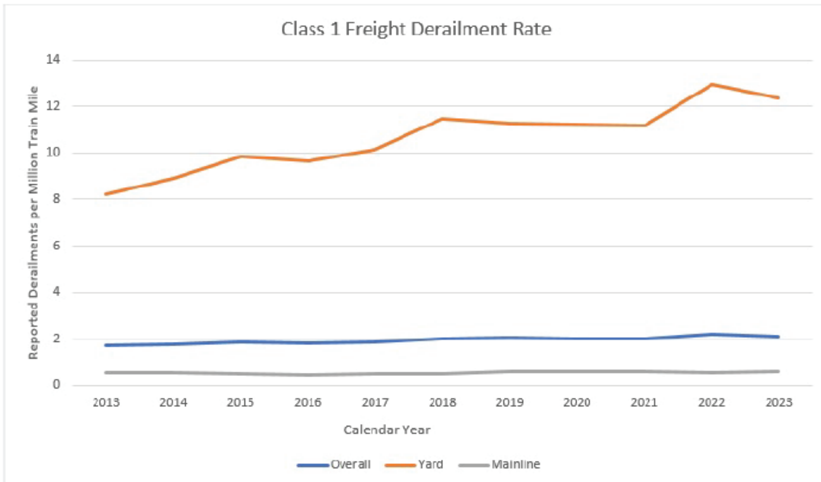
DEAR MR. JEFFERIES:

I received your recent letter on railroad safety, which begins with an observation I agree with: freight rail is an indispensable part of America's economy and way of life, essential for the delivery of virtually everything we count on every day. I also agree with your assertion that safety must be the top consideration whenever we are discussing railroad policies and practices.

But in reading your letter, I was left with the impression that the Association of American Railroads (AAR) is satisfied with the current trajectory of railroad safety in America. I am not.

Your letter correctly notes derailments are today less common than they were a quarter of a century ago. This is welcome, and it reflects the skill and effort of people in the railroad industry—as well as the impact of tougher safety regulations that responded to horrific disasters. Unfortunately, it is also clear that over the last decade, the safety performance of the Class I freight companies has stagnated—and, by some measures, deteriorated. Like the American public, this Department considers that trend to be unacceptable.

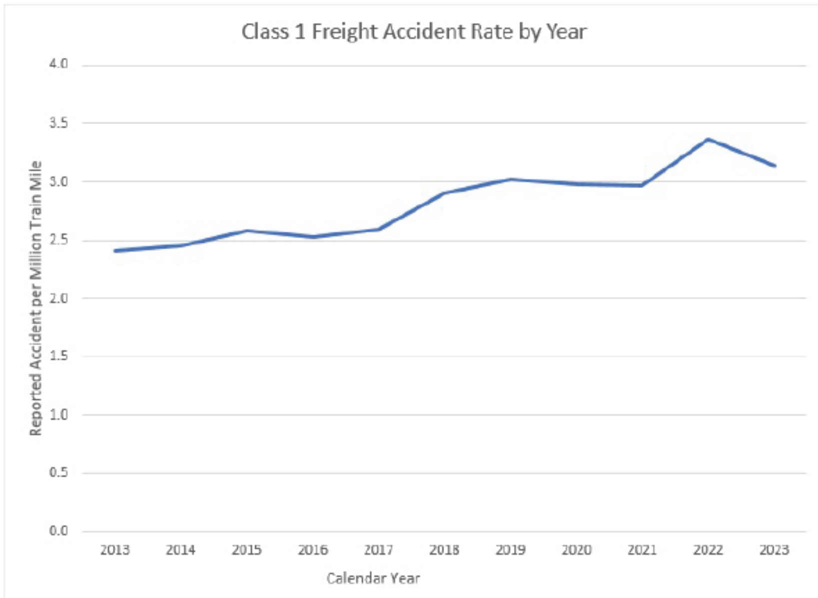
In the spirit of your stated aim of "continually identifying and implementing safety advancements," I want to emphasize how your industry could do more to make sure that status quo improves. Let us begin with some basic data.



The above graph shows derailment rates for the last decade. Rates are defined as number of derailments per million train miles (on mainline track) or per million yard switching miles (for rail yards). Source: Federal Railroad Administration

Again, in the last decade, derailment rates have not significantly improved, according to FRA data. In the case of yard derailments, data suggest the rate in 2023 was actually 49 percent higher compared to ten years ago. I recognize and agree with you that not all derailments are equal in seriousness, and certainly very few of them rise to the level of the East Palestine, Ohio, derailment in terms of impact and severity. Yes, mainline derailments differ from yard derailments. But I cannot accept your letter's generalization likening yard derailments to "fender benders," especially given that in 2023, two Class I freight employees on duty lost their lives in rail yard accidents while a separate incident resulting in an explosion at Bailey Yard in North Platte forced local residents to evacuate their homes.

To be fair, the deterioration in derailment rates has not been uniform. We have been encouraged by recent data showing that Norfolk Southern has experienced a 34 percent reduction in the rate of mainline derailments in the last year. Less encouraging is the fact that data for 2023 suggest that Norfolk Southern is alone among the Class I railroads to achieve significant reductions in the rate of mainline derailments this past year. And more generally, the overall accident rate has not improved. The rate of accidents not at grade crossings has been rising slowly throughout the decade, peaking in 2022.



The above graph shows accident rate by year for the last decade. Source: Federal Railroad Administration

You are correct to note that freight rail is notably safer than highway freight transport. But this is less cause to be satisfied with the status quo in rail than to be disturbed by the status quo on our highways—something we are actively working to change through our policies and funding on roadway safety.

A more appropriate benchmark might be passenger safety in commercial aviation. Consider that America's safest mode of transportation is one which involves using flammable liquids to propel passengers through the air at nearly the speed of sound. In a typical year, the number of U.S. commercial airline passenger enplanements is in the hundreds of millions—and the number of fatal crashes is typically zero. This is the result of extremely careful and prudent regulation and safety culture, as well as a determination to continuously improve. As shown by our response to the Boeing incident in January, even a close call can lead to extreme scrutiny, reassessment of practices, and proposals for regulatory reform.

When it comes to railroads, the U.S. Department of Transportation (DOT) is acting to improve safety using every tool we currently have. We have used our authority to issue safety advisories, promulgate rules, and address rail safety concerns, sometimes over industry objections. We're making historic infrastructure investments to modernize and improve America's physical rail network—often in partnership with Class I railroads. That investment includes the Railroad Crossing Elimination grant program, which enjoys your support and which benefits your member railroads and American communities alike.

In this safety journey, industry behavior is as important as government action. Your letter mentions measures that railroads have taken, without being required to do so, such as the use of wayside defect detectors. I agree that we are all better off because these are in use. Your members have taken many important actions that have improved safety. We welcome the agreements between your member corporations and their labor unions that have extended access to sick leave to more than 88 percent of Class I union freight railroad workers. I also recognize the work that you highlighted to increase access to hazardous material information via the AskRAIL app. This work is welcome, and you have my commitment that our Department will recognize any positive step for safety that your industry takes, alone or in partnership with DOT.

But in too many other areas, we encounter major resistance from industry. And the truth is that we cannot do this work alone. We need to focus on results. And, to reiterate, the overall results of the last ten years in reducing accident rates on America's large freight railroads are unacceptable.

I want to enlist you in the project of rejecting, not defending, today's status quo with its stagnant or worsening accident rates. The rate should be going down—and fast. We need AAR and Congress to join us in the mission of improving safety and to follow through on the safety commitments made in the wake of East Palestine. Americans expect those commitments to become actions, and Americans deserve a freight rail industry that does not oppose common-sense safety measures. I worry that this industry still does not grasp how profoundly it must change.

Here are some particular areas of concern:

- The freight rail industry stands in opposition to important provisions in the bipartisan Railway Safety Act. AAR and the Class I freight railroads could and should break corporate America's pattern of professing public support for doing better and then lobbying against efforts to do so. It would be a welcome, watershed moment if AAR were to change course and support the passage of the bipartisan Railway Safety Act introduced by Senators Brown and Vance.
- In the wake of the East Palestine derailment, each Class I freight railroad committed to joining the Confidential Close Call Reporting System program (C3RS), yet one year later almost none of them have done so. So far Norfolk Southern is the only Class I freight railroad to join—and only at a select number of work sites with some of its workers. We again urge all Class I freight railroads to join C3RS.
- AAR continues to advocate for reducing human track inspections in favor of automated inspections. It is particularly exasperating to see AAR sometimes imply that DOT is standing in the way of newer inspection technologies like automated track inspections (ATI), when in fact railroads are already free to use these newer technologies as much as they like—complementing, not replacing, human inspections. If these technologies are as effective as promised, then by all means, railroads should deploy them widely, use them to dramatically reduce accident rates, and then we can discuss the future of track inspection requirements.

The major freight railroads are widely and increasingly regarded as being obsessed with quarterly profits and short-term operating margins, to the exclusion of other vital priorities like safety, long-term network development, customer service, worker wellbeing, and community engagement. When your industry objects to safety provisions, this perception deepens.

This reputation for being much too focused on short-term profitability is fueled by the fact that the industry is pushing for these workforce cuts and weaker regulations while it is already extremely—some would say ridiculously—profitable. Because Class I railroads tend to operate as regional duopolies or monopolies, they are not subject to the normal dynamics of supply, demand, and competition seen in most industries. Looking at your firms' profits, it shows. The Class I freight carriers recorded another wildly profitable year in 2023, with preliminary figures from the six firms indicating a total of almost $25.2 billion in profits. Margins for these large players are often routinely above 20 percent.[1] No one should begrudge a well-run business responsibly earning a good profit—but when such profitability is reported at the same time as the high level of customer, worker, and community complaints we field with regard to this industry, it is difficult to explain except through the lens of the industry's political and market power.

Toward the end of your letter, you take exception to the fact that your industry is sometimes characterized as "under-regulated." This comment has made me reflect: when an industry's customers are displeased, its communities frustrated, its workers upset, its regulators concerned, and its profits stupendous—what better word is there? If an industry can become spectacularly profitable while delivering poor service, stagnant safety outcomes, and a growing roster of communities that are frustrated because they can't get their calls returned, it is impossible to escape the sense that we are talking about a broken industry. And a broken industry almost always reflects a poor regulatory framework.

I will close by taking AAR at its word that you are "100% onboard" a shared goal of enhancing safety. Your industry has an opportunity now to make good on this commitment. We will know it is working when accident rates plummet. Together, let's make that happen.

Sincerely,

PETE BUTTIGIEG.

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[1] From NYU Stern Margins by Sector (US) dataset: https://pages.stern.nyu.edu/~adamodar/New__Home__Page/datafile/margin.html

Martin J. Oberman, Chairman, Surface Transportation Board, Address at the Southeast Association of Rail Shippers 2024 Spring Meeting, February 29, 2024, Submitted for the Record by Hon. Valerie P. Foushee

Good afternoon. I'm delighted to be here and equally grateful for SEARS adding me to the agenda at a very late date.

But because of disturbing current trends facing the management of the four US Class Is, I thought it my responsibility to address this important gathering of rail stakeholders—and the public—about existing and potential threats to the soundness of our all-important national freight rail network.

As we all know, there's a proxy fight brewing for control of Norfolk Southern—and it does not bode well for the railroad industry, the U.S. economy, or the public. After weeks of news reports that Ancora Holdings, a Cleveland based hedge fund, was plotting to wrest control of Norfolk Southern's board, last week Ancora made their plans official and released a broadside attack on NS and its corporate philosophy of maintaining its workforce at resilient levels and investing for long term growth.

Ancora wants to oust CEO Alan Shaw for the sole purpose of reversing that corporate strategy.

This effort by a Wall Street firm—with short-term dollar signs in its eyes—to strip resources out of a railroad, of course, is not new.

Just last year, another hedge fund, Soroban, launched a successful effort to depose Union Pacific's CEO—not because he was adding resources—but because he wasn't cutting fast and deep enough.

Freight railroads are pillars of the nation's economy, moving 1.6 billion tons of freight annually, representing 40% of all long-distance freight movement. And important to the fight against climate change, as all of you well know, rail offers a significantly more fuel-efficient and lower carbon-emitting alternative to trucking.

In the past decade, activist investors—like Ancora and Soroban—began gaining influence, if not outright control, of some railroads. They recognized that the seven—now six—Class Is dominating the U.S. and Canada—are natural monopolies and are the only transportation option for a high percentage of their customers—and therefore held great potential for profit seeking.

Ignoring the essential role that railroads play in supporting the success of their customers, i.e., the manufacturers that drive our GDP, these investors succeeded in pressuring railroad management to exploit this monopoly power to achieve short-term profits. The strategy was, largely, to slash workforces, raise prices, and reduce output—i.e., service—which they did—thereby risking long-term viability in pursuit of massive stock buybacks and dividends.

This strategy not only affects the economic output of US industries which cannot thrive without robust rail service. It also undermines safety because rail workers are essential to safe rail operations—for themselves and for the communities through which railroads must travel, often transporting hazardous materials. Cutting the workers who perform inspections, repairs and otherwise are responsible to ensure safety, increases threats to the public as well as the workers themselves. And unsafe rail operations, of course, undermine rail service.

Because railroads are so essential to the public well-being; because they have benefited from massive governmental largess since their inception 200 years ago, and perhaps most importantly because they are monopolies—or at best, duopolies—for a major portion of their customers, the Congress long ago imbued railroads with a common carrier obligation.

To best comprehend the unique import and mandate of the common carrier obligation, a pronouncement from the US Supreme Court more than 125 years ago, bears repeating over and over again. Quote:

> " . . . railways are public corporations organized for public purposes, granted valuable franchises and privileges, . . . many of them are the donees of large tracts of public lands, and of gifts of money by municipal corporations . . ."
>
> And this is key: " . . . they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders. The business which the railroads do is of a public nature, closely affecting almost all classes in the community—the farmer, the artisan, the manufacturer, and the trader."
>
> [*United States* v. *Trans-Missouri Freight Ass'n*, 166 U.S. 290, 332–33, 17 S. Ct. 540, 555–56, 41 L. Ed. 1007 (1897).]

In all the time since, and even with the passage of the Staggers Act, this wise and powerful admonition from the Supreme Court has never been repealed or weakened.

And I am going to repeat it over and over again until it seeps into the heads of every railroad shareholder—which includes Ancora and Soroban.

Indeed, just last week, no less a capitalist than Warren Buffet reminded his shareholders in his annual letter that "Rail is essential to America's economic future," and in his words, "[t]he words 'common carrier' define railroad responsibilities."

Unfortunately, ignoring their public duties, the largest railroads, beginning roughly around 2014 and persisting for years thereafter, lacerated their workforces by approximately 30%, or 45,000 persons. The euphemism they employed to label their actions was PSR.

Thus, it was no surprise that by early 2022, months after the economy started to rebound from the pandemic, the railroads were in, what one Wall Street analyst had astutely called, a "service crisis." After closely monitoring rail activity throughout 2021, and patiently listening to the Class Is worthless claims that they had the situation under control, the STB had little choice but to act.

In April 2022, the Board intervened and instituted a two-day public hearing to address the causes of this crisis. At that hearing, the Board heard from numerous rail shippers who testified about missed shipments and delayed service that was costing them business. Several representatives of rail labor detailed the negative impact that the reduced workforce was having on rail operations and safety. We also commanded the appearance of senior executives from all the Class Is.

Every stakeholder, including most importantly the rail executives themselves—told the Board that the cause of the service meltdown was the simple fact that the Class Is lacked sufficient workers to move the trains needed to service their customers. The problem was mostly a lack of engineers and conductors. But carmen, mechanics, and electricians—the folks who keep the trains in shape to actually move freight and move it safely—had also been cut, slowing down rail operations. Shippers also reported difficulties at the white-collar level, with inabilities to reach salespeople and customer representatives.

Of course, the rail executives were slow to acknowledge the obvious—that the shortages were the inexorable consequence of their own choices to eliminate tens of thousands of rail workers in recent years.

Not ever having run a railroad—or having been a manager of any large business myself—I have thought long and hard about how the industry could ever have allowed itself to achieve such a dismal failure of its own business operations. No person who knows anything about running a railroad—and these executives do *know* how to run a railroad—could have failed to foresee that eventually the firing of 45,000 workers would catch up to them.

The explanation of course is that pressure from short term investors focused only on the operating ratio—or as my friend Tony Hatch likes to call it—the cult of the OR. Somehow, Wall Street has decided that the only important measure of success in the rail world is to have an OR at 60 or below. When the analysts can report progress towards that goal, rail stock prices have soared. These low ORs—which could only be achieved rapidly—as the activists demanded—by cutting payroll—have meant lots of free cash which the Class Is have not been shy about paying out in stock buybacks, dividends, and in BNSF's case, returns to its owner. The total in the last decade or so is over $250,000,000—money which was not invested in retaining workers or building new infrastructure to increase a railroad's reach and serve more customers.

It is no mystery that this service crisis depressed the nation's industrial output. It also was a contributor to port congestion, causing shortages of consumer goods and increased prices.

As a result of the eye-opening revelations at the hearing, the Board promptly ordered the four US Class Is—the railroads with the most significant service failures—to file with the Board service recovery plans with intermediate goals over the following six and 12 months for their service improvements. The Board also mandated regular reporting of the railroads' efforts to rebuild their workforces to achieve those service goals. This included reports of hiring, training, washouts, and furloughs.

After that April 2022 hearing, some progress has been made generally throughout the industry. Up until recently, hiring and training had been reinstituted at higher levels which resulted in a slow beginning of service improvement.

But one standout failure of progress was at UP. During 2022, UP—alone among the railroads—was subject to two emergency service orders—the first issued by the STB in over 10 years. UP also instituted a massive upsurge of 1,100 embargoes annually—labelling them congestion embargoes—a legal animal which in my opinion, does not exist, except possibly when the congestion is entirely the fault of the rail customer.

In December 2022, the STB held an additional public hearing to investigate these embargoes. At the hearing, UP conceded that its colossal use of "congestion embargoes" was largely caused by crew shortages resulting from the fact that in previous years, UP had cut its overall work force by over 25%. At that hearing, when he was pressed on whether UP would commit itself to maintaining the resources to start providing adequate rail service, UP's Lance Fritz told the STB: "We learned our lesson once; we don't have to learn it again." And shortly thereafter, he was shown the door—replaced by a management strategy which we now know has profoundly rejected and *unlearned* the lessons of too much cutting.

By contrast, in recent years, other Class Is had appeared to learn the error of their ways and brought in new management committed to reversing these myopic and short-term strategies.

Some say it has been the Board's actions which have had a positive effect. But whatever the reason, Boards of Directors in the past two years have supported CEOs at Canadian National, CSX, CPKC, and very importantly, Norfolk Southern, to make a new and different commitment. Recognizing their public obligations, they have instituted long-term strategies to reinvest capital and, most importantly through the ups and downs of economic cycles, to hire and retain workers to provide consistent and reliable service.

This should be an important message to Wall Street investors because this strategy has every likelihood of producing more sustainable and long-term gains for shareholders as compared to the short-term thinking which dominated the advent of the PSR craze.

The problem with activist investors bowing down to the cult of the OR is that they are impatient and want immediate returns. Their approach to lowering OR as fast as possible can only be accomplished by drastically cutting payroll and other resources in the short term.

It does not take a degree in higher mathematics to understand that there is another way to lower the OR than by reducing the numerator, i.e., which includes the amount spent on payroll.

The OR will also go down if you increase the denominator—that is by having enough resources to attract new business to the railroad, increase the volume—the number of loads—and thereby increase total revenue. That is the vision being employed up to now by this new group of CEOs—particularly those at CSX, CN and yes, Norfolk Southern.

Thus far, those CEOs and their Boards have resisted pressure from activist investors to eviscerate workforces and cut spending on expansion capital. They understand that planning and spending for the long run—while taking time—will ultimately benefit shareholders more than short-term cost cutting, which is detrimental to the long-term vitality of the railroads and undermines efforts to improve safety. And of course, a long-term, future-focused strategy is essential if the railroads are to support the nation's economy and the public interest.

Since the April 2022 hearing, the railroads have hired and trained approximately 9,000 workers. While that still leaves the railroads with 14,000 fewer workers than pre-pandemic, even this limited increase has resulted in improved rail service. Moreover, the economy is expected to grow in the coming months and years. If the railroads are to meet their obligation to serve this expected growth, they must continue their expansion of both railroad workforces and infrastructure. Norfolk Southern has promised to do this and has already begun to deliver.

Any campaign, proxy or otherwise, that threatens to undo recent efforts to rebuild the railroad resilience and move toward significant long-term growth would be a major setback. It would undercut safety and be the opposite of good business, the opposite of fulfilling the common carrier obligation, and the opposite of meeting the Congressional commandment to serve the public. Regardless of what happens with Norfolk Southern's governance, it is crucial that management take seriously their duties to customers and the public.

To envision the consequences to NS if Ancora's efforts result in a course reversal, we need only look at what has happened at UP since just last August when its new CEO arrived with Soroban's short term, OR lowering mandate.

In contrast to other Class Is, UP has embarked on a furlough odyssey. From the time Jim Vena arrived in August 2023, through January 2024, as shown in UP's reports to the STB, UP has reduced its operating personnel by 771—this, after cutting 25% of its workforce in previous years. Every other US Class I has increased employment during the same period.

At UP's 4th quarter earnings call, Mr. Vena promised growth, but at the same time promised to continue to reduce headcount throughout 2024 as he has done continuously since he arrived. Indeed, just last week, UP announced additional furloughs. And the railroads' year end filings show that UP is the only Class I which ended 2023 with hundreds of fewer workers than it had a year earlier. All of the others, including Norfolk Southern, the only railroad which reported zero furloughs, ended the year with a larger workforce.

Just today, the STB received a letter the FRA has sent to UP raising the specter of a threat to safety resulting from UP's eliminating hundreds of maintenance of equipment employees.

Equally important, UP, unlike the others, is also cutting its capital spending, just when it's most needed for growth. UP's 2023 financial statements show that at the end of last year when it furloughed hundreds of maintenance of way workers, it also cut $100 million out of its 2023 capital budget.

Thus, at the end of 2023, UP had $100 million in deferred capital maintenance, the effects of which may not be seen tomorrow, but which will eventually haunt the railroad, as we have seen in the past.

UP also promises to continue on this path in 2024. Rather than make up for the $100 million cut in 2023, UP has actually reduced its 2024 capital budget by $300 million, planning to spend only $3.4 billion as compared to its 2023 capital budget of $3.7 billion. By contrast, BNSF's capital budget for 2024 is $3.9 billion. And BNSF has already spent hundreds of millions more on projects like double tracking its Southern Transcon and building a massive new intermodal facility at Barstow.

I must add, however, that BNSF only recently has decided to hop on the furlough bandwagon again—announcing hundreds of new furloughs just last week, with more to come. This is, indeed, unfortunate. How does BNSF's return to furloughing square with its exciting new partnership with J.B. Hunt to move millions of truckloads to rail by delivering 95% on time performance?

And does UP really expect us to believe that it is committed to growth when it is cutting personnel and capital—the very resources which are essential to that growth.

There's a saying of something about a turnip truck in here.

While UP's course since the advent of the Soroban era is instructive about what happens to a railroad whose strategy is set by an activist investor rather than by a Board and CEO committed to the best interest of the railroad, we can get a further taste of what can be expected to happen at NS if Ancora takes over by looking at how NS has already responded to Ancora's planned proxy fight thus far. Under obvious pressure from Ancora's threats, NS recently announced buy outs for 7% of its management and staff—in direct contrast to its previous strategy of holding on to workers. And while management doesn't drive trains, it is essential to a well-functioning railroad that serves its present and potential customers.

And in the all-important area of future growth for railroads by landing the burgeoning increase in intermodal traffic, one of Ancora's strongest criticisms is that NS has too much intermodal traffic compared to merchandise traffic. Ancora's complaint is that intermodal is not as profitable. Apparently, Ancora, inexperienced in railroading as it is, is unaware that roughly half of all rail traffic in the US is intermodal and that intermodal is where future volume growth is. Coal is not coming back.

So what has happened at NS since those threats were levied? NS, which has been a standout in growing its intermodal base, has only recently announced that it is terminating some of its lower density intermodal lanes, regardless of whether there might be growth potential for the future.

Several weeks ago, Ancora wrote me a letter. The essence of their message was that they had taken a $1 billion dollar stake in NS in order for it—quote—"to become a safer railroad." Really? What hedge fund raises $1 billion to promote safety anywhere? The measure of Ancora's disingenuous pitch to improve safety is that its slide deck completely omits reference to FRA data which shows that, in the last year, NS has been an industry leader in reducing mainline rail accidents and derailments. And NS is the only Class I railroad which has joined the Department of Transportation Confidential Close Call Reporting System, a major advance in instituting a safe culture in any workplace.

Ancora has nothing to say about what it could do better.

I think we can assume that if Ancora succeeds in its bid to control NS, its next move will be to put the Brooklyn Bridge on the market.

Let's be real. Looking at Ancora's slide deck issued last week in which they're required to be a little more candid when soliciting other shareholders, Ancora principally and repeatedly focuses on a rapid lowering of the OR to drive cash payouts and raise its stock price, harshly criticizing present NS management for not making a lower OR the *objective*.

We now know that this is wrong headed thinking. Making OR the corporate objective is what led to elimination of thousands of workers which caused the service crisis.

Joe Hinrichs emphasized this morning that using OR as an operating objective by itself will ultimately lead to bad results. And another CEO has put it so well: "the operating ratio has always been an outcome of running the railway the right way." You "don't cut your way to success." That same CEO pointed out to his investors: "I'm not enamored with having the lowest operating ratio. I'm enamored with earnings growth." In other words, managing a railroad for growth will achieve more sustainable profitability.

In fact, the rapid reduction in OR championed by Ancora can only be accomplished by new major reductions in the workforce. Indeed, Ancora rejects NS' new long-term growth strategy and is particularly harsh on NS' focus on all important intermodal traffic. Clearly, their plan is to install a CEO ordered to reverse Norfolk Southern's recently instituted corporate strategy to maintain a resilient workforce and to invest more in infrastructure to grow the railroad's capacity long term.

The implications of significant cost-cutting at one railroad are ominous for the US economy. The fall out could extend to the entire freight rail system. Railroads crisscross North America in an intertwined network; freight is often handed from one railroad to another before reaching its destination. When one railroad has a service meltdown, it has a ripple effect across all other railroads. Such a debacle occurred in 2017 when CSX went on a cost-cutting rampage—a shock to the system from which it took years to recover.

Already, industrial customers of Norfolk Southern and shortline railroads that feed into Norfolk Southern have raised serious concerns that significant cost-cutting would undo the progress of the last two years.

And of significance, two rail unions whose members' quality of life has improved under current NS management and whose personal safety is at stake have announced their strong opposition to Ancora's proposed management strategy which relies on the cult of the OR.

Contrary to Ancora's sales pitch, a reversion to cutting workforces by major railroads would actually impede efforts to improve service and to improve safety standards to minimize the chances of another disaster like last year's East Palestine, Ohio derailment. These very concerns about what could happen to Norfolk Southern were raised recently by FRA administrator Amit Bose.

Of equal if not greater concern to the health of the entire freight rail industry is that a successful takeover by any investors overly focused on cost cutting will have the other railroad CEOs looking over their shoulders, deterring them from pursuing long-term strategies, and harming the U.S. economy.

At least for the last three years since I've been chairman, the STB has engaged in a long, continuous and continuing struggle to counteract the effects of this Wall Street pressure.

It's a never-ending tension. Wall Street will always be there—which is fine, it's part of our capitalist structure. But the activist investors, such as the ones that have surfaced now at Norfolk Southern, have a very short-term goal and it's not constructive.

Indeed, if Ancora is successful, we will have a national rail network, in which half of it—UP and NS—will be run by CEOs answering to short term, cash maximizing, shareholders to the detriment of the long-term investors—and most dangerously to the detriment of rail customers and rail workers—and ultimately the US economy and every member of the public.

Under those circumstances, I do not expect the STB will sit by and watch and wait while another service crisis unfolds as we confronted in 2022.

On the contrary, if service suffers, ultimately the STB would be called in—and may have little alternative but to institute more accountability hearings and more regulatory intervention to protect the public, an outcome which neither railroad investors nor the STB would relish.

To be clear, the STB has tools available to incentivize better service. We are already considering a rule to make reciprocal switching a practical tool to provide relief to shippers experiencing subpar service. And the Board has also stated it is interested in considering additional ways to grant sole-served shippers competitive access to a second railroad. In my view, for example, it may well be time for the STB to re-examine the restrictions contained in the decades old bottleneck rule.

To be clear: Railroads are a regulated monopoly. They have a common carrier obligation to the public interest and to the nation's economy. Unlike other businesses, railroad management and owners are not just free to manipulate the business by draining the company's resources for short-term gain.

Those of us in the rail community—and every U.S. citizen—need to stay tuned. To be continued.

Thank you.

Mr. NEHLS. The gentlelady yields. I now recognize the ranking member of the full committee, Mr. Larsen, for 5 minutes for an opening statement.

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Chair, and thank you, Vice Ranking Member Foushee, for holding today's hearing on commuter rail.

The BIL supercharged our Nation's investment in passenger rail, providing $102 billion in planned funding for intercity rail and $108 billion for transit agencies. A significant portion of this can be used for commuter rail.

Now, the BIL guaranteed multiyear funding for the state-of-good-repair investments and corridor development for intercity and commuter passenger rail. It made possible, for the first time ever, dedicated, reliable Federal funding disbursed over 5 years to improve and expand intercity passenger rail.

Now, transit agencies, Amtrak, the FRA, and the FTA are implementing long-term plans for passenger rail expansion and improvement, secure in the knowledge that the funding is there for the next 5 years. I look forward to hearing from our witnesses today about the difference this budget certainty has made for developing and sustaining infrastructure improvements and then, of course, what Congress can do to keep the momentum.

Commuter rail systems have benefited from BIL funds, including the Capital Investment Grant, or CIG, funding, which supports transit expansion. In my district, Sound Transit runs Sounder trains with two round trips every weekday between Everett, Mukilteo, Edmonds, and Seattle. Further south, the Sounder serves commuters between Tacoma and Seattle. The trains run on freight tracks owned by BNSF, and BNSF operates the trains. Amtrak provides maintenance and Sound Transit owns the stations and provides security. This partnership is an example of the layers of support and coordination often necessary to provide commuter train service in the U.S.

And even at the Federal level there are silos, though, with the Federal Railroad Administration providing most of the regulatory oversight of commuter rail and the Federal Transit Administration providing the bulk of the funding. So, I look forward to hearing recommendations from the witnesses for the next infrastructure bill to make passenger rail funding and service more effective.

Now, BIL passenger rail funding is creating jobs, it is growing regional economies, it is reducing congestion and carbon emissions, it is building a cleaner, a greener, a safer, and more accessible transportation network. For example, the FTA announced over $631 million to replace 302 aging transit railcars, including over $100 million for Metra in Chicago. That is just the beginning. This transformational investment in the BIL is a great start. I am committed to ensuring reliable funding for long in the future.

The BIL is also an investment in workers. Federal rail funding will develop a well-trained and diverse workforce to build, operate, and maintain intercity and commuter rail systems. So, while commuter rail agencies have access to dedicated funding through transit programs, there is no similar guaranteed source of funding for intercity passenger rail. And without the BIL's advance appropriations, intercity passenger rail is dependent on the annual appropriations process to fund its longer term major capital projects.

Since commuter rail often shares tracks with freight or intercity passenger rail, investments in rail benefit those other partners. The FRA's Consolidated Rail Infrastructure and Safety Improvements grants, or CRISI, can be used to upgrade commuter rail property that is shared with Amtrak or freight rail, and the BIL guaranteed $5 billion in advance appropriations for CRISI. Providing steady funding for intercity passenger rail will allow States and communities the certainty they need to plan and deliver more and better passenger rail service.

So, I thank the witnesses for being here today, for sharing your perspectives on these and other issues, and helping us hear about the opportunities and challenges facing you all in today's environment.

With that, I yield back.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chairman Nehls and Vice Ranking Member Foushee, for holding today's hearing on commuter rail.

The Bipartisan Infrastructure Law (BIL) supercharged our nation's investment in passenger rail, providing $102 billion in planned funding for intercity rail and $108 billion for transit agencies. A significant portion of this can be used for commuter rail.

The BIL guaranteed multi-year funding for state of good repair investments and corridor development for intercity and commuter passenger rail.

It made possible, for the first time ever, dedicated, reliable federal funding—disbursed over five years—to improve and expand intercity passenger rail.

Transit agencies, Amtrak, the Federal Railroad Administration and the Federal Transit Administration are implementing long-term plans for passenger rail expansion and improvement, secure in the knowledge that funding is there for five years.

I look forward to hearing from our witnesses today about the difference this budget certainty has made for developing and sustaining infrastructure improvements and what Congress can do to keep the momentum.

Commuter rail systems have benefited from BIL funds, including Capital Investment Grant funding, which supports transit expansion in projects across the country.

In my district, Sound Transit runs Sounder trains with two round trips every weekday between Everett, Mukilteo, Edmonds and Seattle. Further south, the Sounder serves commuters between Tacoma and Seattle.

The trains run on freight tracks owned by the BNSF Railway Company, and BNSF operates the trains.

Amtrak provides maintenance, and Sound Transit owns the stations and provides security. This partnership is an example of the layers of support and coordination often necessary to provide commuter train service in the U.S.

Even at the federal level there are silos, with the Federal Railroad Administration providing most of the regulatory oversight of commuter rail and the Federal Transit Administration providing the bulk of the funding.

I look forward to hearing recommendations from the witnesses for the next infrastructure bill, to make passenger rail funding and service more effective.

BIL passenger rail funding is creating jobs, growing regional economies, reducing congestion and carbon emissions, and building a cleaner, greener, safer and more accessible transportation network.

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Providing steady funding for intercity passenger rail will allow states and communities the certainty they need to plan and deliver more and better passenger rail service.

I thank the witnesses for being here today and for sharing your perspectives on these and other issues, and help us hear about the opportunities and challenges facing you all in today's environment.

Mr. NEHLS. The ranking member of the full committee yields. I again thank you all for being here. I look forward to hearing from each and every one of you.

I would like to take a moment to explain our lighting system for all of you. There are three lights in front of you. Green means go. Obviously, yellow, slow it down a little bit, you are running out of time, and then red means stop talking.

I ask unanimous consent that the witnesses' full statements be included into the record.

Without objection, so ordered.

I also ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

Without objection, so ordered.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

As your written testimony has been made part of this record, the subcommittee asks that you limit your oral remarks to those 5 minutes.

And now I would like to briefly recognize Mr. Yakym to introduce our first witness, Mr. Noland.

Mr. Yakym.

Mr. YAKYM. Thank you, Mr. Chairman. It is my pleasure to introduce Mike Noland, the president of the Northern Indiana Commuter Transportation District which, back home in Indiana, we call the South Shore Line.

The South Shore provides a vital connection between South Bend, Indiana—in my district—and Chicago, and many points in between, including the Indiana Dunes National Park. I and many other Hoosiers have fond memories of taking the South Shore to Chicago. I am sure many people from Chicago have fond memories of coming to South Bend to catch maybe a Notre Dame football game.

Mike has over three decades in the rail industry, and he has presided over major capital projects for the South Shore Line. I especially want to highlight the almost complete $650 million double track project, which will further cut down the time from South Bend to Chicago by making the full route double-tracked so that eastbound trains don't have to wait for westbound trains, and vice versa.

Mike and I go way back, and I am thankful that you invited him today to lend his deep experience and expertise to our conversation. Thank you, Mr. Chairman, and I yield back.

Mr. NEHLS. With that wonderful introduction, I would like to now recognize you, Mr. Noland, for 5 minutes.

TESTIMONY OF MICHAEL NOLAND, PRESIDENT, NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, AND CHAIRMAN, COMMUTER RAIL COALITION; DEBRA A. JOHNSON, GENERAL MANAGER AND CHIEF EXECUTIVE OFFICER, REGIONAL TRANSPORTATION DISTRICT (RTD), DENVER, COLORADO; DAVID W. DECH, EXECUTIVE DIRECTOR, SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY (TRI-RAIL); KEVIN S. CORBETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NEW JERSEY TRANSIT, ON BEHALF OF THE NORTHEAST CORRIDOR COMMISSION; AND DARREN M. KETTLE, CHIEF EXECUTIVE OFFICER, SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (METROLINK)

TESTIMONY OF MICHAEL NOLAND, PRESIDENT, NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, AND CHAIRMAN, COMMUTER RAIL COALITION

Mr. NOLAND. On behalf of the members of the Commuter Rail Coalition, thank you, Chairman Nehls, Ranking Member Larsen, and Congresswoman Foushee for inviting us here today to testify on some very unique issues, challenges, and opportunities facing commuter rail across the country.

I would like to also thank Congressman Yakym for his vigorous support of the South Shore Line and, of course, our wonderful Governor, Eric Holcomb, who has been an incredible cheerleader and champion for commuter rail in the State of Indiana, investing hundreds and hundreds of millions of dollars into our rail system.

As mentioned, my name is Mike Noland. Today, I am here as chairman of the Commuter Rail Coalition, an industry coalition representing the public agencies that provide 98 percent of all ridership in the country, plus over 30 private-sector consultants and suppliers that support our industry. I am also president of the Northern Indiana Commuter Transportation District that operates the South Shore Line. And as Congressman Yakym mentioned, we are a 90-mile system that runs from South Bend, Indiana, to Chicago, Illinois.

I will focus my testimony today on two specific areas: first is the lack of capacity in the excess liability insurance market; and second is the Amtrak statutory authority over public-sector commuter rail operations.

Commuter railroads purchase annually $323 million in excess liability insurance. That is the Federal cap. The cap will be adjusted in 2026, and it is based upon the Consumer Price Index. That is the sole determinant of the cap raise. We expect that the cap will go up from $323 million to over $400 million when the CPI is used.

To be clear, commuter railroads are not required to purchase up to the cap. We do so because we have to comply with our third-party contracts. If a commuter railroad is unable to place that coverage, contractors, software providers, host railroads like Class I's can put us in breach of contract, and the likelihood is that some of us will have to suspend operations.

The Commuter Rail Coalition is asking for Congress to give us a technical correction to the 30-day implementation rule that is currently in law when the cap is raised. We would like 365 days of time to place the additional coverage. Why 365 days? Well, if all of us, all 32 railroads in the country, at the same time approach the excess insurance markets, we think it is very unlikely that we will be successful. We have to go after these markets with a time when there is shrinking capacity in these markets. And if we are all there with 30 days to try to place that coverage, we don't think that is a recipe for success.

We know that we must search for alternatives to our reliance on foreign insurance markets. We ask Congress to work with us to explore options and do studies.

We also are looking for help from Congress perhaps to support some loans so that we could establish a national commuter rail industry liability pool. We are looking for ways to exercise self-help to resolve this issue.

My final point has to do with Amtrak's relationship with commuter agencies, and the need for the Surface Transportation Board to serve as the arbiter of any disputes between commuter railroads and Amtrak. The Rail Passenger Service Act of 1970 provided railroads the opportunity to be relieved of costly passenger operations, and Amtrak took those over. In return, the railroads granted priority access to Amtrak over their routes, and only charge Amtrak incremental costs. Importantly, public commuter rail agencies were not part of that grand bargain. However, Amtrak's statutory powers under the RPSA apply to our systems.

Now, the CRC is a strong supporter of improved and expanded passenger rail networks in this country. We are not in any way anti-Amtrak. However, we believe that commuter railroads should not be subject to Amtrak's statutory powers under the RPSA of priority access on our lines or from only charging incremental costs if they are using our service. We would ask Congress to establish a well-defined process to issue resolution between commuter railroads and Amtrak. We believe the STB is the right body to adjudicate such disputes, and we hope that Congress in the reauthorization will provide the STB that power.

Chairman Nehls, Ranking Member Larsen, Congresswoman Foushee, thank you on behalf of the Commuter Rail Coalition for having this hearing today. We appreciate the opportunity to realize the full potential commuter rail has to be stewards of the public interest.

And since I have the opportunity, I invite any and all of you to come out on May 13 to our ribbon-cutting ceremony that will be held in Gary at our Miller Station. And if you can't make it for that, come out any time. We will give you a ride on the South Shore Line, which is the Nation's last remaining interurban passenger railroad.

Thank you.

[Mr. Noland's prepared statement follows:]

Prepared Statement of Michael Noland, President, Northern Indiana Commuter Transportation District, and Chairman, Commuter Rail Coalition

INTRODUCTION

On behalf of the members of the Commuter Rail Coalition, I want to thank you Chairman Nehls and Ranking Member Payne for the opportunity to testify on some very unique issues, challenges and opportunities facing the commuter rail agencies across the nation.

I also wish to report that the very significant funding increase we have seen since the passage of the Bipartisan Infrastructure Law has provided necessary funds for critical investment and the predictability that allows us to move towards, or to maintain, a state of good repair.

I am Mike Noland, Chairman of the Commuter Rail Coalition (CRC) and President of the Northern Indiana Commuter Transportation District, operator of the South Shore Line commuter rail system. Along with my colleagues Debra Johnson, CEO of Denver RTD, fellow Coalition board member David Dech, Executive Director of the South Florida Regional Transportation Authority, CRC board member Darren Kettle, CEO of LA Metrolink, and one of my CRC co-founders, New Jersey Transit's Kevin Corbett, we wish to review the state of commuter rail operations our industry faces today. From changing travel patterns and demographics altering how our customers use our service, and how we deliver that service, to changes taking place in the worldwide excess insurance industry that directly impacts our ability to deliver service, we are definitely in a state of change.

As President of the South Shore Line I oversee a 90-mile commuter railroad serving Northern Indiana with service into downtown Chicago. Today, I am here as Chairman of the CRC, an industry coalition representing the public agencies that provide over 98 percent of all commuter rail ridership and over 30 private sector suppliers and consultants that support our industry.

The Coalition just celebrated its five-year anniversary and we are very proud of our collective efforts to communicate with one voice to critical stakeholders such as the U.S. Congress and the Department of Transportation, about trends in service and the needs of our industry going forward. Since day one our mission has been to engage and educate stakeholders on the tremendous value commuter railroads bring to the communities we serve.

SAFE, EFFICIENT, CLIMATE FRIENDLY

Commuter rail is not only safe, it is reliable, efficient, and climate friendly, proving to be an excellent return on the investment of public dollars. The 32 commuter rail agencies across the country pride themselves in providing 314 million (2022) riders with the safest mode of ground transportation.

How safe? According to the National Safety Council, commuter rail is the safest mode of ground transportation in the U.S. And with innovations in technology such as Positive Train Control (PTC) and human factors analysis, commuter railroads are continuously improving their safety performance.

The much-discussed PTC is just one of the many safety systems already in use by commuter railroads. My colleague Mr. Kettle just received a grant to introduce an intrusion detection system that will further enhance the capabilities of PTC in

Southern California, and Mr. Corbett's New Jersey Transit will soon begin using AI to improve grade crossing safety on their light rail lines—a technology that will have application for commuter rail as well. The technology that railroads are installing today will be undergoing improvements and updates for decades to come.

Commuter rail performs better than almost every other mode in operating expenses per passenger mile traveled. According to the National Transit Database, only subways provide better cost effectiveness.

And of the top 20 US metro areas ranked by GDP, only three job centers are not served by commuter railroads. In the Chicago Metropolitan area alone, regional transit, of which commuter rail is an integral part, directly supports 126,000 jobs. Regional economic activity created by transit is approximately $5.6 billion per year while additional tax revenue created by transit is approximately $1 billion per year. In the Chicago region, the economic benefit returned per $1.00 invested in transit is $3.86 [1].

The transportation sector as a whole—including private cars, commercial trucks, commercial and private planes—is responsible for nine percent of all greenhouse gas (GHG) emissions—the largest of all US sectors. According to the Federal Railroad Administration, however, the rail sector—freight and passenger combined—emits only two percent of GHG, while also reducing dependence on private cars and commercial trucking.

Rail's efficiency plays an important role in reducing the transport sector's emissions. Without transit, an additional 1.7 billion miles would be driven in the Chicago region, creating an additional 375,000 tons of greenhouse gas emissions and 1,500 additional severe traffic accidents [2].

As mentioned, I am the President of the South Shore Line commuter railroad, a 90-mile system serving Northwest Indiana, from South Bend International Airport to Millennium Station in Chicago. I have dedicated my career to providing safe and efficient rail service to millions of riders, and in Indiana we are thrilled that the South Shore service is being improved and expanded through a partnership with the Federal Transit Administration (FTA) with two Full Funding Grant Agreements as part of the Capital Investment Grant program. The combined impact of the new West Lake service, which will open in 2025, and the Double Track service, which will be open by this time next month, is nothing short of transformational for Northwest Indiana. The State of Indiana anticipates that these projects will generate in excess of $2.5 billion in private sector development over the next 20 years, and a conservative return of $2 for every state dollar invested (with a more likely $4 in return) from these rail projects. In fact, we are already seeing over $500 million of committed private sector investment through transit development next to our stations, before opening service on either project.

If the Chairman would indulge me for just a moment, I would like to thank Representative Yakym, a member of this subcommittee, for his support of this investment and for his keen interest in South Shore Line Service.

"Commuter rail" is traditionally defined as a passenger rail service that primarily operates within a metropolitan area, connecting commuters to a central city from adjacent suburbs or towns. Commuter rail systems are "heavy rail" using electric or diesel trains, as opposed to traditional subways or elevated "light rail" trains.

As my colleague Debra Johnson will address in greater detail, commuter rail as a mode has generated frequent jurisdictional questions within the federal government. Depending on the issue, we fall alternately under the jurisdiction of either the Federal Transit Administration or Federal Railroad Administration. We receive much of our federal assistance through formula funds, and we access to the Capital Investment Grant Program of the Federal Transit Administration for our large extension projects. The Federal Railroad Administration has safety oversight of all our operations and recently has also awarded some discretionary funding grants for commuter rail agencies.

The service we provide, as well as the make-up of our agencies, reflects the diverse communities we serve.

Ours is an industry with both a long history and significant recent growth: 12 new commuter rail services debuted in just the past 20 years. The oldest in the nation, the Long Island Rail Road, is this year marking its 190th anniversary. The South Shore Line service began over a century ago, and the Denver RTD launched commuter rail service in 2016.

Some of our agencies—like my own, Mr. Kettle's Metrolink, and Mr. Dech's Tri-Rail—are stand-alone commuter rail only service providers; others are part of multi-

[1] "Transit is the Answer" (2023), Regional Transit Authority Strategic Plan.
[2] Id.

modal operations. Debra Johnson and Kevin Corbett both lead multi-modal agencies that provide a mix of rail and bus transit services.

At the South Shore Line, we are the direct providers of the service. On the Metra system in Chicago, where I previously served as Chief Counsel for 16 years, the agency contracts with the Union Pacific and Burlington Northern Sante Fe to provide some of its service, and it directly operates five other service corridors in their system. In Florida, Dave Dech's system contracts out to provide service through Herzog, and in Los Angeles, Darren Kettle's Metrolink system is operated by Amtrak.

Issues Facing Commuter Rail Today

My colleagues will delve into this more fully in their remarks, but myriad external factors illustrate that commuter rail has an opportunity to embrace an era of renaissance.

There is no better time for the CRC to have brought these voices together in support of the agencies and, collectively, the mode in addressing the need to:

- Adapt to the post-pandemic ridership habits.
- Responding to freight operating practices and safety issues that impact communities through which we travel
- Balancing our needs with those of Amtrak's and other intercity passenger rail initiatives and ensuring that commuter railroads have equal footing in these discussions.

With respect to our interactions with Amtrak, it would be very beneficial for the commuter rail industry to have one oversight agency or administrative body with jurisdiction over issues impacting our systems to evaluate the sometimes competing priorities and balance everyone's needs.

Over the course of our long history, commuter railroads have met many challenges.

I am happy to report that our industry succeeded with one of the biggest yet—the installation of PTC across all of our systems. The cost of implementation, with over 90 percent funded with precious local resources from our capital development budgets, came to roughly $4 Billion for public agencies. And agencies are spending millions of dollars in ongoing, annual maintenance and upgrades to keep PTC in top form.

The logistical challenges to implement PTC were equally harrowing. One of the main hurdles was "interoperability": The requirement that any train operating over another railroad's tracks must be able to communicate seamlessly with the "back office" of that railroad's PTC system, in addition to its own system. Nowhere was that more difficult than in Chicago, with its dense rail network that sees 1,300 to 1,400 commuter and freight trains each day. Metra Chicago's PTC system must work seamlessly with the PTC systems of 12 other railroad companies including my South Shore Line—and on one of Metra's lines, the Southwest Service, it has to work with five.

Challenge of Procuring Liability Insurance

Currently we face a challenge to our ability to operate that is beyond our control, has nothing to do with our operations, and in our opinion, completely ignores the incredible safety record and commuter railroads' further safety enhancements, such as PTC. I am speaking about the challenge we face securing excess commercial liability insurance up to the federal liability cap. This problem threatens our ability to operate and will require close collaboration between the commuter rail industry and Congress. You are likely somewhat familiar with a similar scenario. The mainstream press has covered the fate of homeowners with no claims history losing their insurance as carriers exit various markets "due to declining profitability." (Newsweek, March 4, 2024)

In September 2023, the Senate Banking Committee held a hearing on *Perspectives on Challenges in the Property Insurance Market and the Impact on Consumers*. The climate the Senate Banking Committee examined for consumers is similar for commuter railroads. In a "hardened" insurance market, insurers are limiting their exposure by reducing coverage, or pulling out of markets entirely because they have made profitability calculations based on the range of payouts made to a broad range of insureds, such as following extreme weather events (hurricanes, tornados), wildfires, coastal flooding, Texas grid failure, and mass-casualty events.

The issues we face in worldwide excess insurance market are serious. Commuter railroads currently carry $323 million in excess liability coverage, the federal cap. Under law, the federal cap will be CPI-adjusted by notice in early 2026, at which time commuter railroads will have only 30 days to secure the additional coverage. If we are unable to place this additional coverage, contractors and host railroads can declare breach of contract, requiring a railroad to stop running service.

Compounding this issue is the fact that we can only purchase small amounts of our excess insurance from US insurers; today the maximum we can purchase from domestic insurance carriers is only $32.5 million per railroad. Commuter railroads are forced to spend public dollars to purchase the balance, $300 million in additional coverage, in overseas insurance markets.

The Coalition's immediate focus, though, involves the need for a technical correction to modify the 30-day timeframe mandated in law that provides for an adjustment to the federal cap on passenger and commuter rail liability. I fear that if this provision is not adjusted from 30 to 365 days before the next adjustment—currently scheduled for the first quarter of 2026—we may have to shut down and suspend some or all of our commuter rail systems.

A bit of background: Limitations (or caps) on rail passenger liability first appeared in December 1997, as part of Title 49 U.S.C. Section 28103, when it was set at $200 million. Eight years later, in December 2015, the cap was incorporated into Section 11415 of the Fixing America's Surface Transportation ("FAST Act") and was increased to $294 million. The FAST Act also indexed the cap to inflation, to be adjusted every five years.

The largest commuter rail settlement to date occurred in 2010 as a result of the Chatsworth, California incident in which 25 people were killed and 135 injured. At that time the liability cap was $200M.

Following that event, Congress mandated the implementation of positive train control and the improved crashworthiness of passenger rail vehicles and set the wheels in motion to periodically adjust the liability cap as indexed by the Consumer Prices Index. No commuter rail incident of the magnitude seen in Chatsworth has occurred since.

The index methodology ensures that the aggregate allowable awards to all rail passengers, against all defendants, for all claims, including punitive damages, arising from a single accident or incident in the commuter rail or passenger rail industry is based on current dollars adjusted for inflation.

The cap was last adjusted in February 2021, when the five-year look back added roughly $26 million to the new liability limits. The Department of Transportation triggered that increase by issuing a notice that the statutory adjustment to the rail passenger transportation liability cap under Section 11415 of the FAST Act would go into effect 30 days after the day the Secretary's notice was published in the Federal Register.

The liability cap of $323 million became effective on March 27, 2021. Every commuter railroad in the country raced to acquire the additional $26 million in coverage in the excess liability market. Many did not secure this additional coverage until nearly the end of this 30-day timeframe.

The cap is next scheduled to be adjusted in the first quarter of 2026. With the Consumer Price Index as the sole determinant of the adjustment, the Commuter Rail Coalition anticipates a significant increase up to and likely in excess of an additional $70 million dollars.

Due to the state of the domestic insurance market, all commuter rail agencies and Amtrak must procure a large proportion of their coverage from overseas insurers. U.S. insurers have, over time, exited the market for "excess liability" coverage, reasoning that they could deploy their capital in other areas and absorb less risk. The reasons domestic insurance companies exited the market are varied, but the fact remains that as public agencies we have no choice but to find this insurance coverage in foreign markets. Our need to purchase insurance outside the United States is certainly contrary to the Buy America initiatives so important to Congress.

Further, no single insurance company is willing to fully insure an agency for a potentially catastrophic event. Consequently, multiple excess insurance carriers participate to provide converge up the federal cap, building layers of insurance from just above our self-insured retention levels up the top layer of coverage. These layers are referred to as insurance "towers" and are built from the bottom (highest risk coupled with the highest premiums) to the top (lowest risk with the lowest premiums). Each insurance company has its own "appetite" for varying degrees of risk. This, of course, allows insurance companies to limit the amount of insurance available and is how they manage their risk or exposure to any one insured. Some companies will insure only at the lowest levels of the tower (the so-called "working layers") while others are interested only in the uppermost (and therefore "safest") levels of the tower.

As coverage is built, the individual tower layers themselves are often further subdivided and can consist of numerous insurance companies each taking a share of the coverage in that layer. This framework further spreads the risk for insurers: it is not uncommon for ten or more insurance companies to participate in a particular layer with each company committing to provide a portion of the coverage (typically from $2.5M to $10M). Though increasingly rare, some companies, if the layer is small enough, will commit to covering the entire layer, usually in an amount not greater than $20M to $25M.

If you were to examine each commuter railroad's insurance tower, you would find a distinct reliance on foreign markets, especially London, and in particular Lloyd's of London, the world's largest marketplace for excess casualty insurance. Bermuda is the second largest marketplace for excess casualty insurance, and other dominant carriers are located elsewhere in Europe.

As mentioned, purchasing excess liability insurance in foreign markets is not by choice but by necessity. So, taking my experience for the South Shoreline in Indiana, you would find that I have 22 participating insurers filling 35 slots on my insurance tower, a majority of the slots are covered by London insurers (many were from Lloyd's), seven were from Bermuda, and only one from the United States.

In Metra's last renewal, 22 slots were filled by London carriers, six slots were filled by Bermuda carriers and one slot was filled by a European carrier. Two additional carriers from London and one from Bermuda filled slots covering punitive damages. No carriers from the United States participated in the Metra tower.

Federal Law Does Not Mandate Insuring to the Cap

To be clear, commuter railroads are required to carry coverage up to the federal cap only as a result of third-party contracts. Federal law does not mandate that commuter railroads insure up to the federal liability cap. Rather, third-party contracts—such as trackage rights, purchase of service and vendor contracts—require that commuter railroads insure and indemnify those third parties up to the liability cap.

Many of these third-party agreements state that failure to maintain excess liability coverage up to the federal liability cap could lead to a commuter railroad being in breach of contract. As an example, a commuter railroad's inability to insure to the cap could result in vendors that supply software for PTC terminating a service that commuter railroads are federally required to have in place. Without PTC in place, the likely outcome is that commuter railroads would be forced to shut down service.

A host railroad can also contractually forbid operation of the commuter railroad on its tracks without the full limits of excess liability insurance being in place. And other third-party service providers could refuse to allow its conductors and engineers to operate the railroad's rolling stock to transport passengers.

So, while commuter railroads are not federally compelled to insure up to the liability cap, in all practical purposes, the cap serves as an existential requirement for our ability to operate service for the commuting public.

Given the hardened insurance market, recent indications of market capacity, and inflation's impact on the CPI that will be used to calculate the next increase in 2026, commuter railroads have a very real concern that if we are unable to obtain the required insurance within the 30-day implementation window we could be forced to shut down our service, likely with little or no warning to our customers.

Simply, if coverage is unattainable, we will be forced into shutting down until the coverage is obtained or some other type of financial guarantee is provided to the third-party.

Existing Threats to Securing Coverage

"Market Capacity in the Excess Insurance Industry" is the headline you see when you consider the greatest threat to continued coverage for any one of the commuter rail agencies nationwide. The number of insurers in the market willing to offer coverage, and those still in the excess insurance market who have coverage to place has shrunk over the past ten years and particularly in the past five years, in terms of the number of participating insurers and the amounts they are willing to commit for coverage. In December 2023 we were advised that excess insurance capacity available to the commuter rail industry stood at just over $400 million.

Why is capacity in the excess market being reduced? It is a complex set of market conditions that has absolutely nothing to do with commuter rail safety or commuter rail claims.

The insurance industry is highly cyclical. A "soft" market cycle is defined by lower insurance premiums, a broader appetite to assume risks and coverages, increased capacity (the availability of high limits), and greater underwriting flexibility. A "hard" market is characterized by higher insurance premiums, diminished capacity, more conservative underwriting, and fewer carriers writing certain coverage lines or insuring certain specific industries.

After 15+ years of a soft market, the insurance industry began experiencing a hardening of the market in 2018–2019. The effects of the current market are being seen across most lines of insurance and the majority of industries. Insurance experts we have consulted predict that the hard market will continue through this decade and likely beyond.

This exponentially hardening market is primarily due to greater frequency of catastrophic weather events, economic and social inflation[3], and litigation funding[4]. Coupled with a multitude of excess claims resulting in astronomically high settlements and verdicts, these conditions have created a vast imbalance in underwriting financials—a balance which the markets feel must be corrected for their own survival. Although these trends are not necessarily new, their impact is strengthening.

These challenges really presented themselves in clear terms in 2020 when the commuter rail industry, along with many others, saw significant rate increases—some as high as 75 percent from prior year premiums, predominantly at the high excess level. Excess insurers had suffered significant losses and decided to "level their losses".

Again, it is important to note that these "losses" in the insurance market were not the result of losses incurred in the commuter rail industry. I must underscore here the fact that we have all implemented PTC, which would have prevented most of the high exposure accidents over the past 20 years. The losses cited by insurance providers are the result of hurricanes and wildfires and mass shootings, as well as trends in auto claims in both frequency and severity due to a decrease in oil prices (more driving), increased cell phone and marijuana (distracted and impaired driving), and an increase in overall technological distractions in vehicles.

This came at a time when insurers had historical underpricing of premiums, an overall deterioration of reserves due to large payouts, and a lack of investment for new carriers.

The losses were building at a rapid pace, impacting many markets where excess liability coverage is used. The following examples illustrate settlements or verdicts in excess of $500 million across several industries over the past several years[5]:

Life Sciences	
1. Blood thinning drug causing stroke and death (2019)	$775M
2. 17 patients with defective hip replacements (various years)	$941M
3. Opioid litigation (various years)	$48+B
4. Class action—coil birth control (2020)	$1.6B
5. New York State opioid litigation (2021)	$1.18B
Health Care	
1. Sexual abuse by university sports physician (2018)	$500M
Consumer Products	
1. Talc Litigation (2018–2020)	$5B
2. Cable television provider held liable for murder by employee (2022)	$1.14B
Real Estate and Hospitality	
1. Hotel settlement for mass shooting resulting in 58 deaths (2019)	$800M
Transportation (Road)	
1. Truck driver negligently causing death of college student (2021)	$1B
Manufacturing	
1. Engine defect litigation (2019)	$758M
2. Class action regarding improper emission controls (2020)	$700M
3. Class action regarding engine fires (2021)	$889M–$1.3B

[3] Social inflation describes the phenomenon when insurance claims costs are increasing more quickly than the standard rate of inflation. Social inflation's impact on claim costs ultimately leads to higher insurance costs for all consumers. Recently, incurred claim losses have increased much more rapidly in recent years—much more rapidly than in preceding years and more rapidly than economic inflation would predict.

[4] Litigation funding is the practice where a third-party unrelated to the lawsuit provides capital to a plaintiff involved in litigation in return for a portion of any financial recovery from the lawsuit.

[5] Statistics culled from "Liability Limit Benchmark & Large Loss Profile by Industry Sector 2023—Proper Protection in a Volatile World" (Chubb)

4. Faulty batteries for electric vehicles causing risk of fire (2021)	Up to $1.9B
5. Death of two people due to truck's faulty roof (2022)	$1.72B
Oil and Gas	
1. Failure to investigate multiple leaks at gas storage facility (2021)	$1.1B
Utilities	
1. Wildfires (2017/2018)	$12B–$24B
2. Gas leak and explosion killing one, injuring 25 (2018)	$790+M
Chemical	
1. Class action regarding chemical explosion (2017)	$671M
2. Class action regarding agrichemicals (various years)	$11.22B

Transportation (Rail)

These losses alone, all of which occurred in the United States, total over *$105 billion*. It is worth noting that some claims do not reveal themselves until many years later (i.e., product liability, sexual abuse, etc.), circumstances for which insurers must hold adequate reserves.

It is worth noting that commuter rail does not appear on this list. Nevertheless, while commuter rail, as part of the excess liability insurance market, benefits from sharing risk with extensive coverage and low premiums in a soft market, it also suffers the shared consequences of shrinking coverage and very high premiums in a hard market fueled by social inflation and large losses.

As noted above, the largest commuter rail settlement to date occurred in 2010 as a result of the Chatsworth, California incident in which 25 people were killed and 135 injured. Since then, the commuter railroads have invested billions in myriad new safety systems and protocols. No commuter rail incident of the magnitude seen in Chatsworth has occurred since.

Underwriting Capacity

Even more problematic for commuter rail than exponentially rising premiums is the issue of "capacity" or, simply put, the availability of enough insurance to satisfy the requirements of all the insureds in a particular sector or market.

From the perspective of the excess liability markets, underwriting capacity is the maximum amount of liability that an insurance company agrees to assume from its underwriting activities. It represents an insurer's ability to retain risk. It is important for an insurance company to calculate and maintain its underwriting capacity so it will be able to pay claims when needed.

An insurance company's potential for profitability depends on its "appetite" for risk. The more risk it assumes by underwriting certain types of insurance policies (or by increasing the number of policies it writes), the more premiums it can collect and invest. However, the more risk an insurer accepts through the issuance of a large number of policies or larger risks, the more the possibility exists that it may become unprofitable, or worse, insolvent.

For an insurance company, striking the correct balance is essential to maintaining its financial health. An insurer's maximum amount of acceptable risk—or underwriting capacity—is a critical component of its operations.

The goal of good underwriting is to generate premiums that exceed the insurer's losses and expenses. They do that by underwriting policies that cover less volatile risks (as commuter rail is perceived to be), increasing premiums, and decreasing capacity.

Capacity for Commuter Rail

In general, capacity for lead excess insurers who underwrite commuter rail has greatly decreased over the past ten to twenty years. Non-lead excess insurers have decreased their capacity as well. The London and Bermuda excess insurance markets continuously monitor and adjust the amount of capacity they deploy. As a result of the current hard market, further capacity withdrawal is expected over the next few years.

Capacity withdrawal in the insurance industry is especially problematic when the commuter rail industry is staring at a significant increase in the federal cap on liability in 2026. Given recent inflation, we are concerned that the cap could increase by $70 million or more.

If one considers that 32 commuter railroads *each* will be competing for this additional coverage to meet the 2026 cap, it will be difficult—if not impossible—for all commuter railroads to obtain that coverage by the current 30-day deadline. Our best opportunity to obtain the new level of coverage is to have additional time to approach the excess insurance liability markets and not compete with each other in a 30-day window. We need an immediate change to the 30-day implementation requirement to provide up to 365 days to place this additional coverage.

With respect to cost, the upper layers of a tower (for example $28,000,000 in excess of $295,000,000, bringing coverage up to the current $323M liability cap) cost an average of $16,000 per million. We can expect the cost for one commuter railroad to acquire another $70 million in coverage in 2026 would likely be an *additional* $1,120,000.

In addition to seeking relief on the need to place this coverage within 30 days of the 5-year liability cap adjustment, we must also address to the overarching problem of a market with limited capacity and the need to find alternative arrangements. Needless to say, if the excess insurance market fails, Congress and the commuter railroads together will need more than 30 days to put alternatives in place so that vital transportation services around the country do not grind to a halt.

What might those options include? One that we are considering is an industry pool formed by and funded through premiums paid by commuter railroads. Together, we are open to exploring all of our options, but are clear-eyed as to the hurdles of establishing such a pool.

Alternative Arrangements

To assume that the current foreign excess liability market can continue to support the requirements leveled on commuter railroads has proven to be unreliable. We must search for stable alternatives and we look forward to working with this committee and the Congress to find workable solutions.

We are clear-eyed as to the hurdles of establishing an industry insurance pool. A multi-state agreement to share liability is no small undertaking, especially when navigating varying state liability caps and tort immunity protections. We are actively discussing these options and ask Congress to assist us by supporting studies and, potentially, federally-supported loans needed for capitalizing a commuter rail industry liability pool.

To assume that the current market can continue to support commuter rail's needs has proven to be unreliable. We must search for stable options that all willing commuter railroads can participate in, and we look forward to working with this committee and the Congress to find equitable solutions.

Amtrak and Commuter Railroads

My final point has to do with Amtrak's relationship with commuter rail agencies and the need for the Surface Transportation Board to serve as the final arbiter for any disputes that arise between these two public assets over access rights to each other's property and the associated costs.

Commuter railroads frequently interact with freight railroads and Amtrak but have extremely limited access to the dispute resolution mechanisms afforded by the Surface Transportation Board (STB) given the current STB authorization language. This lack of a forum puts public agencies—commuter railroads—at a significant disadvantage when it comes to issues involving the freight railroads, especially the Class 1 railroads and Amtrak.

As background, in 1970 the Rail Passenger Service Act (RPSA) provided freight railroads the opportunity to transfer their chronically unprofitable intercity passenger operations to Amtrak. In exchange, 22 freight railroads that were party to the agreement were required to: (1) allow Amtrak "to operate wherever it wished" over their lines; (2) "grant Amtrak trains preference over their own freight trains;" and (3) allow the ICC (now Surface Transportation Board) to determine compensation for Amtrak's operations if they could not reach agreement with Amtrak. Freight railroads were also required to pay some level of compensation to Amtrak.

In short, the RPSA relieved 22 private railroads of their passenger common carrier obligations in exchange for Amtrak's right to priority access to tracks for incremental cost. The commuter agencies and handful of freight railroads were *not* part of this so-called "grand bargain": they did not transfer passenger operations to Amtrak and received no benefit from the Rail Passenger Service Act. Yet those who were not party to the RPSA are held to the quid pro quo that they did not make.

It is inequitable to continue to subject commuter railroads to only the burden side of the grand bargain. Non-RPSA parties should not be at risk of being forced to provide access to Amtrak trains, absent a mutually acceptable agreement with Amtrak.

In April 2021 Amtrak sent letters to commuter railroads across the country introducing their vision for *Amtrak Connects US*. "We have developed a vision for the future that involves strategic expansion to increase train frequencies on some existing Amtrak corridor routes, and initiate new corridors to connect additional city-pairs, called *Amtrak Connects US*." The letter I personally received went on to state: "Some of these additional trains *will* (emphasis added) operate on NICTD rail lines."

Again, commuter agencies were not party to the grand bargain, we were not relieved of any financial burden assumed by Amtrak, and therefore, the CRC asserts that commuter railroads should not be subject to Amtrak's statutory ability to simply enforce it rights over commuter rail properties. The public assets that are commuter railroads must be on an equal footing to Amtrak and treated differently from the 22 freight railroads that received the benefit of the RPSA.

Further, commuter rail lines should not be seen as a preferred alternative from Amtrak's current routes. In the Indiana case, Amtrak desires to move their route from a freight line to the newly upgraded South Shore Line. The freight line where Amtrak currently operates in Indiana was just upgraded for their benefit; it received in excess of $65 million in state-funded enhancements to improve Amtrak service on the RPSA host railroad. Seemingly, Amtrak seeks to abandon the line that was improved by Indiana taxpayers for their benefit in order to avail themselves of the investments NICTD has secured to improve service for our own ridership.

Should Amtrak exercise its statutory authority and begin operating over the South Shore Line, their presence will negatively impact the capacity and maintenance calculations made to support the federal investment in NICTD service.

Further, under statute, Amtrak would only be required to pay the incremental costs of its use of the line. Host railroads have no leverage to negotiate or force Amtrak to pay anything approaching the actual cost of their presence on a rail line, meaning, in this case, that NICTD would be underwriting the cost of Amtrak service through Indiana.

The equation creates a circumstance that requires commuter railroads to subsidize the operating costs of Amtrak without fair compensation.

Conversely, when a commuter railroad operates over Amtrak-owned tracks, that access is billed at actual cost.

Amtrak has stated that they desire to reach an acceptable agreement in Indiana, but they have also recently and vigorously defended their statutory authority over commuter railroads.

Commuter authorities must be permitted to continue to realize the full, long-term value of the public investment that has been made in their lines and facilities and to protect the value of those investments for their own passengers. All railroads not party to the "grand bargain" must be protected when Amtrak seeks to exercise its will. There must be a forum for negotiation between equal parties for access and compensation.

The Commuter Rail Coalition believes the best approach to ensure a well-defined process for resolution is to adjust the statutory rights of Amtrak to require good faith negotiations between Amtrak and commuter rail systems when either party seeks trackage rights, and forum to adjudicate disputes. In our view, we believe the Surface Transportation Board is the right entity to deal with disputes between Amtrak and commuter railroads and we suggest that the STB be empowered with the authority to review and determine terms of any agreement between Amtrak and a commuter rail agency that remains in dispute.

CONCLUSION

Chairman Nehls and Ranking Member Payne, I want to thank you again for the opportunity to explain some of the challenges we face in the commuter rail industry. If there is one message I wish to leave with you today, it is that commuter railroads face a changing landscape as our customers modify their travel patterns, and we embrace those opportunities that allow for us to offer safe reliable and affordable service. We look forward working cooperatively with you and the Congress to find the most expeditious, cost-effective solutions to the issues discussed here today. We all climbed a steep hill to meet the PTC mandate. The challenges we now face are equally as formidable but there are pathways to success. We look forward to working towards those solutions.

Mr. NEHLS. Thank you, Mr. Noland.

Ms. Johnson, you are now recognized for 5 minutes.

TESTIMONY OF DEBRA A. JOHNSON, GENERAL MANAGER AND CHIEF EXECUTIVE OFFICER, REGIONAL TRANSPORTATION DISTRICT (RTD), DENVER, COLORADO

Ms. JOHNSON. Good morning, Chairman Nehls, Ranking Member Larsen, Congresswoman Foushee, and members of the subcommittee. I am pleased to join my industry colleagues to discuss opportunities and challenges facing commuter rail operators nationwide.

The face of commuter rail is evolving. This vital public service is now experiencing a renaissance. Agencies across the country are delivering service that match needs of a hybrid workforce, as well as to provide more attractive mobility options to discretionary customers. To advance these enhancements, investments are a must.

On March 29, the Federal Railroad Administration released the Notices of Funding Opportunity for fiscal years 2023 and 2024: $2.4 billion for rail safety and infrastructure improvements. Amtrak and short line railroads are eligible to apply, but not commuter rail agencies.

The CRISI program, administered by FRA, funds projects that improve the safety, efficiency, and reliability of intercity passenger and freight rail, yet commuter rail priorities are not eligible for direct funding under the CRISI program. Since CRISI was first initiated, Amtrak has seen its access to direct funding grow exponentially while commuter railroads must compete with all other surface modes for discretionary funding. There is no existing specific U.S. DOT program that is focused on commuter rail infrastructure and rolling stock. Commuter rail agencies seeking Federal assistance to maintain a safe, efficient, and reliable network have been shortchanged.

Speaking to rail safety, most commuter rail capital needs are related to safety investments that ensure commuter rail remains one of the safest mobility options. When agencies invested over $4 billion to implement Positive Train Control systems nationwide, this investment came at the expense of locally prioritized improvements and/or service. Capital reinvestment projects were postponed or delayed indefinitely, while operational safety was maintained at a significant but necessary cost.

As the subcommittee considers future rail safety legislation, the commuter rail industry welcomes the policies and practices that may emerge in that legislation. That said, reliable Federal funding for continued commuter rail safety investments is paramount for long-term sustainability. Hazardous materials are frequently transported by freight railroads across alignments shared by commuter rail. The cost associated with these inherent risks must be borne by the freight railroads as a cost of doing business, thus they must be held accountable for their safety practices.

The Commuter Rail Coalition supports the concepts advanced in the Senate's proposed Railway Safety Act, legislation introduced by Senators Brown and Vance last year. That said, the coalition's primary concern with the legislation is the significant cost that commuter rail agencies are being asked to absorb for the benefit of private entities, specifically with the wayside technology requirements such as hot boxes.

It cannot be overstated that such requirements are for the freight railroad's sole benefit. Considering that commuter railroads operate under a much stricter safety regime than freight railroads, commuter rail operators foresee little, if any, benefit from the hot box detector introduction on our rights-of-way. While the Senate bill proposes the installation cost to commuter railroads be partially offset by a new reimbursable Federal funding program, coalition members have significant concerns with this requirement.

First, taxpayers should not shoulder private entity costs of safely moving freight.

Second, the reimbursement program envisioned in the Senate bill would neither fully cover the hot box detector installation costs nor the required ongoing maintenance.

And third, many commuter railroads currently have unfunded capital projects that are a matter of public necessity. Diverting public funds for private-sector purpose is not good Government.

Congress has an opportunity to address these concerns and several others in any final legislation.

On behalf of the Commuter Rail Coalition, we look forward to further collaboration.

Mr. Chairman, Congresswoman Foushee, and Ranking Member Larsen, it has been a pleasure to appear before the subcommittee today to share concerns as an industry and, most importantly, to express our support for achieving even greater safety levels in the commuter rail industry. Once again, I offer our collective expertise and assistance as you move forward on safety legislation and, ultimately, the reauthorization of the surface transportation bill. Thank you.

[Ms. Johnson's prepared statement follows:]

Prepared Statement of Debra A. Johnson, General Manager and Chief Executive Officer, Regional Transportation District (RTD), Denver, Colorado

RTD RAIL OPERATIONS

RTD operates light rail and commuter rail lines within its 2,342 square-mile service area. The Denver metro region has long championed rail transit as a necessary transportation mode. The agency's first light rail line commenced revenue service nearly 30 years ago. FasTracks, the agency's transit expansion program, at the time of approval by voters in 2004, was the largest such program in the nation. Together with a concessionaire partner, Denver Transit Partners/Denver Transit Operators, RTD's Commuter Rail operations consist of four commuter rail lines, one of which is directly operated by RTD. Commuter rail service spans from Denver International Airport in the east to adjoining suburbs in the north and west of the metro region. According to the 2023 Public Transportation Fact Book published by the American Public Transportation Association, RTD experienced the highest ridership per mile of track of any commuter railroad in the country.

COMMUTER RAIL ELIGIBILITY UNDER THE CONSOLIDATED RAIL INFRASTRUCTURE AND SAFETY IMPROVEMENTS (CRISI) PROGRAM

The face of commuter rail is evolving. This vital public service, first established to move a workforce from the more affordable suburbs into the city center during morning and evening rush hours, is experiencing a renaissance. More and more, agencies across the country are introducing service that mirrors a regional rail approach—that is: bi-directional all-day service to serve the post-pandemic travel patterns of a hybrid workforce and to provide additional or more attractive travel options to discretionary customers.

To advance these adaptations, investments must continue to be made into the essential public assets that are commuter railroads. Prior to the pandemic, commuter railroads across the US moved approximately half a *billion* people annually (as compared to Amtrak's 33 million).

As a transit mode, commuter railroads are accountable to two different agencies within the Department of Transportation. In certain congressional circles, there is some debate as to whether commuter rail should be considered rail transportation or transit with respect to committee jurisdictional responsibility. Media outlets regularly conflate "passenger rail" as including commuter rail operations when, typically, this is simply shorthand for "Amtrak." And, remarkably, the Surface Transportation Board has no authority to intervene when commuter railroads are party to a dispute with Amtrak.

It is unfortunate, then, that Consolidated Rail Infrastructure and Safety Improvement (CRISI) Act funds the privately held short-line railroads' projects along with Amtrak's, while explicitly excluding a transit mode that moves vastly more people every year in comparison. The Coalition has a vested interest in working with Congress to correct this critical oversight.

Earlier this month, the Federal Railroad Administration released the notice of funding opportunity for the FY23 and FY24 funding: $2.4 billion for rail safety and infrastructure improvements—but none for commuter rail.

The CRISI program is administered by the Federal Railroad Administration and funds projects that improve the safety, efficiency, and reliability of intercity passenger and freight rail, yet *commuter rail priorities are not eligible for funding under the CRISI program*. Authorized by Congress in the Fixing America's Surface Transportation (FAST) Act, funding under this program has grown significantly since its inception—from $200 million initially to $1.5 billion in *FY2023 and $1.1 billion in the recently enacted FY2024 appropriations bill*.

Currently, the CRISI program limits eligibility only to projects directed by freight rail and intercity passenger rail, specifically Amtrak in this instance. If a commuter railroad benefits from the program, it is only as an ancillary partner to another entity's project, as commuter rail operators are not eligible direct recipients for CRISI funds.

Since CRISI was first initiated, Amtrak has seen its access to direct funding grow exponentially, while commuter railroads must compete with all other surface modes for discretionary funding.

There is no specific program in existence at USDOT, either within the Federal Railroad Administration or the Federal Transit Administration, that is focused on commuter rail projects.

Commuter rail agencies must compete for funding in large discretionary programs at the USDOT that attract competition from all other surface modes and a wide array of projects. This includes, for example, pedestrian walkways and bicycle paths, and thus commuter railroads are at a disadvantage from a significant amount of competition.

RTD's commuter rail service is relatively new, and the agency does not currently face the pressure of trying to absorb significant "lumpy" investments in the manner that similarly situated agencies do. However, it will not be very long before RTD, too, must endeavor to make infrastructure improvements and replacements as well as to begin rebuilding and replacing rolling stock. These investments often come along every 10 to 20 years; venturing to find ways for commuter rail agencies to absorb costs within the confines of the formula funds transit agencies receive is extremely challenging. What often happens is that agencies make investments to forestall major makeovers with the hope that resources will become available at a later date; they may have no viable options absent other sources of available funding.

Commuter rail agencies could plan much more effectively and would likely be able to make better economic decisions if they were able to tap into CRISI funds or a similar capital investment funding source. Program managers at the USDOT, the Federal Railroad Administration, and Federal Transit Administration would be able to look at the commuter rail industry as a whole and better plan for each agency's upcoming vital capital replacement needs.

There may be disagreement from some, including short-line railroads, that commuter rail projects should gain eligibility under the CRISI program; these entities have expressed trepidation regarding potential competition from commuter rail for funds they would otherwise benefit from. It must be stated, however, that commuter rail agencies are publicly funded organizations that rely heavily on state and local funding for capital needs in order to provide a public benefit, with no federal program dedicated for offsetting infrastructure and rolling stock costs. Whether these needs compete with or supersede those of privately-owned entities who also struggle with capital replacement demands, it is, of course, Congress' prerogative to decide that question. The fact remains that commuter rail operators' needs are great, and allowing them to go unaddressed, while at the same time funding in large amounts those of private entities, will mean that commuter rail assets will be allowed to degrade. Agencies and their customers seeking safe, efficient, reliable transportation solutions have been short-changed with respect to access to federal funding.

Rail Safety

Most commuter rail capital needs are related to safety investments, which ensure that commuter rail remains one of the safest transportation modes available. When agencies invested over $4 billion to deploy Positive Train Control (PTC) systems nationwide, it came at the expense of locally prioritized improvements and upgrades. Capital reinvestment projects were pushed back or delayed indefinitely, while operational safety was maintained at a significant, but necessary, cost. Moving forward, as the subcommittee considers future rail safety legislation, the commuter rail industry stands ready to embrace the policies and practices that may emerge in that legislation. That said, reliable federal funding for continued commuter rail safety investments is needed to ensure long-term sustainability nationwide.

The Commuter Rail Coalition supports the *concepts* advanced in the Senate's proposed Railway Safety Act legislation introduced by Senators Brown and Vance last year. Because some commuter rail agencies host freight operations carrying hazardous material, the Coalition also recognizes the important role it must play in the eventual solution. Commuter rail's safety record speaks for itself, and the industry stands ready to work with Congress to identify solutions that ensure the safety of commercial freight movements over shared tracks, while not placing the safety burden—or risk—on the taxpayer or public agencies. Safety is of utmost importance to every commuter rail provider.

The Coalition's primary concern is related to costs. In this case—as the Senate language is currently drafted—commuter rail agencies are concerned with being asked to absorb significant costs for the benefit of private entities only. This is, of course, in reference to mandates requiring wayside technology, such as hotboxes, and the resulting responsibility for the high cost for installing and maintaining these devices. It cannot be overstated that such requirements are for the freight railroads' sole benefit. Considering that commuter railroads operate under a much stricter safety regime than freight railroads, commuter rail operators foresee little if any benefit from the introduction of hotbox detectors on our right-of-way.

To reiterate, commuter rail operators are held to, and operate at, a much higher standard in the interest of customer safety. Passenger railroads are required to inspect rail vehicles at least daily, under FRA's Part 238 requirements; given the nature of commuter rail operations, on-board personnel have eyes on equipment each time they step off the train at station stops.

In contrast, freight railroads do not operate in the same manner, and are not held to the same inspection standards. For this reason, freight railroads have in some locations relied on wayside detectors to be alerted to degraded equipment. Class 1 rail consists can move 1,500 miles or more between visual equipment inspections, whereas commuter rail operators have much shorter intervals between examination by maintenance personnel—in most cases fewer than 100 miles.

Hazardous materials are frequently moved by freight railroads across commuter rail properties. The risks and the cost of keeping surrounding communities safe must be borne by the freight railroads as their cost of doing business. And they must be held to account for their safety practices.

While the Senate bill proposes the costs to commuter railroads of installing new required technology be partially offset by a new reimbursable federal funding program, the members of the Coalition take issue with this requirement on several points. First, taxpayers should not shoulder the cost of private entities safely moving freight. The associated cost could be absorbed by freight railroads, who can easily pass the costs onto their customers. Second, the reimbursement program envisioned in the Senate bill would neither fully cover the cost of installation of the required hotbox detectors nor the required ongoing maintenance. Third, many commuter railroads currently have a myriad unfunded capital projects that are a matter of public necessity; diverting public funds for a private sector purpose is anathema to serving the public good.

Congress has an opportunity to address these concerns and a number of others in any final legislation.

Excess Liability Coverage

Federal statute directs the Secretary of Transportation to adjust the cap for excess liability coverage of commuter railroads every five years by applying the consumer price index.

Commuter railroads have existing liability limits under the law in each state in which they operate. Rather than being required by federal law to carry excess liability coverage, however, it is commuter railroads' contractual obligations to host railroads, PTC system contractors and suppliers, and other similar entities that require indemnification and coverage up to the federal limit.

In RTD's case, due to incremental increases in the federal liability limit, which currently sits at $323 million, the cost of excess liability coverage has grown tremendously over time and currently exceeds $1 million annually. Once notice of the increased limit is publicly posted by USDOT, railroads currently have no more than 30 days to acquire the necessary additional coverage. Compounding this challenge is the fact that ever fewer insurers, whether domestic or international, are willing to take on this level of insurance risk. This means that, following posting of each new liability cap, commuter railroad representatives must quickly travel overseas to seek coverage from the dwindling handful of insurers globally, primarily in markets in London and Bermuda, that are willing to extend coverage to meet the federal cap.

If the federal liability limit were to be raised to the level beyond which these few insurers are willing to offer coverage, commuter railroads would simply not be able to obtain insurance and would therefore be forced to suspend operations.

To address this possible market failure, Congress must extend the window, from the posting date to the effective date of any new federal liability limit, to a full 365 days. Doing so would allow railroads sufficient time to seek excess liability coverage and, barring availability of this coverage in the insurance market, would allow Congress time to act to intervene while commuter railroads continue to operate.

Notification to Commuter Rail Agencies for Trains Carrying Hazardous Materials

Should the House consider a similar hazardous materials notification requirement such as that contemplated in the Senate Railway Safety Act, the Commuter Rail Coalition encourages the inclusion of commuter rail agencies on the list of entities receiving advance notification of the movement of such materials across their property. Currently, commuter rail agencies receive no notification of hazardous materials being transported on their property or their service territory. Having advance notification would allow commuter rail agencies to prepare appropriate responses to any occurrence that may impact customers or employees.

Requirements for Equipment Intended to Prevent Wheel Bearing Failures

The Senate bill as currently structured would require trains carrying hazardous materials to be scanned by hotbox detectors at a minimum of every 10 miles to prevent wheel bearing failures and possible derailments. The Commuter Rail Coalition questions the value of the outdated technology of wayside detectors, and, if such mandates are required on property owned by commuter rail agencies, the cost of installation and ongoing maintenance for any such wayside monitoring devices should be borne by freight carriers as a cost of their business, not by the public in the interest of their own safety.

Research through Centers of Excellence for Freight and Passenger Services

The Commuter Rail Coalition sincerely applauds congressional efforts to conduct critical research by creating Centers of Excellence to study not only improvements in operating practices, but also new emerging technologies that could help address the challenge of trying to ensure against disasters such as that which took place in Ohio. The Coalition strongly supports all research efforts that can help improve vehicle safety, to also include passenger rail vehicles. And while the legislation will undoubtedly be focused mainly on the transport of goods, especially hazardous materials, a similar focus should be applied to research for on-board sensors that alert train crews to developing mechanical failures; such advancements will benefit both freight and passenger railroads.

The Commuter Rail Coalition further applauds any additional research on passenger car designs that can help achieve lighter weight vehicles with improved safety. Current passenger rail car design standards are outdated and need to be reviewed and updated, particularly in light of the positive train control technology required to be in place across all commuter railroads.

Mr. NEHLS. Thank you, Ms. Johnson.

Mr. Dech, you are now recognized for 5 minutes.

Turn on your little button.

Well, pull the mic closer. It should turn on red. Do you see a little red?

Maintenance, maintenance. Get on it.

[Laughter.]

[Pause.]

Mr. DECH. Let me try this again. OK, thank you very much.

Mr. NEHLS. My apologies.

Mr. DECH. No, no.

Mr. NEHLS. All right.

Mr. DECH. I am sure it was my fault.

TESTIMONY OF DAVID W. DECH, EXECUTIVE DIRECTOR, SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY (TRI-RAIL)

Mr. DECH. Thank you, Chairman Nehls and Congresswoman Foushee, for the opportunity to testify today before this subcommittee. My name is David Dech, and I am the executive director of the South Florida Regional Transportation Authority, and we provide commuter rail service on behalf of the Florida Department of Transportation, known as Tri-Rail.

I am here today to talk about two main topics: the benefits that the commuter rail industry has derived from utilizing outside private contracted services, and some additional views on overall rail safety.

But first I would like to add that the additional funding that we have received through the Federal formula funds and the new railcar replacement program, both a result of the Bipartisan Infrastructure Law, have provided critical assistance that will allow us to address important capital replacement needs.

Also, we all recognize that COVID–19 has fundamentally changed the way we live and work, including altering commuting patterns. I am very pleased to report that Tri-Rail ridership has steadily grown over the last few years, and as of the last couple of weeks, we are exceeding prepandemic ridership numbers.

Regarding contracted services, the South Florida Transportation Authority, as well as my previous employer, Capital Metro in Austin, Texas, rely heavily on private outside contractors to provide our services. I have worked with both bundled and unbundled or bifurcated contracts, wherein you contract with either a single contractor for all of your needs, or you split those contracts up among different companies. Either of these strategies can be beneficial, depending on the needs of the commuter rail agency.

SFRTA has relied on outside contracting since its inception in 1989. These contracts are competitively procured. Outside contracting is particularly advantageous when standing up a relatively new railroad, allowing the agency to leverage the expertise of the private sector to roll out the service and maintain it while it matures. While most of the focus is on large operating and maintenance contracts, there are other opportunities for specialized competition, as well. Examples would be PTC maintenance, security fare collection, all the way to leasing of rolling stock.

We believe that we benefit from competition. There are seven private contractors who offer a full range of services: Herzog Transit Services, Keolis, Alternate Concepts Incorporated, Amtrak, Bombardier/Alstom, RATPDev, and Transdev.

This subcommittee in the near future may consider legislation to further improve rail safety. As a railroad operations executive who has served in both the freight and passenger worlds, I would like to offer a few observations.

But first let me emphasize that the Commuter Rail Coalition supports the concepts advanced in the Senate's proposed Railway Safety Act legislation. Where we differ is who should bear the costs, and whether there are other technologies that may be useful. Commuter railroads are taxpayer and farebox funded, and we believe that the installation and operating expenses for wayside defect detectors or other equivalent technologies should be borne by the entities benefiting from such technology, and in this case, that would be the freight carriers.

Mr. Chairman, please allow me to be clear on this point. The commuter rail industry fully supports the introduction of any technology or change in practice that will lead to improved rail safety. We need to ensure that these changes do not degrade the quality of our service, and we do have concerns of the potential impact of an increased number of hot box detectors on our service levels.

We also fully embrace the funding of the research and development of new technologies that may meet or exceed the abilities of existing wayside defect detectors.

Chairman Nehls and Congresswoman Foushee, I again want to express my thanks for the honor and the opportunity to be part of this process and share my experience with contract services and the commuter rail safety act, and I will be here to answer any questions that you may have. Thank you.

[Mr. Dech's prepared statement follows:]

Prepared Statement of David W. Dech, Executive Director, South Florida Regional Transportation Authority (Tri-Rail)

INTRODUCTION

Thank you Chairman Nehls and Ranking Member Payne for the opportunity to testify today before the subcommittee. My name is Dave Dech and I am the Executive Director for the South Florida Regional Transportation Authority—the provider of commuter rail services known as "Tri-Rail" in South Florida, serving three counties—West Palm Beach, Broward and Miami-Dade. You have heard from my esteemed colleagues today on the very unique issues and challenges facing the commuter rail agencies across the nation. Today I wish to focus my remarks on two important issues: first, the benefits the commuter rail industry has derived from its extensive use of contracted services with private contract service providers, and; two, some additional views as an industry on strategies to improve overall rail safety, especially in the aftermath of the tragic derailment and fires that occurred in East Palestine, Ohio earlier last year.

In addition, let me also add that the federal funding we have received from increased formula funds and the new rail car replacement program that were both the result of the Bipartisan Infrastructure Law, have provided critical assistance that has allowed us to address capital replacement challenges that have been a difficult problem for several years. We look forward to working with the committee to address a more predictable and reliable funding sources for capital replacement needs that the commuter rail industry desperately needs.

During my career leading two commuter rail agencies that utilize private contract operators, I have gained a unique perspective on the benefits of contracted services. My current system, Tri-Rail, has contracted for all services—Train Operations, Maintenance of Infrastructure and Maintenance of Equipment since its inception in 1989. My prior employer, the Capital Metropolitan Transportation Authority in Austin, Texas ("Capital Metro") operates a commuter rail system throughout the Austin urbanized area also utilizing contracted services for all functions.

At Tri-Rail, all our services have been competitively procured and we have contracted with several different contractors over the life of the agency. We have used what is commonly referred to as "bundled" and "unbundled" contracts, which is a format whereby agencies decide if they wish to have one contractor handling all aspects of service—train operations, maintenance of rolling stock and maintenance of the right-of-way and facilities and other infrastructure—such as stations. And while most attention is focused on these larger contracts, we also contract for many other critical services, such as: train dispatching services, signals and communication, positive train control maintenance, station operations and maintenance, security services, to name a few.

When you look across the entire commuter rail industry, you will find many agencies contract for direct provision of train services much in the way Tri-Rail does, as well as many other services. And in some cases, commuter rail agencies provide a mix of contracted train operations and maintenance as well as services that are provided directly by agency employees. An example of this approach is seen in the commuter system in Chicago, where Metra, since a 1983 reorganization, has continued to utilize purchase-of-service agreements with freight rail companies—the Union Pacific and the BNSF railroad—to provide service on three lines; the remainder of their service on six other lines is provided directly by Metra employees. Metra owns all the rolling stock and is responsible for all stations along with the respective municipalities.

Why Contracted Services

The commuter rail industry has a unique history that has offered ample opportunity to use contracted services wherever possible. When Tri-Rail commenced service in 1989, thus becoming one of the first new start commuter rail services in the US in many years, the federal government strongly encouraged consideration of competitive contracting wherever possible in the provision of public transportation services. Tri-Rail saw that by contracting with a service provider, they could stand up a commuter rail operation in a short period of time by bringing in the expertise that a contractor could offer. Hiring and training railroad employees is a skill and process that requires unique expertise and acquiring that expertise through contracted services makes economic sense in many cases.

And 35 years later Tri-Rail has found that through this relationship they can save money and benefit from the innovative approaches offered by a contract operator. This has allowed Tri-Rail to be responsive to changing demographics and ridership patterns in South Florida and I would say has had a hand in allowing us to continue to respond to growing demand in ridership, even beyond pre-pandemic levels.

An examination of the commuter rail industry shows contracted services in more than 14 of the 32 commuter rail operations nationwide, including: Los Angeles (MetroLink); Virginia Railway Express; MARC; and many others that utilize various forms of contracted services.

There are approximately seven private contractors offering a full range of contracted services, including: Herzog Transit Services, Keolis, Alternate Concepts, Inc., Amtrak, Bombardier/Alstom, RATPDev and Transdev. There have been other players offering contracted services to commuter rail agencies in the recent past and vehicle manufacturers such as Bombardier/Alstom who also offer maintenance of equipment services.

The question of whether to bundle or unbundle services is one that each agency makes individually. Some agencies may have the in-house ability to perform certain functions, such as facility maintenance, which may provide a more economic solution than contracted services. Also, agencies have found that it may be of benefit to contract with individual contractors who offer a certain level of expertise and qualification in particular areas. As with all things, this unbundling of contracted services can require additional resources for oversight and coordination. Again, these are the conditions that each agency weighs in making this decision.

I can say that during my experience at Tri-Rail and before in Austin, I have found that contracted services have provided a level of transparency and accountability that is key to smooth operations and cost controls. At Tri-Rail we believe that contracted services provide a level of expertise and stability with economic value that we would have difficulty maintaining if we provided the service directly with our own employees. This of course is not to say that directly-operated services do not have an important place in the commuter rail industry.

Directly operated service provides direct accountability and greater cost transparency. Plus, there is no profit factored into the cost of operations and maintenance. Additionally, because contracts are competitively procured, there can be challenges when a new contract operator assumes control under a new agreement. Tri-Rail has had experience in the past with transitions from one contractor to another, and while I was not in my current position when those transitions occurred, what I understand is that the transitions were managed very effectively, mainly because Tri-Rail employees committed the required time and effort to assure a smooth transition.

The bottom line is that the commuter rail industry has made extensive use of contracted services and has found great value in the expertise of contractors. We continue to explore various options and experiment with differing arrangements and fortunately there has been strong interest from long time contractors such as Herzog and Transdev, as well as growing interest from newer players in the market. Our challenge from an industry standpoint is to work with our federal, state and local partners to ensure that our contracting process is streamlined, concise and not exclusionary or overly complex so as to make potential contractors question the level of effort required to respond to our solicitations. Most contractors will tell you they often invest in excess of $100,000 to research, prepare and submit a proposal for contracted services.

Mr. Chairman, we in the commuter rail industry believe that the federal government should continue to embrace contracted services wherever grantees believe it makes sense. Going forward we see new emerging opportunities to contract with entities who provide rolling stock and locomotives under lease arrangements and the use of federal grant monies for this purpose should continue to be allowed and encouraged. One of the greatest challenges we face is transitioning to cleaner and more robust equipment and in today's world where procuring new equipment requires long lead times, leasing with options for maintenance through a private contractor often makes strong economic sense.

Rail Safety

This subcommittee in the near term may consider legislation to improve rail safety. As my colleague Debra Johnson outlined, the Commuter Rail Coalition supports the concepts advanced in the proposed Senate's Railway Safety Act legislation introduced by Senators Brown and Vance, and believes changes to the freight railroad's inspection practices are necessary to ensure the safety of the communities through which they travel.

Commuter Railroads, as public entities funded by public tax dollars, are concerned that the costs associated with any new requirements for the movement of private commerce on privately-owned railroads should be borne by those private entities. I am of course addressing the mandate requiring new infrastructure or wayside technology, such as hotboxes and where the responsibility for the high cost for installing and maintaining these devices will fall. It cannot be overlooked that such requirements are for the freight railroads' sole benefit and while they often transport hazardous materials over trackage owned by commuter rail agencies, unfortunately commuter rail agencies do not derive similar benefits from these wayside detectors.

Mr. Chairman, let me be very clear on this point. The Commuter Rail industry fully supports the introduction of any technology or changes in practices that will in any way help to improve rail safety—even in areas of freight movement where we have no direct input. We just want to assure that any solutions proposed do not in any way degrade our quality of service, and we do have significant concerns about the operating implications for the use of hot box detectors on our rail territory.

As a current CEO having overseen operations at two commuter rail agencies and previously as an operating executive for a Class I railroad, I can tell you that the use of wayside detectors where there is passenger operations can be quite disruptive due to false positive readings. I have witnessed numerous occasions where a detector notifies a train crew of an elevated temperature reading for a particular journal bearing, only for it to turn out to be an inaccurate reading. The result is a stopped train on the right-of-way with resulting delays for all other trains behind it, in particular passenger trains on a timetable.

The standard operating practice for all railroads that receive an elevated temperature reading from a wayside detector is to stop the train and have the on-board crew conduct a visual inspection. And if the specified area of the reading does not yield the discovery of a problem, crews are instructed to inspect the 4–5 cars before and after the identified car. This is a time-consuming process that can cause a lot of disruption for commuter operations as well as other freight and intercity movements.

This is the reason for our concern over investing in a technology that may not have the same reliability as other new emerging sensor technologies. In comparison to the mandate to adopt PTC, the industry had many years of research completed and while the technology was being finalized, its performance and reliability proved to be quite strong. In the case of wayside detectors, the technology is known to be very limited, less reliable and quite expensive to install and maintain, especially in northern climates. Pushing forward to bring new sensor technologies to the market seems to be an approach that will yield better results from a safety standpoint, as well as less disruptive to operations on the corridor.

In addition to concerns about the performance of hotbox detectors, we are also very concerned that if mandated in any subsequent legislation, the cost for acquisition will rise exponentially. Supply capacity for the devices is already limited due to minimal historical demand. The combination of significant new demand and limited supply will surely result in cost increases of a large magnitude. And of course, we are also concerned about the resulting need for additional maintenance and testing required by commuter agency personnel to assure these detectors are working properly.

We have raised these concerns during consideration of the Senate bill and we are very appreciative of inclusion in their bill of a provision to allay some of the costs for installation. We hope to be able to continue the discussion as legislation moves forward that will yield the best results at an affordable cost.

Conclusion

Chairman Nehls and Ranking Member Payne, I want to thank you again for the opportunity to discuss the experience with contracted services in the commuter rail industry. I also appreciate the opportunity to add a bit more detail to earlier testimony on rail safety.

As my colleagues have pointed out in their testimony, commuter railroads face a changing landscape as our customers modify their travel patterns. The commuter rail industry believes contracted services allow us to better respond to these changing dynamics while controlling costs. And Congress should emphasize the importance of allowing commuter rail agencies to use all forms of federal assistance for contracted services and leasing of rolling stock.

We really look forward to working cooperatively with you and the Congress to find permanent solutions to the issues discussed here today.

Mr. NEHLS. Thank you. I want to get it right. It's Dech, correct?

Mr. DECH. I have been called much worse. Yes, Dech is correct.

Mr. NEHLS. All right. Thank you, Mr. Dech. I now recognize Mr. Corbett for 5 minutes, sir.

TESTIMONY OF KEVIN S. CORBETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NEW JERSEY TRANSIT, ON BEHALF OF THE NORTHEAST CORRIDOR COMMISSION

Mr. CORBETT. Yes. Good morning, Chair Nehls, Ranking Member Larsen, and Congresswoman Foushee. Thank you for inviting me here to discuss the BIL and its impact not only on the Northeast Corridor, which serves up to 800,000 rail passengers every day, but on commuter railroads across the Nation.

I'm speaking today both as cochair of the Northeast Corridor Commission, which I serve alongside my fellow cochair, FRA Administrator Amit Bose, in addition to my role as president and CEO of NJ Transit, the largest statewide transit system in the country and the third largest overall. I am also cofounder of the Commuter Rail Coalition, an association of 25 commuter rail agencies acting together to engage and educate stakeholders on the value commuter railroads bring to the communities they serve.

As some of you may remember, I testified before this committee in both 2021 and 2020, where I largely covered NJ Transit's experience implementing Positive Train Control. We at NJ Transit remain extremely proud of the herculean effort to successfully achieve PTC certification by the December 2020 deadline, although, to be clear, significant challenges with PTC still persist.

For example, there are currently more than five variations of PTC systems nationwide, which can create significant interoperability challenges. And of course, there are significant and ongoing costs associated with upgrades and maintenance of PTC going forward. NJ Transit alone has spent more than half a billion dollars on this unfunded mandate, and this figure will only continue to grow. We continue to advocate for creation of a more cost-effective, unified, standardized national system across railroads throughout the country: Call it PTC 2.0.

While the implementation of PTC represents a significant step forward in our commitment to safety and operational efficiency, it also highlights the broader context of the challenges we face in rail transportation, stemming from historical underinvestment and the inherent complexities of balancing the needs of commuter and intercity rail service.

For decades prior to the public takeover of rail transit, our country disinvested in railroad infrastructure, which left Amtrak and the commuter railroads with a huge hill to climb, a burden we still carry on today.

Further exacerbating capital funding challenges, many agencies continue to face operating budget challenges, as well. When there is a hole in the operating budget, many transit agencies are forced to use capital budget dollars to fill the gap, an insidious practice that ultimately undermines long-term infrastructure resilience and growth.

Whether our railroad network is in the hands of private- or public-sector operators, there is no magic wand. We cannot improve efficiency, reliability, and safety for our customers without adequate funding for both operating and capital. As such, I am a strong advocate for commuter rail systems to have access to the Consolidated Rail Infrastructure and Safety Improvements, CRISI, program, just as intercity rail does now, or a similar source of such funding.

While the markets we serve may be different, both intercity and commuter rail systems have significant operating and capital needs. To be certain, NJ Transit supports Amtrak, and we have a good working relationship with them, although there is always a natural conflict, a tension that exists between intercity and commuter rail, which should not be an insurmountable barrier, but rather a challenge to be managed with strategic collaboration and open dialogue.

Speaking more broadly about funding, BIL has been transformational for both commuters and intercity rail. Thanks to the work of Congress and the Biden administration on the BIL, the NEC has its first-ever source of dedicated, multiyear funding, providing predictability needed to more efficiently deliver a major capital program. This historic investment weans us off what I call the "Transit Hunger Games," where agencies routinely compete against each other for constrained funding that is never enough to maintain even a state-of-good-repair, much less the ability to modernize or expand.

In addition to the increase in formula funding for commuter railroads through the BIL, the FRA and FTA are awarding billions of additional dollars through various discretionary competitive grants.

These grants are vitally important as we and other transit agencies pursue sweeping projects that are beyond the scope of our traditional capital budgets.

Projects such as AI-powered safety systems with light rail vehicles that are currently being funded by the FTA, for example, where we are being able to invest in safe modernization and state-of-good-repair to ensure that our constituents get safety and service improves out of every dollar that we spend.

A perfect example of what transit agencies can do when given necessary Federal resources is New Jersey Transit's $2 billion Portal Bridge replacement project, which is on time, on budget, and 50 percent complete in just 2 years, with the first track scheduled to open in 2026. Portal North Bridge, as many of you know, is a critical single point of failure on the Northeast Corridor between New Jersey and New York, which is also a critical link between DC and Boston.

Switching hats for a moment to my role as cochair of the NECC, it is important to note that the BIL provides a significant downpayment on Connect NEC 2037, or C37, a 15-year plan covering 300 projects, along with a comprehensive renewal program for state-of-good-repair work, including track, signal, and power systems. With the substantial funding from BIL, we now have an opportunity to utilize the FRA's Northeast Corridor Project Inventory effectively. This inventory is crucial, as it allows us to strategically prioritize projects along the NEC, ensuring that the investments are made where they are needed most to enhance safety, efficiency, and reliability along the whole corridor.

As we approach reauthorization, it is vital to recognize that NJ Transit, like commuter rail agencies nationwide, continues to operate with substantial unfunded capital needs. For example, while we are incredibly grateful for the passage of BIL, this funding will not be sufficient to bridge the nearly $5 billion gap between funded and unfunded projects in our unconstrained $17 billion capital plan.

Reauthorization presents a critical opportunity to secure the necessary funding to bridge this gap. For this funding to be effective, it must be guaranteed like the funding provided in BIL. The guaranteed advance appropriation that BIL provided was a game-changer for the Northeast Corridor and allowed agencies to more effectively plan their hiring, purchase equipment, and sign contracts.

It is also essential to streamline funding mechanisms to reduce the complexity and increase the efficiency of how Federal funds are allocated. This also boosts confidence among manufacturers and contractors and other stakeholders crucial to our projects.

Infrastructure has historically been a bipartisan issue in this country, and I am hopeful that this spirit of cooperation will continue through the reauthorization process, enabling us to tackle our significant capital needs head-on.

[Mr. Corbett's prepared statement follows:]

Prepared Statement of Kevin S. Corbett, President and Chief Executive Officer, New Jersey Transit, on behalf of the Northeast Corridor Commission

Good morning, Chair Nehls, Ranking Member Payne, Vice Ranking Member Foushee, and members of the Committee.

Thank you for inviting me to discuss the Infrastructure Investment and Jobs Act, or IIJA, and its impact not only on the Northeast Corridor—which serves more than 800,000 rail passengers every day—but on commuter railroads across the nation.

I'll be speaking today both as co-chair of the Northeast Corridor Commission, where I serve alongside my fellow co-chair, FRA Administrator Amit Bose, in addition to my role as President & CEO of NJ TRANSIT—the largest statewide transit system in the country, and the third largest overall.

I am also a co-founder of the Commuter Rail Coalition—an association of 25 commuter rail agencies acting together to engage and educate stakeholders on the value commuter railroads bring to the communities they serve.

PTC

As some of you may remember, I testified before this Committee in both 2021 and 2020, where I largely covered NJ TRANSIT's experience implementing Positive Train Control.

We at NJ TRANSIT remain extremely proud of our herculean effort to successfully achieve PTC certification before the December 2020 deadline, although to be clear, significant challenges with PTC still persist.

For example, there are currently more than five variations of PTC systems nationwide, which can create significant interoperability challenges.

And, of course, there are significant and ongoing costs for the continuing maintenance and upgrades associated with PTC—NJ TRANSIT *alone* has spent more than half a billion dollars on this unfunded mandate, and this figure continues to grow.

We continue to advocate for the creation of a more cost-effective, unified, standardized national system across railroads throughout the country—call it PTC 2.0.

History/"Natural Conflict"

While the implementation of PTC represents a significant step forward in our commitment to safety and operational efficiency, it also highlights the broader context of the challenges we face in rail transportation, stemming from historical underinvestment and the inherent complexities of balancing the needs of commuter and inter-city rail services.

For decades prior to the public takeover of rail transit, our country disinvested in railroad infrastructure, which left Amtrak and commuter railroads with a huge hill to climb—a burden we still bear today.

Further exacerbating capital funding challenges, many agencies continue to face operating budget challenges, as well.

When there's a hole in the operating budget, many transit agencies are forced to use capital budget dollars to fill the gap—a practice that ultimately undermines long-term infrastructure resilience and growth.

Whether our railroad network is in the hands of the private or public sector, there is no magic wand—we cannot improve efficiency, reliability, and safety for our customers without adequate funding for both operating and capital.

As such, I am a strong advocate for commuter rail systems to have access to the Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program, just as inter-city rail does now—or a similar source of funding.

While the markets we serve may be different, both inter-city and commuter rail systems have significant operating and capital needs.

To be certain, NJ TRANSIT supports Amtrak, and we have a good working relationship with them—although there is always a natural conflict that exists, which should not be seen as an insurmountable barrier, but rather a challenge to be managed with strategic collaboration and open dialogue.

IIJA

Speaking more broadly about funding, the IIJA has been transformational for both commuter and inter-city rail.

Thanks to the work of Congress and the Biden Administration on the IIJA, the NEC has its first-ever source of dedicated, multi-year funding, providing the predictability needed to efficiently deliver a major capital program.

This historic investment weans us off what I call the "Transit Hunger Games"—where agencies routinely compete against each other for constrained funding that's never enough to maintain even a state-of-good-repair—much less the ability for modernization or expansion.

In addition to an increase in formula funding for commuter railroads through the IIJA, the FRA and FTA are awarding billions of additional dollars through various discretionary competitive grants.

These grants are vitally important as we, and other transit agencies, pursue sweeping projects that are beyond the scope of traditional capital budgets.

Projects such as AI-powered safety systems on light rail vehicles at grade crossings to significantly enhance safety, while reducing accidents at light rail grade crossings and on rights-of-way and other new investments in safety, modernization, and state-of-good-repair—to ensure your constituents get safety and service improvements out of every dollar they spend.

A perfect example of what transit agencies can do when given the necessary federal resources is NJ TRANSIT's $2 billion-dollar Portal Bridge Replacement Project, which is on time, on budget, and 50%complete, with the first track scheduled to open in 2026.

Portal North Bridge, as many of you know, is a critical single point of failure on the Northeast Corridor between New Jersey and New York, which is also a critical link between D.C. and Boston.

AMTRAK'S IMPACT/C37

Switching hats for a moment to my role as co-chair of the NECC, it's important to note that the IIJA provides a significant down payment on Connect NEC 2037, or C37—a 15-year plan covering 300 projects, along with a comprehensive renewal program for state of good repair work, including track, signal, and power systems.

With the substantial funding from the IIJA, we now have the opportunity to utilize the FRA's Northeast Corridor Project Inventory effectively.

This inventory is crucial as it allows us to strategically prioritize projects across the NEC, ensuring that investments are made where they are most needed to enhance safety, efficiency, and reliability along the corridor.

REAUTHORIZATION

As we approach reauthorization, it's vital to recognize that NJ TRANSIT—like commuter rail agencies nationwide—continues to operate with substantial unfunded capital needs.

For example, while we are incredibly grateful for the passage of the IIJA, this funding will not be sufficient to bridge the nearly $5 billion dollar gap between funded and unfunded projects in our unconstrained $17 billion dollar capital plan.

Reauthorization presents a critical opportunity to secure the necessary funding to bridge this gap.

For this funding to be effective, it must be guaranteed like the funding provided in IIJA.

The guaranteed advance appropriations that IIJA provided was a game-changer for the Northeast Corridor and allowed agencies to more effectively plan their hiring, purchase equipment, and sign contracts.

It's also essential to streamline funding mechanisms to reduce the complexity and increase the efficiency of how federal funds are allocated.

This would boost confidence among manufacturers and other stakeholders crucial to our projects.

Infrastructure has historically been a bipartisan issue in this country, and I am hopeful that this spirit of cooperation will continue through the reauthorization process, enabling us to tackle our significant capital needs head-on.

CONCLUSION

In the interests of time, I'll close with this: Multi-year, predictable funding beyond FY26 is essential to address not just the Northeast Corridor's state-of-good repair and improvement needs, but the needs of commuter railroads across the nation—this includes significant investments in fleet vehicles as well as facilities and infrastructure.

Let me once again thank you, Chair Nehls, Ranking Member Payne, Vice Ranking Member Foushee, and all the committee members for giving me the opportunity to testify before you today.

I invite members of the committee to visit New Jersey to see firsthand federal dollars at work on our Portal North Bridge project.

Now, I'd be happy to answer any questions you may have.

Mr. NEHLS. Thank you. Thank you, Mr. Corbett.

Mr. CORBETT. In the interest of time, I will close.

Mr. NEHLS. Thank you, you were great, and we will have time to ask questions, but thank you so very much for your attention.

I would like to briefly recognize Mrs. Napolitano, who will introduce our final witness, Mr. Kettle.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. I am proud to welcome Mr. Darren Kettle, CEO of Metrolink, to our committee.

Good to see you again, sir.

Metrolink is a major transportation provider for the residents and businesses in my district throughout southern California.

He was appointed in 2021 as Metrolink's CEO. He has more than 30 years of experience in effective transportation leadership in southern California, having worked for three of the five Metrolink member agencies, including my neighboring San Bernardino County Transportation Authority, Riverside County Transportation Commission, and most recently, he was executive director of the Ventura County Transportation Commission. He has overseen implementation of Positive Train Control and gone beyond to ensure safety in the next generation of locomotives.

Mr. Kettle, thank you for being here, and thank you to all the witnesses for attending, and we look very much forward to your testimonies.

Thank you, Mr. Chair.

Mr. NEHLS. Mr. Kettle, you are now recognized for 5 minutes.

TESTIMONY OF DARREN M. KETTLE, CHIEF EXECUTIVE OFFICER, SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (METROLINK)

Mr. KETTLE. Good morning, Mr. Chair. Thank you for having me here.

Good morning, Ranking Member Foushee. Again, my name is Darren Kettle. I am the chief executive officer of Metrolink, southern California's six-county commuter rail system.

As was mentioned during my introduction, I was previously in Ventura County. I still live in Ventura County, 60 miles from where my office is in downtown Los Angeles. I am not only the CEO of Metrolink, I am also a customer of Metrolink. I regularly take the train.

Metrolink was formed three decades ago by southern California's transportation agencies, and operates on a dedicated right-of-way, as well as with active freight lines. Today, Metrolink has about 20,000 weekday boardings on 142 daily trains, operating on a network of 545 route-miles.

Before the COVID–19 pandemic, three-quarters of our riders held monthly passes. With today's remote and hybrid work schedules, commuters ride less frequently, and so, commuter railroads must change our business model to attract new riders. Two Metrolink initiatives have proven quite successful in boosting ridership.

The first initiative involved increasing off-peak, evening, and weekend service frequencies. We call it Metrolink Reimagined. It has been introduced on one of our lines that serves Los Angeles County from Los Angeles to the Antelope Valley, or the high desert of Los Angeles County.

The second initiative offers free fares to every student in southern California with a .edu web address. College students and high school students are able to take our trains for free. Now, nothing is free. It is State grant-funded, so, we are able to take care of our program and keep our farebox.

These two initiatives boosted our overall ridership by 27 percent on that one Metrolink line in just 4 months. And due to this success, we are looking forward to implementing this new schedule throughout our system.

Two historic developments hold promise to permanently transform rail passenger service in southern California.

First, the Olympic and Paralympic Games, which will be hosted by Los Angeles in 2028. Expected to attract 3 million spectators, the games are designated as car-free, meaning that parking will not be available at the venues for those sporting events. Southern California's transit system must be prepared for the unprecedented demand, and Metrolink will provide the regional backbone transit service to those games from the five urban counties of southern California.

We have shared with the administration our multiyear funding needs, which include the operational surge in 2028 and rolling stock, maintenance facilities, and rail improvements throughout our system. While the Federal Government provided crucial transportation funding for prior U.S. games, a significant funding need still exists for the L.A. games, and the window of opportunity to complete rail projects and procurements is rapidly closing. We need congressional and administrative support to realize the promise of this transformative moment for public transit in southern California and our Nation.

The second development is high-speed rail between Las Vegas and southern California. The first 200-mile-per-hour train in this country, it is Brightline West. Brightline West is planning a groundbreaking ceremony next week to start construction on that high-speed rail line. Metrolink presently operates a station on the exact same footprint of where the Brightline's last station stop will be in Rancho Cucamonga in San Bernardino County. We have coordinated with Brightline West to ensure that our schedules match up with theirs to ensure a seamless connection for travelers on both systems.

By attracting those currently traveling by air or by highway, high-speed rail can significantly boost passenger rail use throughout southern California. My colleague, Dave Dech of Tri-Rail, addressed the importance of private-sector partners in efficiently delivering commuter rail service. Metrolink also operates on a contracting business model, enabling us to efficiently ramp up our future operations and maintenance temporarily for L.A. 2028 and those Olympic Games, but also the longer term connections for high-speed rail.

Finally, I would also like to echo the testimony of Debra Johnson of the Denver Regional Transportation District, urging that commuter rail be granted full eligibility for the CRISI grant program currently restricted to projects that benefit intercity and freight rail. Distinctions in Federal statute between intercity and commuter rail appear increasingly outmoded, and we join the Commuter Rail Coalition in urging reform to the CRISI program.

Chairman Nehls, Ranking Member Foushee, and subcommittee members, thank you for the opportunity to testify today. I look forward to working with you and your staff in delivering the vision of transforming passenger rail service in southern California. Thank you, Mr. Chair.

[Mr. Kettle's prepared statement follows:]

Prepared Statement of Darren M. Kettle, Chief Executive Officer, Southern California Regional Rail Authority (Metrolink)

Thank you, Chairman Nehls, Ranking Member Payne, and members of the subcommittee, for the invitation to testify today on the many opportunities and challenges facing our nation's commuter railroads. My name is Darren Kettle, Chief Executive Officer of Metrolink in Southern California. I appreciate the opportunity to provide Metrolink's perspective as operator of the third-largest commuter rail system in the country and the largest in California.

Metrolink began service in October 1992 and was established to provide Southern California with safe, efficient, dependable rail transportation service while offering an outstanding customer experience, reducing emissions and fostering economic vitality by connecting jobs and housing in a traditionally car-centric region. Today, Metrolink is constituted as a joint powers authority under California law and governed by an 11-member Board of Directors representing the county transportation agencies in Los Angeles, Orange, Riverside, San Bernardino and Ventura counties. Metrolink's 545 route mile system also extends into the northern portion of San Diego County.

As you know, Southern California is a region with some of the most congested highways in the nation. The population of the six Southern California counties served by Metrolink is now 21.5 million people, more than half of California's total population. For those commuting to work, Metrolink provides the freedom to live in almost any portion of the region with the option to hop on one of our trains to get to work or school and to travel to the region's rich entertainment and cultural destinations. We connect multiple commercial markets, along with urban and rural areas, to major job centers all over Southern California—the largest of which is downtown Los Angeles where most of our lines converge at historic Los Angeles Union Station.

OPPORTUNITIES & CHALLENGES

Transition to Regional Rail

The COVID–19 pandemic fundamentally altered the commute patterns of many of America's workers. While this has impacted all modes of transit across the country, none more so than commuter rail. Before the pandemic, roughly three-fourths of Metrolink's riders held 22-day monthly passes. The size of this market has plummeted significantly. Full-time or hybrid remote workers have forced commuter railroads to evolve to attract new riders.

For the last 30 years, Metrolink has operated service focused on these commuters, offering peak service in the morning to primary job centers such as downtown Los Angeles and Orange County and then returning in the evening, centered around traditional white-collar office schedules. Today, remote work and hybrid work schedules remain common, and the white-collar commuter customer group—Metrolink's historic core market—may never fully ride in the same patterns or frequencies as they did before the pandemic.

In early 2022, Metrolink began to work on the development of a new optimized service plan to increase off-peak service levels and support our transformation from a commuter rail model to a regional rail model. We started on the path of determining how to serve a broader set of markets such as leisure travelers and non-office commuters, while operating more cost-effective service by optimizing crews and equipment and operating more train miles with fewer train sets.

We have had time to observe changed travel patterns and welcome some riders back to our system. While peak commuter period ridership remains below pre-pandemic ridership levels, off-peak ridership has returned more strongly. We see this on our weekend ridership and off-peak trains; there is an unmet demand for midday service and desire for travel across multiple lines. Presently, Metrolink operates a total of 142 trains across all our line segments that are primarily focused on peak periods. The recommended schedule to transform our system to a regional rail model would increase service by 36 trains, with 178 total trains operating in the system, and would spread service across the day and into the evening. The schedule would promote transfer opportunities through "pulse" scheduling across lines, providing a more competitive travel time when compared to driving.

We have started to implement this first phase of systemwide service optimization starting with our Antelope Valley Line, which provides service from northern Los Angeles County, through the San Fernando Valley and downtown Los Angeles. In October 2023, we implemented a 58% increase in revenue train-miles with most of the new service added during non-commuter hours and doubling weekend service. During this time, we also launched a pilot student pass program using funds provided from a State of California grant program that allows all students to ride at no cost.

For the four months following the expansion of service on the Antelope Valley Line, total ridership increased by 27% compared to the same period of the prior year, with students accounting for half of the new ridership. We expect to see further increases long-term, but the short-term results are promising. We believe that a full roll out of optimized service with pulse scheduling and distribution of trains to cover non-peak times will be a successful model and transform the transportation landscape for Southern California.

In addition to the promising ridership returns of this expanded model, we recognize there are two opportunities in the coming years that hold the potential to provide permanent, transformative impacts to passenger rail transportation in Southern California for the 21st century. These are the 2028 Olympic and Paralympic Games, which will be held in multiple venues throughout the Southern California region, and the introduction of high-speed rail passenger service—the nation's first, true high-speed service—connecting Las Vegas to Southern California, also scheduled to commence in 2028. I would like to briefly explain Metrolink's critical role in the success of each.

Olympics

The 2028 Olympic Games are a once in a generation opportunity to welcome the world to the United States to celebrate our shared humanity through sports competition. Los Angeles has hosted two successful Olympic Games in the past, but this will be the first "car-free" Olympics to be held in the United States, where spectators and participants will not be provided parking at sports venues. With an estimated 3 million people from around the country and the world expected to attend and support these Games, the public transit system of the region must be improved and prepared to accommodate that expected demand. Metrolink's service will provide the regional backbone of public transit service, connecting people across five counties to first and last mile connections to reach venues across Southern California.

Building off the foundation of an optimized schedule and in anticipation for hosting the world as part of the Olympics in 2028, Metrolink is also preparing its entire Southern California rail network to operate more frequent service in all directions. This effort to improve service through capital investment is part of a more than $10 billion Metrolink capital improvement initiative called the Southern California Optimized Rail Expansion (SCORE) program. Metrolink has secured more than $2.5 billion in state, local and some federal funds to improve capacity by adding new track sidings, grade crossing improvements, station upgrades, and by revitalizing our fleet. The goal is to improve our railroad system to accommodate two trains per hour in both directions of travel on core lines and one train per hour on all other lines. Such improvements are necessary to accommodate a sizable portion of regional travel during the Games period in 2028 and to provide a legacy for the growth of Southern California passenger rail capacity beyond the Games. Metrolink is on track to complete a first tier of service improvements before the Games but requires additional funding for several key projects to round out the program of investments. Particularly, there is a need to complete the rehabilitation or replacement of the oldest and most polluting models in our 55-locomotive fleet. Funds are needed to replace Tier 2 locomotives with the cleanest burning and more reliable EPA-certified Tier 4 locomotives, which offer significant reductions in smog-producing emissions and diesel particulates, a key public health goal in Southern California which far too often ranks as the most polluted air basin in the nation. We also need federal funds to enhance the capacities of our facilities to maintain those locomotives as well as our coach and cab car fleet. Furthermore, Metrolink seeks to secure agreements with Class I railroads to operate passenger service more frequently during the Games periods and explore ways to leverage that experience to support more long-term growth.

We have identified, and shared with the Biden Administration, Metrolink's specific multi-year funding needs for rolling stock, maintenance and capital projects, and operational surge. These needs include additional leased or rehabbed trainsets consisting of up to 13 locomotives and 78 railcars; expansion of our shop/yard maintenance facilities; relocated station platforms along a key capacity chokepoint located between Los Angeles and Anaheim, and an operational surge supplement to ramp up for the Games. In total these costs are estimated at $651.9 million over three fiscal years leading to the 2028 Games.

In prior U.S. Olympics, including most recently in Atlanta and Salt Lake City, the federal government provided significant transportation infrastructure funding to supplement local investment in providing transportation for the Games. To date, no such investment has been made for the 2028 Games which will be "car-free". The window of opportunity to complete rail infrastructure projects and rolling stock procurements is rapidly closing and attention to the transit needs of the Games is needed from Congress and the Administration. While the Games are hosted by cities worldwide, it is the national government which typically takes the lead in providing robust transportation funding and security coordination for the Olympic Games. It is important that the U.S. government step up to provide this assistance to ensure that America again provides an Olympic Games experience that the rest of the world can aspire to, with legacy benefits to residents and visitors for decades to come.

The benefits of investing in passenger rail are well-documented, saving time and expense and improving safety for travelers, enhancing economic activity while also alleviating the need for investments in highway systems. Investment also reduces greenhouse gas emissions and increases independence from imported fuels. According to the American Public Transportation Association, investment in transit can yield 49,700 jobs per $1 billion invested and offers a 5 to 1 economic return.

Brightline West

The other truly transformational passenger rail transportation opportunity on the near-term horizon in Southern California is high speed rail service between our region and Las Vegas. In December 2023, the U.S. Department of Transportation awarded $3 billion in grant funds to Brightline West to construct a privately owned and operated electrified high-speed passenger railroad between Southern California and Las Vegas. The fully grade-separated line will operate primarily within the right of way along Interstate 15 between Las Vegas and Rancho Cucamonga—where Metrolink currently operates a station. Design coordination at the Rancho Cucamonga Station is ongoing between Brightline West and Metrolink staff and is intended to facilitate passenger transfers between high-speed rail and our commuter railroad for a seamless passenger connection. We have also agreed that the service schedule for Brightline West trains and Metrolink's San Bernardino Line trains will be on an hourly, pulsed schedule, providing a customer-friendly schedule that is intuitive and reliable.

I am pleased to report that our partnership with Brightline West has been outstanding and, going forward, we believe that we will connect our services efficiently with sufficient capacity to provide an attractive, viable alternative to the millions of people who annually travel between Las Vegas and Southern California by car and airplane. The advent of this service holds the promise to truly transform passenger rail in the region.

It also underscores another topic I would like to touch on that my colleague, Dave Dech of Tri-Rail in Florida, addressed in his testimony, and that is our work in partnership with the private sector. Metrolink, like Tri-Rail, operates on a contracting business model where most of the maintenance and operations of the railroad are contracted with private sector partners in the rail industry. We utilize the services of many, if not most, of the same rail industry partners that Dave mentions in his testimony. Metrolink has operated on this model since the beginning, and we have found that it is flexible, efficient, and responsive to the needs of our railroad in a rapidly evolving economy and passenger service market. A contracting model of operations and maintenance will help us ramp up our service temporarily in preparation for the Olympics and permanently with the advent of high-speed rail service. We value our partnership with our private sector partners, whether it is to help operate the railroad or transform connectivity from our region to Las Vegas.

Retirement of Polluting Fleet

As I previously mentioned, Metrolink has made a concerted effort to replace older, more polluting locomotives with the cleanest operating models certified as Tier 4 by the U.S. Environmental Protection Agency. Metrolink's acquisition of 40 Tier 4 locomotives, among the largest fleet of Tier 4s in the nation, allowed Metrolink to decommission all its remaining Tier 0 locomotives in March 2020. This decommissioning was required as a condition of state grant funds provided to purchase the new Tier 4 locomotives. Older locomotives that are replaced are required to have their engines destroyed or rendered unusable to improve regional air quality and reduce localized impacts to communities near maintenance facilities. However, Metrolink's retirement of two locomotives occurred after about 18 years of service, before the end of their useful life expectation of 25 years under Federal Transit Administration regulation. Due to this early retirement, Metrolink has been required to repay to the FTA the remaining federal interest in the equipment, for a total repayment amount of nearly $1.3 million. If the remaining Tier 2 locomotives we are seeking funds to replace are retired, we estimate that Metrolink will be required to repay another $3 million to $3.5 million. This FTA repayment requirement unfairly penalizes agencies like Metrolink seeking to replace polluting locomotives in an air basin as polluted as Southern California's, a laudable public policy goal. We urge Congress to require the repayment be waived when locomotives are retired earlier than allowed by FTA regulation in a federally recognized pollutant non-attainment air basin.

Funding—Full Eligibility for CRISI

Finally, I would like to reiterate and amplify the testimony of Debra Johnson of the Denver Regional Transportation District regarding full eligibility of commuter rail for the Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant program. CRISI was first authorized in the Fixing America's Surface Transportation (FAST) Act of 2015. The program consolidated five existing FRA funding programs into one safety and infrastructure funding source. Despite being administered by the FRA, project eligibility is limited to intercity and freight rail corridors, and commuter rail-specific corridors are not eligible. Due to this limitation, much of the Metrolink railroad network does not qualify to receive program funding.

To ensure the safety and resilience of rail corridors for regional passenger rail service, we urge Congress to consider including full eligibility for commuter and regional rail corridors, rolling stock procurements, and rehabilitation to be eligible for CRISI program funding.

Conclusion

In my role as Chief Executive Officer, I am committed to ensuring Metrolink delivers the safest and most convenient passenger rail service possible. With improved customer service, increased frequency and reliability, and a paramount commitment to passenger safety, commuter rail will become an even more compelling alternative to our nation's most congested roadways. I invite members of this Committee to visit us in Southern California to see Metrolink's commitment in action.

The future for our industry depends on an integrated transportation system that connects all modes with one another in a system that offers a seamless experience to passengers. In our region and across the country in metropolitan areas, this begins with commuter rail. We are modernizing our business practices and delivering services for future generations. To achieve these goals, we need robust federal support.

Chairman Nehls, Ranking Member Payne and Subcommittee Members, thank you for the opportunity to testify before you today. I look forward to working with you as we deliver on the vision of transformative commuter rail service across the nation.

Mr. NEHLS. Thank you, Mr. Kettle.

I ask unanimous consent to enter into the record a letter from the American Short Line and Regional Railroad Association dated April 17, 2024.

Without objection, so ordered.

[The information follows:]

Statement of Chuck Baker, President, American Short Line and Regional Railroad Association, Submitted for the Record by Hon. Troy E. Nehls

INTRODUCTION

As president of the American Short Line and Regional Railroad Association (ASLRRA), the trade association that represents the more than 600 Class II and III freight railroads (commonly known as short line railroads or short lines) and hundreds of suppliers that support the country's short line freight rail economy, I appreciate the opportunity to provide a statement for the record for this hearing.

The short line industry is a great American success story, and short lines are tremendously proud of their vital role in the country's economy and their work creating jobs in each of your states.

The topic of this hearing is the commuter rail industry, and we recognize the important role held by our friends in the commuter rail space. Our worlds overlap to some extent; we share some of the same track and technology, especially in densely-populated regions where commuter rail plays an important role in getting people to and from work, home, school and other critical destinations—sometimes alongside short line trains hauling important goods and freight to and from market.

We recognize that the commuter rail industry faces numerous economic challenges, especially after the Covid pandemic disrupted and re-arranged once-certain commuting patterns for tens of millions of Americans. Due to the upheaval and continuing uncertainty facing commuter rail farebox revenue and overall financing, we understand many commuter rail agencies are now seeking new economic lifelines. We stand ready to work with Congress and all stakeholders in the rail space to ensure the health of our commuter rail partners. Short line railroads, however, also face economic headwinds due to years of deferred maintenance that come with inheriting worn-out track and aging structures. With surface transportation reauthorization on the horizon, it is imperative that Congress recognize that any solution to help commuter railroads not come at the expense of the short line freight rail network. Congress should support the programs, policies and resources that allow small railroads to upgrade their infrastructure to modern standards and good condition and to serve thousands of customers and communities in a safe, reliable, economically efficient, and environmentally friendly manner.

THE SHORT LINE FREIGHT RAIL INDUSTRY

Short line freight railroads are a vital part of the country's rail economy. Our members are critical links in the nation's freight supply chain, and all are vital engines of economic activity. Together, our members are tied to 478,000 jobs nationwide, $26.1 billion in labor income and $56.2 billion in economic value-add—providing a service that more than 10,000 businesses nationwide rely upon to get goods and products to market.[1] Short line railroads are particularly essential to the provision of first- and last-mile service to shippers, typically serving as the first and final link between suppliers and customers. Our members provide this connection in many key industries critical to our country's economic health, including the manufacturing, agricultural, mining, energy and chemical sectors. For large areas of rural and small-town America, short lines are the only connection to the national rail network.

Short lines are an environmental success story. Just as commuter railroads can take cars off the road, reducing greenhouse gas emissions, short line railroads are environmental stewards. They provide a sustainable, low-carbon freight logistics option that is more environmentally friendly than competing forms of surface transportation. Short line service keeps 31.8 million heavy trucks off highways and public roads—preventing costly wear and tear on pavement, relieving traffic congestion, cutting the emissions of harmful criteria pollutants and reducing deadly crashes.

Short line railroads face economic challenges from inheriting old, outdated track. As this panel knows well, the short line industry was spurred to new life in the early 1980s when smart deregulatory action by Congress allowed larger, Class I railroads to spin off moribund track. Short line railroads acquired and revived these marginal lines, turning them over time into thriving enterprises while preserving freight rail service for thousands of customers and employees. But even after decades of investment by short line railroads in upgrading track and structures—often a third to 40 percent of annual revenue—the backlog of repairs still looms large. Our industry estimates more than $12 billion is still needed to allow short line rail-

[1] The Section 45G Tax Credit and the Economic Contribution of the Short Line Railroad Industry, prepared by PWC for ASLRRA (2018).

roads to fully modernize and meet the country's freight needs.[2] This number is likely higher still, considering the hard-hitting impact of inflation on construction costs in recent years and emergent needs for investment by short lines in their locomotive fleets.

Competitive federal grants are critical for strengthening the short line rail network. In 2015, Congress recognized the significant rebuilding needs of the rail industry and acted, creating the Consolidated Rail Infrastructure and Safety Improvements (CRISI) program. Congress was aware at the time of challenges that even then faced the commuter rail industry but nonetheless explicitly chose to exclude them from eligibility for this program. Lawmakers limited CRISI funding eligibility to projects on intercity passenger rail lines, such as those operated by Amtrak, and to freight rail projects and specifically to projects on Class II and Class III short line railroads. The effects of this wise policy choice can be seen at short line railroads and customers nationwide and in the short line freight rail network. Since the first CRISI grants were awarded in 2017, short lines have used CRISI resources to replace track and crossties, add and extend sidings, rehabilitate bridges, improve drainage and roadbeds, and upgrade lines to handle industry-standard 286,000-pound railcars, ensuring national network interoperability. CRISI has allowed short lines to provide more service, eliminate bottlenecks, and reduce congestion—and most importantly, improve safety, as upgrading track helps prevent the top causes of derailments on short lines: old, worn-out rail, poor crosstie condition, and deficiencies in roadbed and drainage. Because of the conditions faced by short lines, and the nature of their service areas, a small CRISI investment can be transformational to a railroad's operations and the safety and quality of service to shippers.

Rural and urban economies have thrived because of CRISI. Fiscal Year 2022's appropriations law brought the first full year of IIJA's implementation and, with it, new and significant investments in short line freight rail projects. The Federal Railroad Administration (FRA) selected 47 projects that were advanced by short line railroads or short line partners. These projects are found in 36 states. All have helped improve safety, strengthen network efficiency for shippers, further minimize short line rail's environmental footprint, and create new jobs. The next round of IIJA-spurred funding (covering Fiscal Years 2023 and 2024) is now available for competition. Short lines are inspired and confident in their ongoing ability to put forward smart, resourceful and competitive grant applications that will bolster the country's freight rail backbone.

Ill-Conceived Efforts To Alter and Upend CRISI

CRISI's demonstrated ability to bolster the freight rail network should be protected. Altogether, 48 states have received CRISI awards since the program's inception. With challenges facing the commuter rail industry—as evidenced by testimony presented for this hearing—some are proposing a dramatic undoing of the successful path forged by CRISI. Some have suggested expanding eligibility within CRISI to allow funding for commuter rail projects. Any such effort to loosen or expand CRISI to include a whole other sector of rail would be a dire and drastic mistake. CRISI is the only competitive grant program for which short line railroads are directly eligible. Despite the continued strength and quality of short line projects, adding another mouth—or dozens of them—at the table could swallow the entire program. This would snuff out small railroad projects, despite the continued strength and quality of short line projects. Throwing out the current structure in favor of commuter rail would counter well-thought, deliberative Congressional intent reflected in two successive surface transportation reauthorization bills (both the FAST Act *and* IIJA) to use CRISI to help rebuild our freight rail network instead of focusing on regional commuter rail programs. This uncertainty and upheaval could be calamitous to the short line freight rail ecosystem.

Vast resources are already available to commuter railroads. Congress has already wisely provided for commuter rail in substantial, well-established, and dedicated funding programs. Commuter railroads can avail themselves of many large-scale competitive grant programs provided with massive funds by IIJA. For instance, commuter entities are eligible for department-wide competitive grant programs, like Mega and RAISE, and programs through the Federal Transit Administration (FTA) like the Capital Investment Grants (CIG) program. Commuter railroads are recipients of funding from major pots of formula funds, like the impressively funded Urbanized Area Formula Grants program. Commuter railroads that share lines with intercity passenger rail—especially those along the Northeast Corridor (NEC)—can and have benefited in recent years from the enormously funded new programs in

[2] PWC report.

IIJA to expand passenger rail service. Commuter railroads can also avail themselves of Congressionally directed spending unavailable to most short lines. Commuter properties are eligible for major federal loan programs like TIFIA and RRIF and have state, local and farebox revenue, too. Lastly, those seeking to throw out CRISI in favor of a new, untested framework are doing so on the heels of massive infusion of resources in several Covid relief packages in 2020 and 2021.

Congress should consider the creation of new resources and programs, not raiding existing ones. If current resources are insufficient and Congress wants to explore new pathways for investing in commuter rail, we will not stand in the way of such a worthwhile discussion. Many commuter rail operating models are facing new economic pressures and significant reductions and changes in demand for their services. This is not a challenge to be addressed by attempting to temporarily paper over the situation with CRISI funds. In practice, this funding is not necessarily being sought for capital purposes, but rather to provide financial flexibility to try to fill in unexpected operating deficits. Lawmakers should carefully evaluate how to use or bolster the existing tools they have in the established transit funding toolkit. Congress needs to determine, with a long-term view, the federal objectives that are realistic and appropriate to be attained with federal resources in the commuter rail space given changed circumstances in recent years.

Short line railroads do not seek to deplete commuter rail resources. We in the short line rail community are currently urging Congress to consider authorizing new resources for small railroads impacted by an increasingly devastating number of natural disasters. We appreciate the robust bipartisanship evidenced by the members of this panel who have endorsed important legislation proposed by Rep. Byron Donalds (R–FL), the Short Line Railroad Relief Act (H.R. 3782), now before the committee. An authorization for commuter and transit entities to receive emergency funds *already* exists and has been used to provide tens of millions of dollars for commuter rail agencies, which we do not question nor want to change. We encourage our friends in the commuter space, rather, to consider modeling their effort on ours—seeking new authorization and appropriations as necessary instead of upending current successful and time-tested USDOT endeavors.

Finally, more resources will be needed by short lines to face new challenges since CRISI's creation. Earlier this year, a new rule went on the books in California that threatens to impose drastic new financial obligations on short line railroads. The agency implementing the rule, the California Air Resources Board (CARB), even admits some short lines "*would be eliminated*" due to "*the costs of the Proposed Regulation*" (emphasis added).[3] Should this rule stand (and even worse proliferate nationwide) and California be granted the inappropriate authorization that it has requested from the EPA, short lines would require ever more resources to ensure they can make unexpected, massive investments in locomotives, while simply trying to keep their business afloat. We calculate that this rule could force California short lines to try to make nearly half a billion dollars in motive power fleet investments over only a few years. That would be a step change by multiple orders of magnitude above historical short line locomotive capital investment levels. We expect the next round of the CRISI program will see several applications for funding for locomotive projects from California short lines as they attempt to respond to this huge and problematic unfunded mandate. Having more entities eligible to receive CRISI moneys, such as commuter rail, could push already endangered short lines in California—and those states that could mimic California's emissions rule—ever close to the brink of bankruptcy.

CONCLUSION

ASLRRA appreciates the committee's close attention to the items we have noted in our statement, and we welcome future opportunities to work together on these matters.

Mr. NEHLS. Thank you all for being here and your testimony. We will now turn to questions from the panel, and I will recognize myself for 5 minutes.

First question, Mr. Noland, Amtrak asserts that it has a right of track preference over the commuter lines. How does Amtrak's use of commuter lines impact commuter rail services?

[3] State of California Air Resources Board. Proposed In-Use Locomotive Regulation Standardized Regulatory Impact Assessment. Page 143. May 26, 2022.

Mr. NOLAND. Well, if we have built, which we just did, a $650 million project to really build up our own commuter system, we have got schedules that are based upon the infrastructure we have built, we also have a freight partner that uses that line. If Amtrak shifts their current service onto our line, that will use up capacity.

And so, we need to have the ability to have a fair arm's-length negotiation if Amtrak is going to come to our line and not simply—and they have not said this, but they have the power to say, "Thank you for negotiating, but we have the right to enter your line. And if we do come on your line, all we have to pay you is the incremental cost to be there." For us, that seems to be an inequitable circumstance, and we would suggest that that needs to be balanced with fair and reasonable adjudication if we can't reach an agreement.

Mr. NEHLS. Sure. Mr. Corbett, do you have any thoughts?

Mr. CORBETT. Yes. I think, for us, we have a good relationship with Amtrak, but that Amtrak preference does have—if there is a train coming hours late on Amtrak, for us, we are operating 20-plus trains on the Northeast Corridor, particularly at rush hour, so, we have to wait until that train comes through. That can hold up 1,000 people on each one of our trains.

I think the key for us is to be part of the dispatching. We can live with Amtrak preference if we are part of the dispatching, which currently we are not.

Mr. NEHLS. Sure. And Mr. Noland, at a recent subcommittee hearing, NTSB Chair Jennifer Homendy expressed the need to eliminate the redtape and better communicate with communities to improve grade crossing safety. How might FRA improve communication and streamline the application process and grant distribution with regards to the Rail Crossing Elimination program?

Mr. NOLAND. Well, I think everybody on this panel would agree that wherever we can eliminate a grade crossing, that is a good result.

We talked about Positive Train Control. It is a great system. We invested $4 billion-plus into it. It saves lives, it makes a safer system. But if we collectively look at the injuries and deaths at grade crossings across the country, it pales in comparison to what PTC is doing for us. So, we are big advocates, and anything that we can do to make access to those funds simpler and easier, we support that.

Mr. NEHLS. I agree with that, and that is where the lives are lost, the injuries are taking place. I think there is about $500 million, if I am correct, in that program. I believe that there should be more robust funding into that area, without question.

Ms. Johnson, RTD-Denver has applied for Federal loans and grants for rail improvement projects in the past. What has been RTD-Denver's experience in these application processes?

Ms. JOHNSON. Thank you, Mr. Chairman. Our experience has been one that has been slightly cumbersome in the sense of trying to understand fully the rules of engagement. We have leveraged opportunities by partnering with other jurisdictions when we have taken advantage of the opportunities to rehabilitate our Denver Union Station nearly 12 years ago.

And so, as we go forward, basically understanding more in a straightforward manner would be advantageous for us to take advantage of programs more holistically.

Mr. NEHLS. Yes. This one here, I guess, again for Mr. Noland, but anybody can.

You touch upon it in your opening statement. We talked about the issues commuter rail faces with regard to the excess liability insurance and the 30-day window to obtain the insurance. You are asking for that 1 year, that 365. Do you want to just add a little bit more, and then maybe we have a second or two for some of the others?

So, if you want to, Mr. Noland, if you want to touch upon it one more time, or——

Mr. NOLAND [interrupting]. Sure. The excess liability insurance market is all foreign. So, we are not buying here in the United States. This is not Buy America. We are going to London, and we are going to Bermuda.

The prices have skyrocketed, and the market capacity is shrinking. And I think anybody who has followed the news has seen that in homeowners or car situations, the insurance is getting more costly and less available. And we are seeing that in the excess insurance market. There is approximately $400 million of rail excess market available worldwide. And when the act is adjusted, when the amount in the cap goes up, we are going to have difficulty placing that coverage.

Mr. NEHLS. Mr. Kettle, do you have any comments on that, or any point?

Mr. KETTLE. I would just echo what Mr. Noland said. When the increase occurs in 2026, that is when we get real anxious. For now we are stable; 2026 is an entirely different question.

Mr. NEHLS. Yes, it has my attention. And hopefully the members of this subcommittee, we are going to continue to look into that, because you should be able to buy that insurance here someplace in the United States.

All right, I will now recognize Mrs. Foushee for 5 minutes.

Mrs. FOUSHEE. Thank you, Mr. Chairman. And thank you again to the witnesses for your testimonies today. This question is for any or all of you: Do your contract partners work with rail unions?

Mr. DECH. So, I can address that. Yes, our outside contractor in south Florida, we do deal with the—we are organized labor both on the transportation dispatching and on the maintenance of equipment side, as well as maintenance of way. So, yes, ma'am.

Ms. JOHNSON. Mrs. Foushee, Debra Johnson, once again. We are part of a concessionaire agreement. And in reference to the employees that they have, their signalmen are unionized, but the conductors and engineers are not.

Mr. NOLAND. On the South Shore Line, we directly provide service. We have 300-plus employees who are with five different national rail unions. We are right now in negotiations, so, we are no different, really, than a Class I or other commuter properties that directly provide service. So, yes, we have union employees.

Mrs. FOUSHEE. Thank you. The next question is for Mr. Corbett.

Mr. CORBETT. For us we have 12,000 employees, 10,000 which are unionized overall. Our rail is fully unionized directly for us. Our light rail is contracted out, but they are also fully unionized.

Mr. KETTLE. And just lastly—again, Darren Kettle, CEO of Metrolink—our engineers and conductors are Amtrak contractors. And in that fashion, they are represented.

Mrs. FOUSHEE. Thank you. The next question is for Mr. Corbett. Should other regions of the country have similar regional commissions to the Northeast Corridor Commission?

And if so, what would be the benefits of that?

Mr. CORBETT. Thank you. I think we have seen it be very beneficial. It has been a growth curve, a learning curve since the commission was created, but we really see that now, particularly with the funding, we are able to prioritize and cooperate and work collaboratively with Amtrak.

Sometimes there is a tension. When it was all the Pennsylvania Railroad, intercity and commuter rail even within one company, that is a natural tension. But we worked that out. And I think the success and the progress we have made at the Northeast Corridor Commission would be a good role model for some other regions, as well, yes.

Mrs. FOUSHEE. Mr. Dech, do you think the flexibility in the Senate version of the Railway Safety Act that allows railroads to submit a plan to the Federal Railroad Administration for alternate technology options for hot box detectors gets to your concern on what alternative technologies there might be to hot box detectors?

Mr. DECH. I think that is a good start. There are technologies out that are available that, like, I personally—our agency isn't big enough to kind of leverage those—put that R&D in. But I know some of the Class I's have been dabbling for quite some time. And I know there is some grant money out there for research and development because there are ways that we can leverage different technology, even existing technologies such as using fiber optic lines that are along the railroads.

With advances in machine learning, you have the possibility to map the acoustic footprint of what is a healthy bearing. So, over time, with enough research, you should be able to map that out and then be able to pick out an overheating or malfunctioning bearing, which would be far more effective than waiting every 10, 15, 20 miles.

Mrs. FOUSHEE. In a March 2023 press release, the Association of American Railroads stated that they would immediately install 1,000 additional hot box detectors every 15 miles. What are your thoughts on why they would say that if the technology is obsolete?

Mr. DECH. The technology is there. It is a sure-fire way to add a layer of protection. I think that it is a small market.

I am a supporter of the wayside defect detectors. I installed them in Austin when we didn't have any. We have upgraded our defect detectors here. I worry about the supply chain and being able to fulfill those orders, which I think will affect the cost for all of us, which is, I think, why we need to look at some alternatives.

Mrs. FOUSHEE. Thank you, Mr. Chairman, I yield back.

Mr. NEHLS. The gentlelady yields. I now recognize Mr. Kean for 5 minutes.

Mr. KEAN OF NEW JERSEY. Thank you, Mr. Chairman, and I want to thank our witnesses for being here today. I would especially like to thank Mr. Kevin Corbett, president and CEO of New Jersey Transit, for traveling south to inform us of the challenges faced by New Jersey Transit, and also the critical work they do for the great State of New Jersey.

Mr. Chairman, thank you for holding this hearing, as it is critical for my constituents in the Seventh Congressional District of New Jersey, which relies heavily on commuter rail on a daily basis. May that be for commuting eastward into New York City in the morning, or commuting westward in the afternoon, or reverse on those routes in the morning and the evening; the ability to catch a children's sporting event or other activities; or to access dinner with their families and on a timely basis, having an efficient rail system is vital for that to happen. It needs to be predictable commutes, and it needs to be as easy as humanly possible.

New Jersey Transit is operating efficiently, is vital for all New Jerseyans. As Mr. Corbett knows, my constituents are enthusiastic about the Hunter Flyover. It basically constructs a flyover south of Newark Penn Station to eliminate at-grade crossings and to reduce conflict between trains, and increases capacity for New Jersey Transit and for Amtrak alike, enabling New Jersey Transit to improve Raritan Valley Line service. That is why I introduced, and this committee and the whole House has passed, the One Seat Ride Act, which directs the Secretary of Transportation to conduct a cost-benefit analysis of a one-seat ride trip versus a transfer trip option during peak hours on New Jersey Transit's Raritan Valley Line.

This committee and this House should recognize the immense benefits commuter rail has for the State of New Jersey and the Northeast Corridor, but also the future benefits to the entire Nation.

Mr. Corbett, as I know, you are extensively familiar with the Gateway Project and its benefits not only to New Jersey, but to the entire region and to the country. Additionally, I know we have spoken many times regarding the need for a one-seat ride option on the Raritan Valley Line before the completion of the overall Gateway Project. As you know, I worked with one of your predecessors over a decade ago to secure the first-ever off-peak option for Raritan Valley Line commuters.

A key part of having a full-time redundant system throughout New Jersey and throughout the region is making the Hunter Flyover as a reality. In September of last year, it was announced that FHWA awarded an additional $425 million in Federal transportation dollars to NJDOT as part of the Federal August redistribution process. I know that funding is key for completion of the Hunter Flyover. Is New Jersey DOT allocating any of these funds for this project?

And what is currently the status of the Hunter Flyover completion?

Mr. CORBETT. Thank you, Congressman, and thank you for all your efforts on behalf of New Jersey Transit and for our regional and national economy in that context.

Hunter Flyover, as you know, a one-seat ride and a smooth transition, the flex funds that we get from FHWA do not have that flexibility to cover a Hunter Flyover, because that is just a pure rail bridge. We did put in for a RAISE grant for it, a competitive RAISE grant, but that did not make the cut for a RAISE, and I think that is one of the reasons we are looking at CRISI, because this would be a kind of bridge that would be perfect for CRISI. It will improve both Amtrak—instead of going for a ladder cutting across the Northeast Corridor, it will bring the Raritan Valley Line over and tie in right into the corridor smoothly, not disrupting Amtrak or our Northeast Corridor trains, but be able to tie right in. So, it is a critical piece of infrastructure.

But that is the challenge. We are in the preliminary design work for that. But to get the funding to really go to full design and contracting, we need to—we do not have that funding. So, that is a critical issue, and that is one of the things we would like to see—

Mr. KEAN OF NEW JERSEY. And the—as you know, the one-seat ride on the Raritan Valley Line can be completed long before the Gateway Project is completed.

Mr. CORBETT. Yes.

Mr. KEAN OF NEW JERSEY. It is vital to my constituents and needs to be prioritized.

As you mentioned in your testimony, there is always a natural conflict that exists between New Jersey Transit and Amtrak. But what are these conflicts? You said they were managed with strategic collaboration. Specifically, what are the most common areas of conflict between New Jersey Transit and Amtrak operations, and how are they usually resolved?

Mr. CORBETT. Well, I think, for the purpose of—regarding the BIL, I think the money that we spend on projects, things like Elizabeth Station, if they are projects that are beneficial to us but not necessarily a priority for Amtrak, the workforce availability has been the biggest cause of delays and cost overruns when they are not able to provide protection.

And I think one of the things we have done for the Northeast Corridor as this money is coming in to allow these projects to move ahead quicker is, for projects where Amtrak cannot supply their workforce in a timely manner, is for us—we are doing a pilot program right now for County Yard/Delco Lead project, where we will do the flagging because it is for our benefit. Our flaggers we properly trained so that we can do that, which will free up Amtrak's labor force to be able to work where they do have their limited resources as they ramp up. They are adding a lot, but right now they struggle to provide adequate flagging up and down the corridor.

Mr. KEAN OF NEW JERSEY. Perfect. Thank you.

I yield back.

Mr. NEHLS. The gentleman yields. I now recognize a very valued member of this subcommittee, Mr. Moulton, for 5 minutes.

Mr. MOULTON. Mr. Chairman, thank you very much. It is an honor to be here with all of you.

Mr. Chairman, you talked about how more people are working remotely. We heard that from a number of our witnesses. My estimation is that this will delay some of the ridership goals that were laid out before the pandemic, but not ultimately reduce them. And

I was going to brag about how, as of February, Boston commuter rail ridership had reached 96 percent of prepandemic levels, but Mr. Dech has already surpassed prepandemic ridership.

So, congratulations, and I won't pat ourselves on the back for that.

But the bottom line is that commuter rail systems need to modernize. In Massachusetts, we are talking about converting from a commuter rail system to simply taking people in and out of the city to a regional rail system that will fundamentally get people around the Commonwealth faster. That's when they are valuable, if they can get you around faster.

Now, when we have highway hearings, we often talk about EVs and self-driving vehicles, but most of the clips from this hearing could be from 1949, because we are fundamentally talking about technology that is 75 years out of date. Ranking Member Larsen talked about the contributions of the Bipartisan Infrastructure Law to intercity rail services like Sound Transit, which, like my MBTA Commuter Rail in Boston, operate with essentially 1950s technology at 1900s speeds.

By the way, not 1920 speeds, because by 1920, most speeds were faster. And if you compare commuter rail timetables from 1920 to today, they are mostly faster in 1920. That's pathetic.

Vice Ranking Member Foushee talked about intercity passenger rail in North Carolina, a great investment. But the reality is that ridership estimates for this new system are very low compared to highway or air traffic numbers for one clear reason: they are too slow.

I am grateful for Mr. Yakym, actually, because he was, I think, the only Member to discuss actually increasing speeds, which Mr. Noland is accomplishing on his system.

And, Mr. Kettle, thank you very much for talking about the importance of high-speed rail, even though there was no dedicated high-speed rail funding in the Bipartisan Infrastructure Law.

So, one question I have for all of you is, what are you doing to actually increase speeds to attract riders, because you can get people faster where they need to go?

There is a 1947 rule that limits speeds to 79 miles per hour without automatic train stop, based on a crash in 1946. Where are we with PTC? We have PTC. How many of you are petitioning to increase speeds on your lines, now that you have adopted PTC?

I am going to take that for the record, because we have limited time, but I would very much appreciate your responses.

We also talked a bit about the Senate bill for more hot box detectors. Hot box detectors are 1960s technology. And sure, we can put more of them—we could put one every 5 feet, and it would reduce but never eliminate crashes. Whereas, if you had onboard technology to actually measure the bearing temperatures in real time, just like we have onboard technology that we wear, wearable technology all around, you could actually eliminate accidents. That should be the focus of our committee: modernizing.

And so, the big question is, OK, so, why are we so behind? Why is this? Well, there are a number of reasons, but there is none bigger than funding. And Mr. Corbett, you talked about historical underinvestment, decades of subsidizing highways and driving and airports and airlines. But while we celebrate $100 million for Metra commuter cars in Chicago, you couldn't build a single highway interchange for that kind of money. We are talking about PTC here at the same time as we are talking about next-generation air traffic control. There is one big difference. Congress pays for it, for the air system, but it is forcing private railways to pay for the rail system.

Now, we also talk here about increasing fare revenues, but we never talk about doing that with driving, to actually make people who drive pay the cost. So, I asked for a study in Massachusetts to examine the cost of driving. Conclusion: $64 billion annually to the Commonwealth, just in the small State of Massachusetts. That is $14,000 per person that they are paying with their tax dollars to subsidize people who drive. Even if you don't own a car, even if you don't own a car, that is what we are paying to subsidize driving.

And instead, the MBTA system in Massachusetts is estimated to save about $15 billion a year because of increased—I'm sorry, that is just in terms of the highway that we don't have to build, and the 3,000 acres of parking spaces we don't require. It also has $11.4 billion in annual economic benefit.

If you look at Massachusetts in terms of airports, it is the same thing. Terminal E just got a $700 million expansion. If you look at the number of passengers it will serve, that is about $130 per passenger investment at the same time we are repairing the Orange Line with an investment of $3.13 per passenger.

So, the bottom line is that I am a big fan of America, but I am not a big fan of our commuter rail systems. We need to modernize. We need to catch up with the rest of the world. And what this committee should be doing is pushing commuter rail systems to move forward. I hope we can accomplish that with you.

And Mr. Chairman, I yield back.

Mr. NEHLS. Mr. Moulton, I appreciate your insight. I now recognize Mr. Yakym for 5 minutes.

Mr. YAKYM. Thank you, Mr. Chairman.

Mr. Noland, we have talked both about the transformational impact that the $650 million double track project will have on the South Shore in our local economy. From an initial concept to next month's groundbreaking, how long has it taken for the double track project to come to fruition from concept all the way through to completion?

Mr. NOLAND. Well, Samuel Insull thought about it 100 years ago, but 10 years ago, our board passed a strategic plan. We started the engineering in 2016. So, from the time we went out with preliminary engineering and environmental to finishing up the punch list, which we are doing today, is 8 years.

Mr. YAKYM. And there has been a lot of work over the course of the last 8 years. Is that fair to say?

Mr. NOLAND. That is fair to say.

Mr. YAKYM. Can you briefly walk through how the financing of this project came together?

Mr. NOLAND. Well, we have financing from a lot of different sources: four counties that we operate in each contributed $18.25 million towards the funding. In two of the counties, it was split between the county government and the city of South Bend and St. Joe County, as you know, and $12 million from Michigan City and the other $6 million from LaPorte County.

We also received funding from the State of Indiana, tremendous funding from the State. I mentioned Governor Holcomb is our major champion there. We appreciate that.

And then we went out and received funding from the Capital Investment Grant process. We have a full funding grant agreement with the FTA for the balance of our funding.

Mr. YAKYM. So, many sources of funding over the course of the last 8 years to come up with the $650 million.

Mr. NOLAND. Correct.

Mr. YAKYM. So, you and the South Shore Line put in a lot of blood, sweat, and tears over the last, call it now 10 years almost, to put together the funding, the contractors, and everything else to make this double track a reality, which we are going to open next month. Yet, as I understand it, Amtrak, which doesn't currently operate on South Shore's track, is considering essentially inviting itself onto the double track. Is that correct?

Mr. NOLAND. Amtrak currently runs parallel to us on the Norfolk Southern. They have historically indicated they have issues with their on-time performance and capacity, and I think they see the opportunity to use the significantly improved right-of-way. And so, we have had conversations with them, and they have indicated they would like to strongly consider moving their operations over to our line.

Mr. YAKYM. And if they do that, you would have very little bargaining power over Amtrak's compensation to you, and it would be essentially Amtrak that tells you what it believes is going to be a fair rate for them to come onto your tracks. Is that correct under current Federal law?

Mr. NOLAND. Absent an across-the-table negotiation at arm's length, Amtrak does have the statutory power to come on our service and only pay incremental cost.

Mr. YAKYM. Did Amtrak contribute any money or other nonmonetary support for the double track project?

Mr. NOLAND. No, sir.

Mr. YAKYM. Mr. Chairman, I hope that we can watch this space very, very closely. And I will say I have had a very good dialogue with the CEO of Amtrak, Stephen Gardner in this hearing room, but also in private in my office. And I want to make sure that, if Amtrak does go this route, it does so only after it follows through on its promise and commitment of close consultation and adequate compensation for the South Shore Line and the double track project.

Thank you, Mr. Chairman, again, for holding this hearing today, and I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mrs. Napolitano for 5 minutes.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. A question for Mr. Kettle.

With 500-plus route-miles serving more than 20 million people, how does Metrolink prioritize investments in infrastructure or programs that increase access to its service for underserved communities?

Mr. KETTLE. Thank you, Congresswoman. So, as you said, we service a large market, southern California, 20 million people. Many of the lines that we operate on originally were freight railroad lines, and they go through a number of disadvantaged communities throughout southern California, including your district, but all over southern California, where we have residents of lower incomes.

We have established a couple of different programs. One that we are quite proud of is a program that allows for any individual with a EBT card to get 50 percent discounts on the ability to ride our trains, regardless of age. We also have programs for active military and seniors. And of course, I mentioned during my opening remarks our "students ride free" program that has been tremendously successful across the region.

As I have said, I ride the train, I see the students, I see what it is doing to change their lives, and it is growing our ridership. So, it is a win-win.

Mrs. NAPOLITANO. Thank you. You mentioned a concerted effort to replace older, more polluting locomotives with a cleaner model. Why does Metrolink need to add cleaner burning diesel locomotives to its fleet?

How many do you have now?

What impact will these newer locomotives have on southern California?

How many is the agency seeking to purchase?

Mr. KETTLE. Our current fleet is a fleet of 55 locomotives; 40 of those are virtually brandnew, Tier 4 locomotives, the cleanest burning diesel locomotives in the country.

I don't think anybody will question that southern California has historically had a real challenge when it comes to air quality. So, it would be irresponsible for us if we didn't make best efforts to make sure that entire fleet of 55 is the cleanest burning diesel engines you can find. Our goal is to get to 53 of our 55 to be Tier 4 locomotives. Again, the oldest ones we have were only introduced into our fleet in 2017, so, they are brandnew.

And then we are going to be testing the market of zero-emission push-pull locomotives. We received a regional grant most recently in the amount of $60 million for us to start looking at exploring zero-emission push-pull locomotives. It would be the first demonstration of that type of technology in the country.

And I should mention real quickly we will also be launching our hydrogen fuel cell multiple unit in the region where we have some of the dirtiest air in San Bernardino County, between San Bernardino and Redlands. It will be the first zero-emission, multiple unit, hydrogen fueled in revenue service in the United States.

Mrs. NAPOLITANO. Thank you. California, as in other States, has a severe housing shortage. How does Metrolink service help connect people living in more affordable areas of the region get to their employment centers?

Mr. KETTLE. Again, we live in a vast region. Some of our trips are 70 or 80 miles because that is where the affordable housing is, whether you work in Orange County or Los Angeles County, and our trains get there.

We have started working with homebuilders to provide incentive programs. As new homeowners are purchasing homes in outlying areas that are more affordable, we are working with homebuilders to develop programs that get people onto our trains so they know that the commuter rail system in southern California can be an option for them besides driving a car.

Mrs. NAPOLITANO. Great. Would you explain a little bit of what you have done with the Positive Train Control to better the service?

Mr. KETTLE. Positive Train Control, along with all of my colleagues, it has been something that we have pursued. We were the first to actually have it in the country in southern California.

What we have learned with PTC, though, is that it is all about safety, but we are finding value added in PTC. Most recently, we have been able to connect Positive Train Control to ShakeAlert. Everybody knows southern California has an occasional earthquake. So, now we are set up to the point where ShakeAlert, through PTC, alerts our engineers. Depending on the severity of the earthquake, it may entirely shut down that train if it is within a certain radius of where the earthquake occurs, or it may simply tell an engineer that an earthquake has occurred, you need to slow your train or stop it.

So, we are taking the opportunity of this safety technology, and taking it to a whole other level.

Mrs. NAPOLITANO. Thank you very much.

Mr. Chairman, I yield back.

Mr. NEHLS. The gentlelady yields. I now recognize Mr. Stauber for 5 minutes.

Mr. STAUBER. Thank you, Mr. Chair. I know we are discussing commuter rail today. However, I want to discuss crime.

And crime is happening on all modes of public transportation: buses, transit rail, commuter rail, you name it. It wasn't always this way, but Minnesota has changed with our current Governor at the helm. It is now known for leniency for criminal behavior. There is no better proof than the Metro Transit in Minneapolis.

Let's start with the "party car." On the three-car light rail, operators never enter the middle car when the light rail switches directions. This was quickly noticed by a certain crowd. The middle car now attracts riders who are more likely to smoke or break rules, so much that it is conversationally known as the "party car," that middle car.

So, instead of cracking down on the bad behavior, however, the Democrats in Minnesota, they took a different approach. Fare violations are now a petty misdemeanor, a $35 ticket instead of a $180 misdemeanor charge, and they have replaced police officers with Transit Rider Investment Program, TRIP, agents: nonpolice agents who are to "remind" criminals of their behavior. Now it has become so bad that they are considering reducing the size of the trains, rolling out a two-car train instead. Instead of punishing the criminals, our State would rather punish our good citizens who are just trying to get to or from work.

To our witnesses, I know Minneapolis is not alone in the fight against crime, but it is clear our State leaders are lost on this issue. What have your commuter transportation systems done to ensure the safety of your passengers?

Mr. Kettle.

Mr. KETTLE. Thank you, Congressman. As I mentioned in my earlier remarks, I am a user of our system. I ride the train, I am a customer. I see what our customers see on a daily basis.

What we have addressed on our system—and generally speaking, across the country, commuter rails are considered relatively safe in the transit sector. But that is not enough. We have Los Angeles County sheriff deputies that ride our trains regularly. My chief of safety, security, and compliance ensures that we have strong metrics that then—yes, sir.

Mr. STAUBER. So, Mr. Kettle, I appreciate that. Specifically, if I am on one of your trains, something happens to me, will there be a sheriff's deputy there?

Mr. KETTLE. We do not have sheriff deputies on every train, no. We target——

Mr. STAUBER [interrupting]. OK. So, in that case, Mr. Kettle, somebody assaults me or one of my children. What do I do?

Mr. KETTLE. On our trains, we make sure there—first of all, we have conductors on all of our trains that have immediate access to our security operations center. If something occurs, our conductors immediately call that into security.

Mr. STAUBER. What is the timeframe?

Mr. KETTLE. Well, in a 545-mile system, and sheriff deputies spread throughout, it can take a couple of train stations before our sheriff is able to be on our trains.

Mr. STAUBER. OK. Mr. Corbett, how about you?

Mr. CORBETT. Yes——

Mr. STAUBER [interrupting]. If somebody is being assaulted, tell me the pace at which they could get immediate help.

Mr. CORBETT. Congressman, also, we have our own police force, an extremely proud police force. We do deal with counterterrorism with the New York-Philadelphia market, so, we have a lot of experience.

Mr. STAUBER. Yes.

Mr. CORBETT. We also deal with—you see more drug-related crimes——

Mr. STAUBER [interrupting]. Do you have law enforcement on every train, in case——

Mr. CORBETT [interrupting]. We don't put them on every train, similar—but what we do have is the next station—we tell our crews generally not to get involved with the assault, but we put through legislation we just got passed in New Jersey 2 years ago that allows us to—if you are in assault, we protect certainly our train crews so that it—we don't have to—through the court system, that it is—raised it as a felony. So, it is a serious felony, so, we do that. And then we are able to ban them from riding the system.

Mr. STAUBER. Thank you, Mr. Corbett, thank you.

Mr. Noland, how about you?

Mr. NOLAND. We have our own police force, but it is not a large police force, and we are over 90 miles. Our conductors are trained that if there is an incident on a train, to immediately get a hold of dispatch, who will get a hold of our police department. And if they can't be there in a timely fashion, we work with our local municipalities very cooperatively so that at the next available train stop we can handle that situation.

Mr. STAUBER. In any of your equations, are you expecting other commuters to jump in and help?

VOICE. No, we are not.

Mr. STAUBER. OK.

Ms. Johnson, how about you?

Ms. JOHNSON. We have a sworn police department. Our second crewmember actually is contracted out on our concessionaire agreement platform, and they are armed. And we also have a transit ride app. If somebody were to see something, they can say something, and then we will deploy additional support.

Mr. STAUBER. Is there law enforcement on every train?

Ms. JOHNSON. Not sworn, certified police officers, but armed security.

Mr. STAUBER. OK. With no arrest powers, or——

Ms. JOHNSON [interrupting]. No arrest powers.

Mr. STAUBER. Got it. Mr. Dech, you are the last one. I've got 10 seconds left.

Mr. DECH. We have armed security on our trains, as well as at our stations. We do randomize those processes. We have conductors on every train that have access to our PSCC, and we work very closely with our counties and municipalities for police to have arrest powers.

Mr. STAUBER. Yes, I just—real briefly, Mr. Chair, if you would indulge me for a minute. The reason I am asking this is, you talk about safety as your priority. If I am on your 90-mile train, 45 miles into it, and I get assaulted, or my children or my wife, the expectation is there will be help as soon as practical. You are talking 25 or 30 minutes. The assault is over, the damage is done.

And so, as a former police officer, I know getting there quicker—and I think you all would agree with this. I understand the practicality of it. But you know what? I think that more people would feel comfortable and probably more ridership if that were to happen, if they saw law enforcement there with arrest powers. That is a deterrent.

I thank you very much for indulging me, Mr. Chair. Thank you.

Mr. NEHLS. The gentleman yields. I now recognize Mr. García for 5 minutes.

Mr. GARCÍA OF ILLINOIS. Thank you, Mr. Chairman and Ranking Member, and to all of our witnesses.

As you have heard, a commuter rail is a lifeline for many people who rely on it for affordable, convenient ways to get to work, school, and anywhere else they want to go.

With the upcoming surface transportation reauthorization bill, there are ample opportunities to address some of the challenges for commuter rail. One such challenge is the challenge in ridership levels and patterns that has shifted since the COVID pandemic.

Mr. Noland, I understand that NICTD is building a second set of tracks between Michigan City and Gary, Indiana, which is expected to bring more ridership to Chicago, as well. I welcome that.

Amidst a new ridership landscape, what factors went into deciding to build additional tracks on this route?

And how is NICTD evaluating what projects to fund, based on the change in ridership?

Mr. NOLAND. Thank you, Mr. Congressman. The section is a 26-mile section that was largely single track. And Congressman Moulton mentioned that we are an older technology, and we need to look at ways to improve our service.

So, one of the things that we have looked at was areas where we have congestion. We had congestion in that area. By adding a second track with high-speed crossovers, we are able to add more express service, reduce our time to and from Chicago, and that drives ridership. Better performance is an opportunity to drive ridership.

We are also going to add trains to the off-peak evening and weekend services so that we are not just that rush hour—that traditional rush hour—that 8 a.m. to 5 p.m. worker is not there anymore. We need to service the midday folks, as well.

So, those two things, reducing the time to Chicago and back and offering the services off peak are huge for us.

Mr. GARCÍA OF ILLINOIS. Great, thank you.

Another pressing issue for commuter rail and the rail industry writ large is the lack of regulation around locomotive emission standards. As of 2016, nearly 50 percent of existing locomotive emissions were uncontrolled, with no standards for any pollutants. Mr. Kettle, why has the rail industry, in your opinion, been so slow to cut emissions, despite the fact that cleaner engines exist?

Mr. KETTLE. Congressman, I think, again, in our system, we have gone all-in as it relates to finding the cleanest burning technology utilizing diesel locomotives. Again, we use renewable fuel. We do not use petroleum diesel.

I think it is a combination of factors I think you are seeing throughout the country. Commuter railroads are shifting to cleaner burning, Tier 4 locomotives. We certainly are committed to that, with a long-term future of getting to zero emission.

And I think it is a byproduct of just the nature of the cost of equipment. When you buy a locomotive, you are going to have that locomotive for 30 years, and I think it takes time for that public investment to be fully absorbed, at which point I think other agencies across the country will look towards cleaner burning equipment.

Mr. GARCÍA OF ILLINOIS. Well, thank you for that answer. And just following up on it, the people most harmed by pollution from these emissions are rail workers and communities around those railroads, communities like my district, which has some of the worst air quality in the country. What can we do at a Federal level to speed up the transition to Tier 4 or zero-emissions engines?

Mr. KETTLE. It really does boil down, Congressman, to funding. And you have heard my colleagues talk about the CRISI grant program and our eligibility or lack thereof. I think it is a question that, as you look towards reauthorization, making sure that there are opportunities for agencies like ours to pursue funding for those cleanest burning technologies.

Mr. GARCÍA OF ILLINOIS. Very well, thank you so much.

Mr. Chairman, I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Burchett for 5 minutes.

Mr. BURCHETT. Thank you, Mr. Chairman.

Mr. Kettle, Metrolink is taking some steps, I believe, to reform its commuter rail business model. What would ticket prices be for you to break even?

Mr. KETTLE. It is going to take some time for us to play this all out, Congressman. It is a great question. I think what we are going to look towards is, by growing the number of riders, we are hoping to keep our fares exactly where they are today as we grow our service. It is just going to take time to see if that generates the ridership that we hope it does, because we can't keep doing the business the way we have been doing it.

Mr. BURCHETT. What is your current deficit?

Mr. KETTLE. Well, I think that any commuter railroad in the country is going to say we are a public transit agency——

Mr. BURCHETT [interrupting]. That is just——

Mr. KETTLE [continuing]. Right now our current——

Mr. BURCHETT [interrupting]. That is just a simple question.

Mr. KETTLE. All right. Our farebox recovery right now is 13 percent. So, public sources besides our farebox come to that number of 87 percent that requires additional public support.

Mr. BURCHETT. So, you don't have an exact number of your deficit.

Mr. KETTLE. I do not. I can provide that to you, sir.

Mr. BURCHETT. I would like that. You serve a region in southern California from San Diego to Los Angeles Counties. It seems to me like it is the State's and counties' responsibility to subsidize your services, not the Federal Government.

Your request that the Federal Transit Administration would waive interest on two locomotives because California passed some very costly and very, very burdensome rail regulations, to me, is out of touch. Our Nation is already $35 trillion in debt, and billions in Federal handouts are already available to rail. California's excessive regulation is a problem, and it's folks like you that don't—if you all don't speak up at the State level, it's only going to get worse for everyone else's sake. The rest of the country shouldn't have to pay for California's mistakes.

I yield the remainder of my time, Mr. Chairman.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Johnson for 5 minutes.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman. Today, the demand to increase accessibility, opportunity, and equity through infrastructure improvements is more attainable than ever before because of the Infrastructure Investment and Jobs Act passed by Democrats, along with a few Republicans, Joe Biden's legislation, which provides $1.1 trillion—I think probably $200 billion of that going to rail—the largest investment in the Nation's rail system, probably. Well, I don't know how long it has been, but it has been a long time, and it was long overdue. We did it, but we need to do more.

And when finding solutions to the challenges confronting commuter rail systems, we cannot overlook the critical necessity of adequate funding for capital projects, service expansion, and enhancing transit ease of access, particularly for underserved communities.

Mr. Kettle, you have caught a lot of flak for being from California today. That is unfortunate. Not that you are from California, but you are catching flak for being from California. In your testimony, you discuss Metrolink's commitment to delivering safe and convenient passenger rail service, while emphasizing the importance of Federal support for the commuter rail industry's modernization efforts. How does Metrolink ensure its service expansions and improvements benefit all community members, including those living in areas with little to no transportation access?

Mr. KETTLE. Thank you, Congressman Johnson. The Metrolink system is an expansive system, 545 miles. We go through a lot of communities, many communities where freight railroads have long traveled.

As we look to transform ourselves away from just being about the commuter, but about the user of our system for so many other purposes—a discretionary trip throughout the midday, the peak, the evening—that, I think, is something you are seeing throughout the industry, that we have to change our business model. That is what is going to ensure equity in transportation.

If we are built only around the commuter, generally speaking, we are building for some essential service workers, but primarily for white collar workers. That is not what we can be for the long term. And by instituting and implementing more midday service, evening service, and weekend service, that is providing equity and mobility that our region has never seen in a region as large as southern California. So, that is where we are going full steam ahead to try to make that happen. We see that as our real opportunity for our future.

Mr. JOHNSON OF GEORGIA. Well, it definitely seems like a viable alternative, particularly as commuter rail passengers' ridership has declined since the pandemic and the advent of work from home.

What programs and initiatives can the Federal and local government implement to mitigate barriers in service for marginalized groups such as language, mobility, and awareness?

Mr. KETTLE. Well, the Metrolink system—the nature of access to our system, I think it comes back to frequency and reliability of service for those that use our system.

Access, we can always improve our access at our facilities, at our stations, on our equipment that is, in some cases, out of date. So, I think those are areas, as we overhaul equipment, those are our opportunities.

But I do think, Congressman, the biggest opportunity for us to make sure that we are providing access is making sure we are providing frequency and reliability of our trains throughout our system so that people can count on us when they need us.

Mr. JOHNSON OF GEORGIA. Thank you. Have you seen collaboration between Federal, State, and local governments in advocating for support and funding for transit projects or programs?

And where do you see the need for improvement?

Mr. KETTLE. The very nature of our system—we operate a five-county system. I work for five counties that make up the Southern California Regional Rail Authority. We are all about collaboration.

We all come together to fund our system. Our local—those counties are funding a big part of what we are doing, it is not all on the Federal Government. But we do come to the Federal Government and State government to help support the needs of the region.

So, we are very, very strong in our collaboration at all levels, including Sacramento, as well, the State capital.

Mr. JOHNSON OF GEORGIA. Thank you, and that concludes my time.

And I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Menendez for 5 minutes.

Mr. MENENDEZ. Thank you, Chairman. First, I just want to let our ranking member, Congressman Payne, know that we are thinking about him, wishing him a speedy recovery.

I also want to welcome Mr. Corbett, who serves as the president and CEO of NJ Transit. NJ Transit operates bus, light rail, and commuter rail throughout New Jersey, carrying thousands of people every day to work and helping our constituents move through the region.

NJ Transit provides an essential service to the State and to our district. Last fall, they sprang into action to take on additional bus routes after private companies operating in Jersey City announced the closure of several essential routes. I applaud NJ Transit for ensuring that our constituents remain connected to essential resources and preventing gaps in service.

Mr. Corbett, as your testimony highlights, the Infrastructure Investment and Jobs Act has been a critical investment for infrastructure across the country. Our district has received almost $11 billion in grants from the IIJA, including $6.9 billion for the Gateway Project alone. The importance of these funds for our district cannot be overstated. Just yesterday, NJ Transit and Amtrak service was disrupted along the Northeast Corridor for hours due to overhead wire problems, disrupting the evening commute for thousands of people.

Mr. Corbett, what happens when there are issues with infrastructure on even a small section of the Northeast Corridor?

Mr. CORBETT. Thank you, Congressman, great to see you.

Mr. MENENDEZ. Yes, sir.

Mr. CORBETT. We are the most densely populated State in the Union, as you well know, and we are back—COVID, the days of COVID—we are packed, our trains, rush hour, you see standing room only. So, if we have 1,000 people on a train and we have 20-plus trains an hour going into New York, if they are delayed even 10 minutes, that backs up trains all the way down to Philadelphia. So, that means thousands, tens of thousands of commuters are stranded.

Our number-one cause of delays for New Jersey Transit is on the Northeast Corridor, for our whole statewide system. And that ties into the catenary and infrastructure. And Amtrak is—that is what they inherited from the Pennsylvania Railroad. A lot of that catenary goes back to the 1930s. The signal system, these are almost 100-year-old systems, as Congressman Moulton touched on. So, if that is not repaired and brought up to standard, for us it is important to prioritize that. To upgrade the catenary and the signal system would be huge.

The other big bottleneck, as you know, is Portal North Bridge. And certainly, the chairman—we would love to have anyone from the committee come up. That is a huge bottleneck that within 2 years will be eliminated. And that is what this kind of funding provides us and Amtrak to do.

Mr. MENENDEZ. I appreciate you highlighting those points. It is why it is so critically important that we continue to provide robust funding for our State and regional partners as we continue to invest in rail.

I want to just switch quickly to commuter trends. Over the past couple of years, transit agencies across the country have been struggling with budget deficits. At the same time, we have also seen a large shift in commuter trends. And we know that more people are working from home, which means less folks commuting into work, which means less fares for public transit agencies.

Mr. Corbett, about how much of New Jersey Transit's budget relies on fare?

Mr. CORBETT. We rely on, for the operating budget, about 20 percent from Federal money. Our capital plan is over 40 percent.

So, again, our system, we don't—as you saw with Midtown Direct Service, and as Congressman Kean talked about, having our service—direct ride, one-seat ride into New York, when you do that, property values soar in the surrounding communities. We are a big boom of transit-oriented development. That generates tremendous wealth, but we don't capture that ourselves. So, even if we are running at a deficit, we are generating wealth for the whole economy. So——

Mr. MENENDEZ [interrupting]. But fares go into a large part of what your operating budget is. And so, if you have less fares, your operating budget is constrained because less people are using your services.

Mr. CORBETT. That is right, but we do see—on buses, we are back to pre-COVID levels. On rail we are about 80 percent. I think in the New York market particularly, people are not working Fridays. They say they are working from home. The jury is out on that. So, we do see that pulling down our average ridership. But weekend ridership, people are using a lot of weekends. So, the trend is ripe.

But, it was—you couldn't raise the fares during the pandemic, and now we are having—we are raising our fares, as you know. But we still need that Federal component to cover—help us——

Mr. MENENDEZ [interrupting]. Yes, I understand it is a challenging dynamic. I think that is what we all appreciate here, and we have talked about it with Secretary Buttigieg. As you see these new trends, it creates difficulty for planning purposes, operating purposes for public transit agencies, like all of yours. And Congress wants to be here to be helpful, especially this committee. And if you have ways that we can partner together to make sure that we create that funding on a go-forward basis so you have dedicated funding to make those capital improvements, to ensure that we have a quality of product that is a customer-forward product or commuter-forward product, that is what we want to do.

Just quickly, Mr. Noland, my in-laws live in northern Indiana, in Plymouth. So—and my sister-in-law lives in Chicago. So, I appreciate your work, as well as what all of you do, but New Jersey and Indiana is special for me. All right, thank you all so much.

I yield back.

Mr. NEHLS. The gentleman yields. I now recognize Mr. Ryan for 5 minutes.

Mr. RYAN. Thank you, Mr. Chair, and I appreciate the opportunity to waive in here on an important topic to my district. Thank you to everybody here. I represent the Hudson Valley north of New York City, so, sort of on the other side of—but have many of the same challenges as you do, Mr. Corbett, in New Jersey, being part of the Greater New York City metro area.

So, as you might imagine, the congestion pricing conversation is very much on the minds of my constituents who, along with me, are, frankly, very upset—I would say furious—over this plan. As I am sure you know, the MTA is rolling out what I think is an unfair, uninformed, and unacceptable congestion pricing plan which would charge, in my district, families up to $15 a day, up to $5,000 more a year, to commute to Manhattan.

The problem there is that this comes with no commitments to actually improve service in our system. So, you are asking my constituents to pay a lot more with no guarantees, nothing in the plan to upgrade service.

I know you all are sort of tangential to the MTA, but I wanted to sort of get your take on that. And really, as I understand your system, there are a lot more ride options, a lot more frequency. So, if you could give any advice to the MTA, and in my area in particular, and just talk about how you see that playing out.

Mr. CORBETT. Sure. Actually, your colleague, a friend of mine, Mike Lawler, his district, we actually provide service. We operate, I would say——

Mr. RYAN [interposing]. In Orange County, yes.

Mr. CORBETT. Yes. MTA——

Mr. RYAN [interrupting]. We appreciate that.

Mr. CORBETT [continuing]. Their best performance, the MTA is actually the service we operate for them west of Hudson. So, it is relevant.

Certainly, there are places in the world where congestion pricing has worked: Singapore, Oslo, London, whatever. But in this case, it really is just shifting the problem out without—and MTA is taking that money, but it is not going to benefit, for example, our west-of-Hudson MTA service, even. So, we need to share in that money if it comes, so that we can provide that service. And we need the capital investments to be able to get a one-seat ride from Orange and Rockland County through into Penn Station, New York. And right now, we are getting zero, and it is just pushing the pollution.

So, we were very disappointed, and Governor Murphy certainly is fighting, and I know Congressman Lawler is working with Congressman Gottheimer, for example, to really make sure that there is an equitable sharing of that funding, if indeed it does go through.

Mr. RYAN. And I appreciate you being direct, and actually letting the facts and the reality guide us, rather than some delusional plan, particularly in the outer boroughs.

And I do want to thank you. Orange County is about half of my district, so, you all operate that system. And most people don't realize that west of the Hudson River in New York State, there is no way to get to New York City without going through New Jersey, which, no offense to New Jersey, but just doesn't make a lot of sense. And the fact that zero dollars from this huge, multibillion-dollar plan are going to go to improve service to my constituents is incredibly frustrating, and, I think, a significant public policy failure.

So, I appreciate your continued partnership on this, and I look forward to working with you and others that, if we are going to force this through, which it sounds like they are going to try to do, I would like and will continue to push for investments in single-seat ride for west of the Hudson for my constituents and all the residents of the Hudson Valley.

So, that is the main topic that I wanted to bring up, and I appreciate everybody here and your commitment to all of our communities.

And I yield back, Mr. Chair.

Mr. NEHLS. The gentleman yields. I now recognize Mr. LaMalfa for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman, I appreciate it. Thank you, panelists.

Let me launch right in here. As a Californian here, we have been observing the debacle that the high-speed rail project has been for many years. It took several times on the ballot for voters to even have a crack at whether they wanted to decide to be bonded by $9.9 billion for the project that was told to be a $33 billion project. Now the real numbers are out, and it is well over $120 billion. The project needs at least $100 billion from some other source that is unknown. Private investment is not happening. They are not coming in unless you can guarantee your return, which is prohibited by the initiative that put it in place. So, you can't guarantee or underwrite high-speed rail systems.

So, Mr. Dech, I wanted to run this by you here. For what we could be doing instead of high-speed rail—I call it high-cost rail—in California, is local rail, commuter rail, using regular trains that would run a commute distance and adding to them—there has been a Sacramento to the bay area one—wouldn't we—for a lot more bang for the buck when we are talking—we are still short $100 billion—to invest that in private companies or other, more local possibilities, or enhancing local possibilities that we would have?

Mr. DECH. I think there is benefit to both. We are in a unique spot in south Florida, where we are witnessing both of those. So, we have our railroad, which is public transportation, commuter rail, and we run just a couple of miles away from Brightline. And you can see the advantages and disadvantages to both.

So, I have seen that where the private contractors and private entities can get things done very quickly, they don't have some of the restraints that we have when we are spending public money.

So, I do think that there is room in the pool for both of us, so we are both very successful in south Florida——

Mr. LAMALFA [interrupting]. Are you talking high-speed rail, or public——

Mr. DECH [interrupting]. Both. I think there is room for both. We see Brightline in Florida, they run not quite 200 miles an hour, but they are 125 miles an hour between Cocoa Beach and——

Mr. LAMALFA [interrupting]. Now, is that on conventional tracks?

Mr. DECH. Those are on conventional tracks, yes, sir.

Mr. LAMALFA. All right, because it is horrifically more expensive to do the high-speed-rail-type tracks that are capable of 220, the long, elliptical turns, and you have to just cut through communities and everything else on that basis. So, it is a lot.

Now, if you are talking something that is a lot more affordable like that, I would like to see more work—and that is kind of what I am talking about—more work done on up to 125-mile-an-hour rail on using conventional track and more conventional trains. That would be a fraction of the cost that we are talking about.

So, I've got to move quickly here. So, Mr. Kettle and Ms. Johnson, we are seeing more and more mandates in California on locomotives done by our—it is known as CARB, the air resources board. They are constantly ratcheting down numbers of what the emissions are allowed on locomotives. I see a bit, actually, on social media about Arizona is opposing it being forced on them, and even a national mandate emulating California.

I mean, I always tell people, don't do what California does, it will just cost you.

So, are you—Mr. Kettle, Ms. Johnson, are you aware of the rule being put in place by California on locomotive standards being continually ratcheted down and trying to implement new technology ? It might even end up being complete electric.

Mr. KETTLE. Congressman, this is Darren Kettle with Metrolink in southern California.

I will take this, Ms. Johnson, given that we are dealing with it real time.

Yes, Congressman. So, when CARB originally came out with their initial rule, we opposed it because we had concerns about technology being available for us to be able to run zero-emission locomotives. Over the course of the rule development, we negotiated a position to give us time to fully complete our fleet at Tier 4 locomotives, the cleanest burning diesel.

Mr. LAMALFA. Tier 4?

Mr. KETTLE. Tier 4.

Mr. LAMALFA. So, you get to keep diesel, you don't have to go to electric. Is that——

Mr. KETTLE [interrupting]. Correct. We will not have to go to zero emission for 25 years. It gives us the time, it gives the industry time to actually develop the technology to get to zero emission for push-pull locomotives.

Mr. LAMALFA. What do you expect that new technology is going to look like, batteries that last longer or——

Mr. KETTLE [interrupting]. Batteries or hydrogen, sir.

Mr. LAMALFA. Hydrogen?

Mr. KETTLE. Hydrogen or batteries. Those are the two zero-emission fueling sources that are out there.

Mr. LAMALFA. And let's say 20 years from now, when you start running up against that deadline and you are not anywhere close, kind of like CARB did in 1990, as I recall, what do you do then?

Mr. KETTLE. We are hopeful that when CARB sees that—if the technology does not exist at that point, they do have within their rule an analysis of the technology. So, at that time we will know more. But again, 25 years buys us some time.

Mr. LAMALFA. OK, thank you.

Sorry that didn't work out, Ms. Johnson. The 5 minutes flies by. Maybe someone else will open it up for you. But thank you.

Thank you all, panelists.

Mr. NEHLS. The gentleman yields. I now recognize 5 minutes to another valuable member of this subcommittee, Mr. DeSaulnier.

Mr. DESAULNIER. Thank you, Mr. Chairman.

And Mr. LaMalfa, this reminds me of our long debates on this issue 20 years ago, when we debated in the legislature about extension cords for battery-electric cars. I think you lost that debate.

But anyway, and as a former member of——

Mr. LAMALFA [interrupting]. The cord wasn't long enough, is what turned out——

Mr. DESAULNIER [interrupting]. Right, right. Anyway, I made a comment about I would be supportive of that for your district if the district had electricity, I think, which was unfair, but it got a good laugh.

Anyway, as a former member of the California Air Resources Board, I appreciate the—appointed by two Republicans and one Democrat, and the public health standards were held to under the Clean Air Act signed by Richard Nixon and the California Clean Air Act signed by Governor Ronald Reagan. So, more comment on how the Republican Party has changed vis-a-vis public health.

Mr. Kettle, I have a district in the San Francisco Bay area not dissimilar. I am very familiar with your challenges in the South Coast. Long commutes, I think, between L.A. and the bay area. We have over half of the mega-commutes in the country, 2 hours or more as people go further away.

So, in that context, in many years of trying to figure out how our investments in California—very car culture—in transit, in commuter, intercity and intracity rail, and high-speed rail, and the challenges of peak trips—so, when I was on the MTC we had an agreement in one of our RTPs that we would reach 10 percent of our peak trips. I think we got as high as 6 percent, as opposed to London, 90 percent. New York, I think, is 20 percent, which is the best of the United States.

So, when all of us deal with these issues about land use and transportation—and the 405 in West L.A., and induced demand, and how those HOV lanes were filled up like this, we know we have to invest in this. And I very much appreciate the comments in this hearing, because we know that, exurban, suburban, urban.

But what has changed in the last few years is what has happened to the economy. Certainly in the bay area, where we are going through layoffs in Silicon Valley and San Francisco, we probably have close to 40 percent vacancy in downtown San Francisco.

For my commuters 25 miles east of that, they—particularly people who are in the tech industry and can do it—remote work. So, we have a great opportunity.

And of course, not to bore the rest of you with Prop 13 and initiatives and municipal revenue and transportation revenue in California, but how do you see your challenges, just when we were starting to attract more people into traditional peak commutes that would make that farebox recovery and make more discretionary opportunities for your governing board?

This is a wonderful opportunity, but it is fraught with risks and challenges. So, how do we take advantage of this, not punish people to make them start to go back into work and the employer doesn't pay for that commute time?

In California, we rely predominantly on sales tax, which is regressive. So, this is the wonderful opportunity in areas like yours and mine, but it is fraught with challenges.

Mr. KETTLE. Thank you, Congressman DeSaulnier. Good to see you again, sir.

Yes, so, in southern California right now, the peak has changed. Four years ago, the world changed. In Los Angeles, our major urban center where jobs had been plentiful and vacancy rates were low, we are at about the same as the San Francisco Bay area and the San Jose area, where, again, two markets that had large peak commute periods.

The other thing that has really changed is that the peak has changed. What used to be this 9 o'clock in the morning or 8 o'clock in the morning to 5 o'clock in the afternoon is fundamentally different. So, we are looking at how do we reimagine who we are to provide train service at different times of the day into the evenings and on weekends, because it can't just be about that commute. And so, that's our push.

It is not for the faint of heart to look at some new concepts about how we are going to change how we do our business, but I think it is critical. It is going to be the only way that we are going to stay sustainable, because we know continuing business practices the way they are today, just looking at the standard peak, that's not sustainable long term.

Mr. DESAULNIER. Just briefly, we know that density is very important in modeling around the world. So, getting those peak trips and reverse peak trips and getting higher density around your hubs and transit-oriented development, could you respond to that?

Mr. KETTLE. I completely agree the density is important. But again, in southern California, where affordable housing is in the outlying areas, and we still have essential workers that need to get to urban areas, we have got to make sure we are getting to some of those less dense areas, as well.

Mr. DESAULNIER. Thank you very much.

Mr. KETTLE. Thank you.

Mr. DESAULNIER. I yield back.

Mr. NEHLS. The gentleman yields. We are going to go to a second round. Mr. LaMalfa has other questions for you, so, we are going to do that.

So, Mr. LaMalfa, a second round. Go ahead, sir.

Mr. LAMALFA. Thank you. I just have a retort, too, for my great colleague from the bay area there. The Republicans didn't leave those pieces of legislation that Reagan and others have signed. They left us, OK? They have been weaponized for 50 years and turned against us in court decision on court decision. We are still all-in for those positive things. But at this point, you can't even hardly make a move to do simple things.

And as far as the electricity going all the way up to my area, it is getting harder when the enviros tear out my hydroelectric dams up on the Klamath and don't replace the electricity. So, yes, we do look like we are less electrified.

So, anyway, but he is my good pal. I am not—this is fun banter here. Anyway——

Mr. DESAULNIER. We have a comedy routine. Bear with us.

I respect your reference to Senator Jeffords.

[Laughter.]

Mr. LAMALFA. OK. Thank you, panelists.

And Ms. Johnson, I am going to throw that question back to you I had a little bit earlier on the CARB and the technology and the locomotives, et cetera, that we were talking about.

Ms. JOHNSON. Yes. Thank you very much, Congressman. I would like to state for the record I was previously in California, recognizing I am in Denver, Colorado.

And so, to Mr. Kettle's point that was raised relative to having more or less a 25-year exemption, recognizing that CARB had originally put forward the Innovative Clean Transit regulation for 2040, I don't feel as I could opine, recognizing that I run the agency in Denver, Colorado, as it relates to where we are currently.

Mr. LAMALFA. OK, OK. Thank you. Back to Mr. Dech.

When we were talking about local lines, commuter rail, and such, I have been interested a long time, especially as we suffered with the super high costs and massive delays on California's high-speed rail. And I guess if there is good luck in Florida and they are paying for it themselves, great. I don't begrudge anybody doing that and having it economically working out.

But how much more can we benefit from 125-mile-an-hour trains on regular tracks, and what would it take to raise our infrastructure, our, you know, rail, the track condition to be suitable? How much potential is there for a lot more 125-mile-an-hour tracks in any given area around the whole country, or regionally, what have you?

Mr. DECH. So——

Mr. LAMALFA [interrupting]. And is that a good way to be able to achieve higher speed without having the hyper-expensive high-speed rail?

Mr. DECH. So, I will preface this by saying I am by no means an expert on high-speed rail, but I do know that once you start getting to those speeds, you really have to worry about your grade crossings. So, the biggest concern for me is going at any higher speeds than that is grade separating and making sure that you don't have the road crossings. When you have a train going 125 or 200 miles an hour, those grade crossings become critically important. And that is where you really get that cost factor that goes in with raising those, is that you are separating from your conventional road crossings.

Mr. LaMalfa. And if you are talking rural areas, can you possibly build enough split-level crossings through fields and farmland and all that stuff?

Mr. Dech. With enough money, anything is possible.

Mr. LaMalfa. Well——

Mr. Dech [interrupting]. That is the answer to that. It's an investment.

Mr. LaMalfa. Well, every crossing, I hear, is about $40 million. In California it's probably double that at $80 million. And I don't know if you can do that on every little small bird like I have in my district. And we certainly can't be taking away all these crossings because they are critical to small towns and ag areas.

But overall, do you see much potential for—instead of being hell bent on 220-mile-an-hour, hyper-expensive, is there a lot of potential for 125-mile-an-hour conventional tracks to be able to kind of fit that need for higher speed that people seem to be looking for?

Mr. Dech. I think it depends on the area and the service and what you want. If you are looking at—like, in particular, the Brightline West that is going to go from Los Angeles to Las Vegas, the business model is to get you there faster than a car in a high-speed train. So, that is a private entity making that investment that they can do that. So, I do believe that it is a matter——

Mr. LaMalfa [interrupting]. Yes, unfortunately——

Mr. Dech [continuing]. Of what the customer——

Mr. LaMalfa [continuing]. It started out as a private concern, and then recently, I think, $3 billion of Federal money got dumped in on that. I was very disappointed in that because it was touted as being private the whole time.

Does anybody else on the panel want to touch on that 125-mile-an-hour rail topic?

Sir.

Mr. Corbett. The only thing I would say, in New Jersey, with the dense population we are running with Amtrak, one of the things is not just hitting a certain X number of miles per hour, it is the whole trip. So, if you are doing 160 miles an hour, but then you have got to slow speed because you have ancient infrastructure that you have a temporary speed restriction doing 60 or 35 miles, it sort of obviates it. So, it is the whole system from A to B to make sure that you can keep a steady higher speed than necessarily be the top, the Shinkansen or whatever kind of speeds.

Mr. LaMalfa. Yes. I mean, I focus on 125 because that seems to be where it becomes a quantum jump into rail technology that has to be hyper more expensive.

So, Mr. Chairman, I appreciate your extra time. I yield back.

Mr. Nehls. The gentleman yields. Are there any further questions from any members of the committee?

There being none, this concludes our hearing for today. I would like to thank each and every one of you. The first hearing, I guess, we have had in this subcommittee for commuter rail in 20 years. So, job well done. Great dialogue today.

The committee stands adjourned.

[Whereupon, at 11:54 a.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Statement of Fred Craig, Chair, Association for Innovative Passenger Rail Operations, Submitted for the Record by Hon. Troy E. Nehls

I am Fred Craig, Chair of the Association for Innovative Passenger Rail Operations or AIPRO. (*See Addendum #1—About AIPRO*) I also serve as Chief Operating Officer of Transdev Rail in North America. On behalf of AIPRO we appreciate this opportunity to present testimony to this Subcommittee on the potential future of passenger rail in the United States.

THE CASE FOR THE COMPETITION MODEL ON COMMUTER AND INTERCITY CORRIDORS

The prior witnesses at this hearing have made a compelling case that competitive selection of operators and service providers is a valuable option when selecting partners for their services. These commuter agencies are the primary customers for our AIPRO operating members, which are Herzog, Keolis, Transdev and RATPDev. It should also be noted that two Rail Labor Organizations the Brotherhood of Railway Signalman and the Brotherhood of Maintenance of Way Employees are active AIPRO members.[1] Developing strong partnerships between these agencies and our service providers and rail labor has been the key to efficient and successful operations.

While this hearing is not focused on the intercity corridors, the witnesses from SFRTA and RTD presented a compelling case that having qualified firms bid for their services is the model that works best. In this written testimony, we argue that the ways commuter agencies select operators though through competitive processes provide excellent models for expanding the current and future intercity rail market. The substantial number of FRA Corridor Identification and Development (CID) projects now in process make the competitive model completely feasible.

Our primary AIPRO objective is to maintain the forward progress on competition in the commuter arena while at the same time building a similar framework for implementation of FRA CID intercity corridors across America. Today, states/authorities sponsoring intercity projects have two clear options. One—they may select from the Competitive Models currently used by commuter agencies which have been so well articulated in this hearing. Two—they may stay within the Traditional Amtrak Model which has been the dominant method of contract partnering between the states and operators for the last half century. We encourage the Competitive Model to be applied to both the commuter market and state supported intercity CID corridors where appropriate. In fact, there is minor difference in the basics of commuter rail operations, under FTA authority for financial support, and state supported intercity operations, largely under the authority of FRA. Both rail services are regulated for safety under the FRA regime. As Chairman Nehls said, at the opening of this hearing, "*private sector providers help lower costs, improved services, and increased ridership*." In this regard the extensive expertise of the established commuter agencies and their private sector partners could be of immense value in the emerging world expanding intercity rail corridors. The question is how to make it all work together?

The issue of creating a better future for passenger rail falls squarely within the jurisdiction of this Subcommittee. Since the 2008 PRIIA Act, Congress has laid the foundation for a competition model on intercity corridors. (*See Addendum #2—Congress Encourages the Competitive Model on Intercity Corridors*.) With the oppor-

[1] In addition to AIPRO passenger rail contract operators, the Railroad Cooperation and Education Trust (RAILCET), representing unionized rail construction contractors, is also a proponent of the competition model for expanding commuter and intercity passenger rail service. RAILCET is comprised of two building trade unions, LIUNA and IUOE and thirty rail contract companies with whom they have a national agreement.

tunity created by the Bipartisan Infrastructure Law it is time to accelerate this pro-competition trend.

As re-authorization time approaches, we propose your committee pursue a targeted re-arrangement of railroad passenger law to more effectively build a robust and cost-effective rail passenger network that better maximizes the benefits of commuter operations and the expanding CID intercity corridors. The legislation should encourage competition for operations and services in both arenas. In this testimony we will identify specific issues we believe should be addressed.

THE COMPETITIVE DIRECT ACCESS MODEL FOR FRA CID PROJECTS

Compared to many regions around the world, America's intercity passenger network is lacking in many ways. While our country has neglected its national rail passenger system, the developed world has created an amazing web of high speed and high-performance rail passenger service. Now, we are at an inflection point in America. The Bipartisan Infrastructure Law or BIL has appropriated significant funding and created a process that gives us new hope. Can we bring home the dream in the next round?

We suggest BIL's FRA Corridor Identification and Development Program (CID) is the pathway to constructing a high-performance intercity passenger network. While advancing high speed rail and long-distance corridors are important, we suggest a primary early objective should be a massive commitment to city-pair corridors under 750 miles. A strong framework is already in place. States and localities must commit to managing the projects and subsidize the operations. For the first time states have significant federal-state partnership grants available for capital related projects. As the CID pipeline progresses, FRA can become an integral partner and guide implementation of the national program. Currently there are thirty state supported routes with sixty-nine new projects being studied through FRA funding. This model is roughly akin to the Federal Highway Program with federal oversight and significant funding. This is appropriate.

The Competitive Direct Access Model. Federal law clearly permits alternative passenger operators and service providers to become partners with states/authorities in developing intercity corridors under 750 miles. However, since Amtrak has been the only game in town for a half century, it takes a new platform to introduce the competitive model. AIPRO is collaborating hard with stakeholders and is developing a model based on commercial principles and permitting competitive options for selecting passenger rail operators and service providers. We call this the Competitive Direct Access Model. This provides the states with both the Traditional Amtrak Model and the alternative Competitive Direct Access Model for expanding and managing their intercity corridors under FRA guidance.

Our Direct Access Model eliminates statutory operator preferences over track owners. Access, metrics, and standards, including on time performance, are negotiated legal contracts. The Model will encourage competition for services and require early expressions of interest from potential operators and service providers on any given project. It will also incorporate fair labor practices designed to produce good jobs. The goal is a streamlined process.

We do not underestimate the difficulty of the task ahead. The Traditional Amtrak Model has pretty much been the sole method for contracts between the states and an operator on an intercity corridor. It excludes the competitive option. The Competitive Direct Access Model opens the market to alternative operators and service providers. For the last year, AIPRO and its allies have been developing a pragmatic template for this innovative approach. It is based largely on previous work by a Class 1 railroad and has been used effectively in the commuter arena. It has been adopted by the Chippewa Rail Commission which proposes a new Corridor ID service.

- The Competitive Direct Access Model is designed under current law and needs no statutory change (*See Addendum #3—Moving to the Competition Model*)
  - *On-Time-Performance Metrics and Standards*. It positions projects through commercially negotiated access as well as metrics and standards including on-time performance.
  - *Competition Test*. States/authorities will be encouraged to adopt a formal two-step procedure to evaluate the market for a competitive option. The Step 1 planning stage will include a simple solicitation of expressions of interest to determine the viability of a competition. Assuming there is interest, Step 2 in the project development stage will include more formal Expressions of Interest and then later in the process Requests for Proposal. The entire Direct Access Model needs to be streamlined to assure the delivery of equipment at the appropriate time in the implementation cycle.

- *Fair Labor Practices*. Achievement of fair labor practices that will produce good paying jobs while creating flexibility to achieve success in new vulnerable corridor operations.
- *Streamlining*. This process will be designed to not add any additional time to make a project operational. The competitive option will run concurrently with other project activities such as construction and equipment delivery.

Again—we are advancing the Direct Access Model framework under current law.

LOOKING TOWARD A NEW AUTHORIZATION—WHAT SHOULD CONGRESS DO?

With a new BIL authorization on the horizon, we suggest a restructuring of the passenger rail law is in order. Here are a few areas that we believe would create a good result.

- *Promotion of a pro-competitive policy*—Legislative provisions should proactively promote passenger rail innovation and competition.
  - ° The statute should require a competitive method for selecting rail service operators as a condition of grants where practicable.
    - ° Specific rail programs should require competitive criteria for applicant states and local agencies.
    - ° The process should include a requirement for simple Expressions of Interest in the planning stage to evaluate the competition option.
  - ° PRIIA Section 301 grant competitive requirement should be referenced in the criteria. States can select Amtrak or an Operator without a competitive process if they meet the following PRIIA 301 test—If the State/Authority does not select the operator competitively it must "provide written justification to the secretary showing why the proposed operator is best, taking into account price and other factors and that the proposed operator will not unnecessarily increase the cost of the project."
- *Infrastructure and Equipment Funding*. There should be a sustainable funding source available to major providers of rail service on a fair basis including commuter agencies and states/authorities sponsoring passenger rail.
  - ° Commuter agencies should have access to the CRISI.
  - ° Federal grants should have set-asides to build state capacity to manage state supported routes.
  - ° The federal-state partnership program should be available exclusively to the states and authorities sponsoring corridor development.
    - ° Grants available to states/authorities should *not* be available directly to competing operators including Amtrak or Private Operators such as Brightline, Herzog, TransDev, RATPdev or other operators or service providers.
  - ° Equipment and Liability—The legislation should address the insurance shortfall and create an adequate equipment pool available directly to states and commuter authorities.
- *Amtrak Reforms*—The political reality is such, it will undoubtedly be necessary to maintain Amtrak's statutory privileges including access and metrics and standards. These should increasingly become a fallback last resort. Wherever possible the tilt should be to the competitive model.
  - ° Amtrak should not have statutory privileges that increase their power over commuters or other publicly funded agencies. They should deal on a commercial basis as equals. STB should be given clear authority to mediate and resolve disputes between Amtrak and commuter agencies.[2]
  - ° Amtrak Operations should be separated from other functions and made an independent entity with transparent accounting and accountability. The planning functions should be separated as an independent office or transferred to FRA. A level playing field should be created between Amtrak operations and alternative operators and service providers with whom Amtrak will compete.
- *Insurance and Liability*—There should be a complete review on liability and options for coverage of both commuter and state supported rail operations. (*See Addendum 4—Insurance and Liability*)
  - ° The Commuter Rail Coalition proposal for an additional year to secure insurance when the federal cap is increased should be adopted.
  - ° Options for reform including pooling arrangements should be pursued.

[2] Indeed, the new STB Passenger Rail Advisory Committee (PRAC) may prove instrumental in making recommendations to the Board and Congress on how best to use the STB capacity and experience in developing a pragmatic competition platform for expansion of intercity corridors.

- *Equipment*—How can the many needs of the emerging state supported corridors be met? Amtrak cannot efficiently meet the growing requirements of the states and/authorities for the 69 CID corridor projects. Assorted options, including an FRA equipment pool available to states/authorities should be reviewed in the coming months.

Finally, AIPRO would ask this Subcommittee to consider a future hearing on the legislative ideas we have put forward as well as those from other stakeholders. Our immediate goal is a package of reforms that will streamline relations between the FTA oriented commuter world and FRA CID intercity corridors to produce the most cost-effective alternative to produce a high-performance rail passenger network across America.

Thank you!

ADDENDUM #1—AIPRO AND ITS MISSION

About AIPRO. We are an alliance of independent operators, labor organizations and associates dedicated to advancing innovative passenger rail operations in the United States. The organization is made up of passenger rail professionals including operators, labor, rail construction contractors, consultants, and other stakeholders. We share the goal of a transparent and competitive marketplace. The Board is composed of Transdev; Keolis; Herzog; RATPDev; BRS–BMWE (rail labor) and McGrath Rail (rail construction). Our Associates include Direx Consulting and Safe Track. For more than a decade AIPRO has pressed its goals in a low-key fashion. We believe we are now poised to make a significant contribution to the creation of an American high performance passenger rail network.

Today the AIPRO companies play a significant role in the American passenger rail space. In 2019 Amtrak carried about thirty million passengers while the AIPRO companies carried eighty million passengers. Certainly, all passenger rail took a terrible hit in the pandemic. In 2020 Amtrak carried 16.8 million passengers, a 47.4% decrease and the commuter world saw a similar decline. However, ridership is coming back. In 2023 Amtrak carried twenty-eight million passengers. Commuter operations are seeing a similar rebound. In 2023 AIPRO companies carried about 65.5 million passengers by rail in the US (Transdev 2.1 million; Herzog 17 million; Keolis 30 million; RATPDev 15.4 million).

Globally and in America our members compete fiercely against each other. They run everything on the rails from streetcars to high-speed trains. Internationally my company Transdev carries over 608 million passengers a year. Keolis carries about 470 million passengers. RATPDev passenger count totals a whopping 1.5 billion annually. Together our members transport about 2.6 billion passengers by rail each year. This is the equivalent of carrying every American citizen 7.8 times a year.

AIPRO members have incredible experience and a great deal to offer. We are anxious to contribute to the creation of an American high performance passenger rail network in the coming decade.

ADDENDUM #2—CONGRESS ENCOURAGES THE COMPETITIVE MODEL ON INTERCITY CORRIDORS

In the late 1950s and 1960's passenger service operated by freight railroads collapsed. Amtrak was organized in 1971 as a federally controlled entity that would be managed as a "for profit" corporation that would receive taxpayer subsidies. It was given a monopoly over intercity passenger train operations as well as special privileges including forced access to freight rights of way at incremental cost and a metrics and standards priority to be enforced at the Surface Transportation Board. At that time no viable passenger operators were on the horizon.

Over the last half century times have changed. There is now a robust group of independent passenger rail operators that run tens of thousands of trains in the United States and carry 2.6 billion rail passengers internationally. How did this happen? Toward the end of the 20th century new commuter agencies moved to the model of competition for operations and the current AIPRO members became principal players.

By the end of the last century, Congress began to nudge intercity passenger rail in the direction of a competitive model. It began to recognize the growing diverse marketplace for expanding passenger rail operations and services. By 1997, Amtrak had received more than $20 billion in federal funding and there was no end in sight. Recognizing the growing number of passenger rail operators in the commuter field, Congress repealed the prohibition against alternative passenger service providers operating over intercity corridors without Amtrak's consent.

In the PRIIA Act of 2008, Congress strengthened the role of the states to manage all intercity corridors under 750 miles. PRIIA, Section 301 added a new requirement that compelled state grant applicants to use a competitive process in the selection of an operating partner. Further a predecessor Coalition to AIPRO (Herzog-Transdev-NRC) negotiated a provision, also included in PRIIA Section 301, to protect rail labor rights on these intercity corridors in the event there was an operator change from Amtrak to an independent operator. Thus, the rail unions became agnostic as to the operator, and in some cases, are now in active support of the Competition Model being developed by AIPRO.

PRIIA 2008 encourages intercity passenger service.

- Section 209—States, not Amtrak, were made fully responsible for operating losses on the state supported routes under 750 miles.
- Section 301—Established a grant program for the states. Unfortunately, for assorted reasons, the 301 grants were smothered in the bureaucracy cradle.[3] However, these grants available to states were revived in a big way in the Bipartisan Infrastructure Law (BIL) and other FRA grant programs.
- Section 301—*Requires that as a condition of grants, states are to select operators competitively. If a state does not, "it shall provide written justification to the secretary showing why the proposed operator is best, taking into account price and other factors and that the proposed operator will not unnecessarily increase the cost of the project." AIPRO believes this to be a critical provision that should be strengthened in the next authorization and fully applied by FRA.*
- Section 217—Provides that states selecting alternative operators shall have access to Amtrak facilities, equipment & services with STB binding arbitration. This provision has never been assessed but could become important.[4]
- Section 305—Provides states with responsibility for and access to Next Generation passenger cars.
- Section 205—Created an Alternative Passenger Rail Service Pilot Program. Again, this program failed in the implementation and should be revisited.

The FAST Act of 2015 strengthened the PRIIA provisions promoting competition and enhancing the role of states. Then came the Bipartisan Infrastructure Law (BIL) signed into law in November 2021. In total it appropriates about $1.2 trillion over 5 years for transportation and other infrastructure. It appropriated about $39 billion to improve transit and $66 billion primarily for intercity passenger rail. Much of this intercity funding is available through the Federal State Partnership for Intercity Passenger Rail Program. Here both the states and Amtrak are eligible for these grants. This includes $36 billion in advance appropriations. Throughout the BIL the option to pick alternative operators for intercity corridors is fully protected.

ADDENDUM #3—MOVING TO COMPETITION MODEL

Progress to Date. In the pre-pandemic world Amtrak pressed for a $75 billion trust fund giving Amtrak all the money and the authority to manage all intercity passenger rail development. This would have provided complete control over intercity passenger operations. The infrastructure law, drafted by a bipartisan group in the Senate, rejected that approach. It placed FRA in charge of design and funding of the intercity passenger rail network outside the Northeast Corridor. It provided states with substantial funding for the first time ever, primarily through the Federal-State Partnership Program. It is specifically agnostic on the choice by sponsoring states/authorities of contract operators and service providers. Thus, either Amtrak, an alternative service operator or a combination can become the contract partners who operate the passenger service in the intercity corridors.

Specifically, the BIL:

a. *Puts the Federal Railroad Administration in complete charge of developing the intercity passenger network* outside the NEC through the new Corridor Identification and Development program (CID). This creates a system of partnering between states, contract operators and service providers (which may or may not include Amtrak), and FRA. These operating partnerships then enter the CID funding pipeline. AIPRO is convinced that vigorous competition for the partnering role will bring a high-performance rail network to America.

[3] The Obama High Speed Rail appropriation pumped nearly $11 billion into rail projects outside the PRIIA 301 framework. The PRIIA grants then died for lack of an appropriation.

[4] Again, this should be an appropriate issue to be reviewed by the STB's new Passenger Rail Advisory Committee.

b. *Provides significant grant funding to the states for the first time*. Through the Federal-State partnership and other grant programs states now have access to more than $66 billion over the next five years. The USDOT Build America Bureau (BAB) currently has about $110 billion in soft money to lend.

c. *Provides two clear options for the state/authority CID grant applicants to choose operators and service providers in these emerging corridors*. First, of course, states can deploy the Traditional Amtrak Model and keep Amtrak as the exclusive partner. Or states have the alternative option to choose partnering corridor service providers competitively. In many cases, given the long history, Amtrak will be the logical partner. They clearly have an essential role in the future of intercity passenger development. But—there will be circumstances, particularly on new routes identified under the CID program where the competitive model will make the most sense. That will be the sweet spot for AIPRO. We are working to refine that competitive mechanism which we are calling the Competitive Direct Access Model.

ADDENDUM #4—INSURANCE AND LIABILITY

This is a complicated and critical arena. An insurance solution must be built into the Direct Access Model so that the cost of claims does not sink the benefits of competition. AIPRO is looking at a range of options for the emerging intercity corridors. This includes everything from property-by-property insurance coverage on the Commuter model to pooling arrangements, likely through the USDOT, and "nuclear type" coverage. We believe the liability issue needs to be addressed legislatively in reauthorization.

The liability regime in 49 U.S.C. § 28103, with the ever-increasing federal cap, makes it extremely difficult for commuter authorities or states to obtain adequate coverage. The per incident liability cap is expected to reach $397 million in 2026. Increased exposure and a shrinking rail insurance market threatens the future of passenger rail.

Amtrak has tools to address these liability concerns across intercity passenger routes. Given its direct federal subsidy and special statutory protections for self-insurance, Amtrak gets a "head start" on the cost of claims. Some states/authorities with their private operators in the commuter arena have found ways to "skin the cat" on liability—but none are as simple or cost-effective as Amtrak's federal support and captive off-shore insurer. On intercity operations, this has already been accomplished on the Hartford Line as well as the Brightline operation in Florida. We believe similar arrangements can be crafted on the FRA Corridor ID expansions. We are optimistic that liability coverage can be arranged for the emerging intercity corridors as it was on the Hartford Line and Brightline.

To that end, Congress should work to re-level the field. Here are some options:

(1) Requiring Amtrak to offer coverage to any intercity operator or state sponsor through its Passenger Rail Insurance Plan with fair and reasonable terms and conditions. Disputes could be resolved by the Federal Railroad Administration or the Surface Transportation Board.

(2) Enacting a statute that would permit states to extend their sovereign immunity to intercity passenger rail operators by contract.

(3) A USDOT solution. The Build America Bureau programs (RRIF) could be used as a backstop. In another alternative, FRA could provide a federal "match" (akin to the federal appropriation to Amtrak) to a risk liability pool for intercity commuter rail operators or state participants that would also contribute and obtain coverage through that pool; or

(4) Eliminating Amtrak's "head start" by requiring Amtrak to obtain a bona fide third-party policy—without "self-insurance" and Passenger Rail Insurance Ltd.

Statement of Stephen Gardner, Chief Executive Officer, National Railroad Passenger Corporation (Amtrak), Submitted for the Record by Hon. Seth Moulton

INTRODUCTION

As Amtrak's Chief Executive Officer, I am pleased to submit this statement for the record following the House Railroads Subcommittee's April 17 hearing entitled "Getting to Work: Examining Challenges and Solutions in the Commuter Rail Industry." I thank you for giving me this opportunity to share Amtrak's views on the important issues discussed at the hearing that affect Amtrak.

AMTRAK AND COMMUTER RAILROADS

As the testimony at the hearing indicated, until the COVID–19 pandemic, commuter rail service was experiencing a renaissance, with many new services added and significant expansion of existing services. Amtrak, working in conjunction with our commuter and state partners, has played a major role in that renaissance.

Amtrak is the largest host railroad for commuter rail service in the United States. Since we acquired most of the then decrepit Boston-to-Washington Northeast Corridor (NEC) from its bankrupt private railroad owner in 1976, investments to increase NEC capacity and upgrade infrastructure have allowed the number of commuter trains operating over the NEC to more than double. In addition to increasing trains on existing commuter rail services, Amtrak has accommodated many new and extended commuter rail services on the NEC, the busiest railroad in the United States; Amtrak's Hartford Line between New Haven, Connecticut and Springfield, Massachusetts; Amtrak's Keystone Corridor between Philadelphia and Harrisburg, Pennsylvania; and at Amtrak's Chicago Union Station, where the number of commuter trains has also increased enormously since Amtrak acquired control. Each weekday, approximately 2,000 commuter trains of 10 commuter authorities and state departments of transportation operate over the Amtrak-owned and operated portions of the Northeast Corridor and on Amtrak-owned trackage in Chicago.

We are far from finished with adding commuter rail service on Amtrak-owned lines. Construction to accommodate new Metro-North Railroad service between New Rochelle and New York Penn Station on Amtrak's Hell Gate Line, one of the few segments of the NEC without commuter rail service, is currently underway. The Hudson Tunnel, on which we expect construction to begin next year, and other transformative infrastructure investments that are part of the Gateway Program that will double capacity between Newark, New Jersey, and New York City, will allow passengers on NJ Transit's Raritan Valley Line and other NJ Transit lines who must currently change trains to reach New York City to enjoy a one-seat ride directly into New York Penn Station.

In addition to infrastructure access, Amtrak also provides railroad operations services to commuter railroads around the country. As noted at the hearing, Amtrak is one of the seven full-service operators of contract commuter rail services in the United States. Unlike most of the other operators, we are a U.S.-based company and all of our non-management employees who provide commuter rail services are members of one of our 15 labor unions and councils. We operate the Maryland Area Regional Commuter (MARC) Penn Line service between Washington, D.C., and Baltimore and Perryville, Maryland; the Metrolink service provided by the Southern California Regional Rail Authority (SCRRA) in the Los Angeles area; and the Connecticut Department of Transportation (CTDOT) Shore Line East service between New Haven and New London, Connecticut.

All of these commuter rail services have experienced tremendous growth since Amtrak began operating them. For example, the number of weekday MARC Penn Line trains has increased from six when Amtrak became the operator in 1983 to 57 today. We also provide equipment maintenance services for MARC, CTDOT, Sound Transit's Sounder commuter rail service in the Seattle area, and the Central Florida Commuter Rail Commission for the SunRail commuter rail service in the Orlando area, as well as some services for the Virginia Railway Express service in Washington, D.C. and NJ Transit.

AMTRAK'S STATUTORY ACCESS RIGHTS

Amtrak strongly favors collaboration rather than an adversarial approach in all of our dealings with stakeholders. We were therefore disappointed that we did not learn of the proposals of the Commuter Rail Coalition (CRC) to diminish Amtrak's statutory access rights for operation of our trains over commuter railroad-owned lines from CRC itself. Instead, we found out about CRC's proposals when the Surface Transportation Board (STB) posted on its website an ex-parte letter CRC sent to STB members last December.

CRC's letter urged that commuter railroads, and other railroads not relieved of obligations to provide intercity passenger rail service by the Rail Passenger Service Act of 1970 (RPSA) that created Amtrak, "be treated differently" by the STB should Amtrak seek access to their lines. The letter ignored the fact that the pertinent statutory language, codified at 49 U.S.C. 24308, applies equally to all railroads and commuter rail authorities, as the STB and its predecessor, the Interstate Commerce Commission (ICC), have repeatedly recognized. At the Subcommittee's recent hearing, one of the witnesses representing CRC urged that commuter railroads be given a complete veto power over the operation of Amtrak trains on their tracks, stating that commuter railroads "should not be ... forced to provide access to Amtrak trains, absent a mutually acceptable agreement."

The testimony at the hearing by witnesses representing CRC made it clear that CRC has a fundamental misunderstanding of Amtrak's statutory access rights.

First, Amtrak trains do *not* have statutory preference or priority over commuter trains. Section 24308(c) of title 49 gives Amtrak trains only "preference over *freight transportation*" (emphasis added).

Second, the statutory provisions that govern Amtrak's access to freight and commuter railroads *already require* what CRC's witnesses claim it is seeking: "good faith negotiations" before a dispute can be brought before the STB and "protect[ions] when Amtrak seeks to exercise its [rights]." The STB and ICC have always interpreted 49 USC 24308(a), which gives the STB jurisdiction if Amtrak and a host railroad "cannot agree," as requiring good faith negotiations before a dispute can be brought before them. The parallel statutory provision that governs STB resolution of disputes regarding commuter railroad operations over Amtrak-owned rail lines, 49 U.S.C. 24903(c)(2), contains a virtually identical requirement that the parties must "not agree" before the STB's jurisdiction can be invoked.

Section 24308 already provides numerous protections for all host railroads when Amtrak seeks an STB order allowing it to initiate or continue operations over their lines. For example:

- Section 24308(a)(2)(A) empowers the STB to issue orders granting Amtrak access only if the STB finds that is "necessary to carry out" the purposes of Amtrak's governing statutes.
- Section 24308(a)(2)(A)(ii) requires the STB to "prescribe reasonable terms and compensation." The STB has held that Amtrak's payments must compensate the host railroad for all incremental costs attributable to Amtrak's operations, and that Amtrak (or its state partners) may be required to provide funding for capital investments to increase rail line capacity, or to upgrade tracks and other infrastructure, to accommodate new or additional Amtrak trains if the Board deems this necessary.
- Section 24308(a)(2)(B) authorizes the STB to award compensation in excess of incremental costs that is based upon quality of service, as the ICC and STB have consistently done.

Given these safeguards, there is no basis for any of the major changes in and exceptions to Amtrak's longstanding statutory access provisions that CRC is seeking. Nor is there any factual support for CRC's purported concerns that Amtrak will run roughshod over commuter railroads to force its way onto their lines. As the testimony at the hearing indicated, Amtrak has made no attempt to do that. Moreover, under the Infrastructure Investment and Jobs Act (IIJA), the United States Department of Transportation, acting through the Federal Railroad Administration (FRA), is tasked with leading efforts to expand and increase intercity passenger rail service. The FRA-led Corridor Identification and Development (Corridor ID) Program the IIJA established will determine what corridors will be prioritized and awarded FRA grants for infrastructure and other capital investments required to accommodate new or increased service. The addition of new short-distance (under 750 miles) routes and trains will also continue to be dependent upon state funding support. What this means is that FRA and states, rather than Amtrak, will play the lead role in determining where expansion of intercity passenger rail service will occur.

In the 53 years since enactment of the RPSA, Amtrak has brought only seven cases before the ICC or STB seeking access to a railroad's lines for new or rerouted services. None involved a commuter railroad. The only case under what is now Section 24308 in which a commuter railroad was a party pertained to compensation for the operation of existing Amtrak services.

While Amtrak has reached negotiated agreements with host railroads in the vast majority of cases in which it has added new routes or trains, Amtrak's statutory access rights are absolutely essential. If they no longer applied to *all* freight and commuter-railroad owned lines, a single railroad that owned just a couple of miles of track on a route could arbitrarily preclude Amtrak from initiating a new service, or force Amtrak to discontinue service on an existing route when the contract governing Amtrak's operations expired. Twelve of Amtrak's 15 long distance routes, and many of its state-supported supported routes, operate in part over commuter railroads or on railroad lines that in 1971 were owned by railroads not relieved of their intercity passenger rail service obligations.

Finally, there is no basis for special treatment for commuter railroads when it comes to compensation for Amtrak's operations over their lines. All of the commuter railroad-owned lines that Amtrak operates over were acquired by their present owners *after* Amtrak was created in 1970, with full knowledge of Amtrak's statutory rights. It also bears noting that, outside of the NEC, state-supported trains primarily funded by Amtrak's state partners account for nearly 85% of Amtrak train miles on commuter railroads. This means that states would have to provide funding for the vast majority of the additional compensation that CRC seeks for its members. We see no reason why Amtrak and our state partners should be obligated to pay more merely because of changes in the ownership of rail lines over which our trains operate, most of which occurred many decades ago.

Commuter Rail and Amtrak Eligibility for Federal Grant Programs

As indicated by the testimony at the hearing, capital projects that solely benefit commuter rail service are not eligible for Consolidated Rail Infrastructure and Safety Investment (CRISI) grants awarded by the Federal Railroad Administration (FRA). There is a good reason why projects that only benefit commuter rail service are not eligible for the FRA-administered federal grant programs for "rail" projects: commuter railroads are considered "transit" services, which makes them eligible for the federal grant programs administered by the Federal Transit Administration, primarily funded through the Highway Trust Fund, for which Amtrak is ineligible. While CRISI received $5 billion in advance appropriations in the IIJA and an additional $1.4 billion in annual appropriations since its enactment, the federal transit programs for which commuter railroads are eligible received $107 billion in guaranteed funding in the IIJA.

While the vast majority of CRISI grants are awarded to short line and regional freight railroads, CRISI is an important source of funding to Amtrak for safety, job training and other projects that in many cases are not eligible for other competitive grant programs. Although projects that solely benefit commuter rail service are ineligible for CRISI grants, states and regional transportation authorities can receive CRISI grants for projects, such as the proposed Hunter Flyover on the NEC mentioned at the hearing, that benefit intercity as well as commuter rail service. (Amtrak supported NJ Transit's 2022 application for a CRISI grant for the Hunter Flyover.) Many CRISI grants have been awarded for projects that benefit both commuter and Amtrak service. For example, SCRRA received a CRISI grant for a project to make track, signal and safety improvements on one of its lines in Burbank, California that was eligible for CRISI funding because Amtrak also operates over the line.

Needless to say, making projects that solely benefit commuter rail service eligible for CRISI grants would reduce the relatively small amount of federal funding that Amtrak and short line and regional railroads receive through federal "rail" grant programs, and exacerbate the longstanding disparity between federal funding for Amtrak and the funding provided for transit and highways. Were Congress to make commuter rail-only projects eligible for CRISI grants, it should also repeal the statutory provision, codified at 49 U.S. 5302(15)(B)(1), that prohibits federal transit funds from being used for intercity passenger rail service provided by Amtrak.

Effective Date of Increase in Statutory Cap on Passenger Liability

Amtrak supports the recommendation of the witnesses at the hearing that the effective date of the adjustment for inflation in the statutory cap on passenger rail liability that occurs every five years be extended from 30 to 365 days after USDOT announces the new cap. As those witnesses testified, the availability of passenger liability insurance for rail has significantly decreased since the statutory provision requiring the inflation adjustment was enacted in 2015. Some insurance carriers have left the rail insurance market, while others are reducing the lines of coverage they provide or increasing premium costs. Needless to say, the suspension of Amtrak service if a commuter railroad over which Amtrak operates is unable to increase its insurance coverage to the level of the adjusted cap by the current, relatively short, statutory deadline would have a major adverse effect on Amtrak and its passengers.

Additionally, many would be surprised to learn that commuter railroads—unlike Amtrak and virtually every other form of passenger transportation—are not required by federal law to maintain *any* liability insurance. Many commuter railroads also have sovereign immunity under state law that significantly limits their liability for personal injury claims in the event of an accident, and their ability to honor contractual indemnification obligations. If Congress extends the effective date for increases in the statutory cap on liability for rail passenger claims, it should also amend 49 U.S.C. 28103, which requires Amtrak to maintain a minimum level of liability insurance, to make that requirement applicable to commuter railroads as well. Since the testimony at the hearing indicated that all U.S. commuter railroads are contractually obligated to maintain liability insurance with coverage limits in excess of the level specified in Section 28103, making this a statutory requirement should not adversely impact any commuter railroad. However, creating consistency in the application of the law will ensure the many agencies around the United States considering new commuter rail operations understand from the outset what is necessary regarding liability insurance, which could help minimize negotiations over this topic with railroads over which they seek to operate.

AMTRAK AND COMMUTER RAILROADS: THE OPPORTUNITY FOR COLLABORATION

As discussed at the hearing, the work of the NEC Commission established by the Passenger Rail Investment and Improvement Act of 2008 demonstrates what can be accomplished when Amtrak and commuter railroads work together to plan, secure funding for and carry out infrastructure investments. The comprehensive, 15-year, CONNECT NEC 2037 capital investment plan the NEC Commission has developed will maximize the benefits of the IIJA funding made available for the NEC by prioritizing the projects for which there is the greatest need and that will provide the largest benefits to NEC commuter, Amtrak and freight operations. Another outstanding example of Amtrak, commuter rail, state and freight railroad collaboration is the Transforming Rail in Virginia program, which is advancing unprecedented investments that will improve and increase capacity for commuter, Amtrak and freight rail service throughout Virginia.

We strongly believe that Amtrak and commuter railroads should work together to improve their service and infrastructure and serve more passengers to help make the case for the increased, sustained federal funding that both need. We view commuter railroads as collaborators rather than as competitors for existing track capacity and the small portion of federal transportation spending that currently goes to passenger rail.

Amtrak has recovered nearly all of the ridership we lost as a result of the COVID–19 pandemic. Our Fiscal Year 2024 ridership through February was only 2% below our ridership during the same pre-COVID period in Fiscal Year 2020, and we are projecting that we will end this Fiscal Year ahead of our pre-pandemic ridership and revenue levels. As indicated by the testimony at the hearing, commuter railroads have not been as fortunate, as most are still carrying significantly fewer passengers than they did before the pandemic due to increases in hybrid and remote work. To respond, many commuter railroads are looking to grow ridership by attracting more passengers who are traveling off-peak and for purposes other than work commutes.

One way that can be accomplished is through greater collaboration and improved, more seamless, connectivity between their services. Last year, 24.5 million Amtrak passengers began or ended their trips at just six Amtrak stations—in Boston, Chicago, Los Angeles, New York City, Philadelphia and Washington—that are also hubs of those cities' commuter rail systems. Millions more Amtrak passengers boarded or deboarded at the many other stations throughout our network where Amtrak trains connect with commuter trains. Collaborative efforts by Amtrak and commuter railroads, facilitated by advancements in technology and investments in infrastructure, can help break down the barriers, such as uncoordinated schedules and separate ticketing systems, that discourage passengers from connecting between Amtrak and commuter trains today. That would enable both Amtrak and commuter railroads services to attract much needed new passengers and help the public gain more utility out of these respective systems funded by their tax dollars.

NEEDED IN REAUTHORIZATION: MULTI-YEAR FUNDING

The significant multi-year funding the IIJA has provided through advanced appropriations has been, as one hearing witness stated, a "game-changer for the Northeast Corridor." That funding is allowing Amtrak and its commuter rail partners to at last commence construction of vital NEC infrastructure projects, including the Hudson Tunnel, the Frederick Douglass Tunnel in Baltimore and the Susquehanna River Bridge. Completion of these projects will ensure continuity of NEC operations, enhance reliability and performance, and provide much needed capacity for expansion of high-speed, intercity and commuter rail services along our nation's most important transportation artery. IIJA funding is allowing Amtrak and its commuter, state and local partners to advance much needed infrastructure investments on our National Network, such as the Chicago Hub Improvement Program that aims to transform Amtrak and commuter rail service at Chicago Union Station and enhance rail infrastructure used by Amtrak trains throughout the Chicago area.

Of all of the issues discussed at the hearing, the most important is ensuring that substantial, assured, multi-year funding like that the IIJA provides through advance appropriations continues when a new surface transportation bill is enacted. Without that, the enormous progress that Amtrak and commuter railroads have made in advancing joint benefit infrastructure projects on the NEC, in Chicago and elsewhere on our National Network will not continue.

Conclusion

Amtrak looks forward to continuing to work with our commuter railroad partners to ensure that Amtrak and commuter rail service realize their full potential. Expansion of both commuter rail and Amtrak service should be encouraged rather than impeded. We see many untapped opportunities for improving collaboration on infrastructure projects and enhancing connectivity between Amtrak and commuter rail services, and for joining together to make the case for increased funding for all passenger rail services.

Appendix

Questions to Michael Noland, President, Northern Indiana Commuter Transportation District, and Chairman, Commuter Rail Coalition, from Hon. Valerie P. Foushee

Question 1. Your statements at the hearing seemed to indicate that you believe Amtrak has a statutory right to priority scheduling on commuter railroad-owned tracks. Amtrak has shared with the Committee that it does not believe it has this right of preference on commuter railroad-owned track, but does have a statutory right of access.

Could you please clarify what you meant by this/these statement(s)?

Answer. 49 U.S.C. § 24308(c) gives Amtrak statutory preference to operate its service over that of freight transportation. Amtrak has interpreted the statute to include preference for Amtrak trains over freight trains operating on lines owned by commuter railroads. For example, in response to questions by the late[†] Donald M. Payne, Jr. in 2021, Amtrak's Chief Executive Officer, Stephen Gardner, replied as follows:

> "Question 12. Does Amtrak believe it has superior statutory rights over commuter railroads as it does over the lines of freight railroads? If yes, explain the grounds for this claim. ANSWER to 12 & a. Amtrak's statutory right to preference over freight transportation (49 U.S.C. 24308(c)) does not give Amtrak trains preference over commuter trains. *It does give Amtrak trains operating over commuter-railroad owned lines preference over freight trains operating over those lines*." (Emphasis added.)[1]

However, because neither 49 U.S.C. § 24308(c) nor any other statutory provision also gives commuter railroads similar rights over freight transportation, commuter railroads are often at a disadvantage. Because they have no statutory right of preference, both Amtrak and freight railroads that dispatch commuter operations often place commuter operations in a position where they effectively yield their operations to both Amtrak and freight trains, even if a delayed Amtrak or freight train could disrupt the on-time service of the commuter operations. The resulting reality leaves commuter railroads at a distinct disadvantage and compromises the reliability of their service. Moreover, as owner of certain corridors and facilities used by commuter railroads, Amtrak's control over dispatching in an environment where the commuter carriers have no statutory protection of either first or equal priority, gives Amtrak the ability to give its trains priority over commuters even where its trains are delayed and will cause disruption to commuter operations.

Of note, in contract negotiations with commuter railroads, Amtrak repeatedly requires commuter operators to provide Amtrak with dispatching priority over that of commuter railroads, often citing its statutory rights of access[2] as leverage over the commuter railroads in its negotiations. This statutory right of access, a right that can be enforced by the Surface Transportation Board, and the terms of which can be set by the Board if the parties cannot agree on a governing contract, places Amtrak in a distinctly advantageous position.

[†] Editor's note: Representative Payne died on April 24, 2024.

[1] Plans for Expanding Intercity Passenger Rail, Remote Hearing before the Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Committee on Transportation and Infrastructure, House of Representatives, 117 Cong. 37 [https://www.govinfo.gov/content/pkg/CHRG-117hhrg47413/pdf/CHRG-117hhrg47413.pdf] (Dec. 9, 2021), Appendix (Questions from Hon. Donald M. Payne, Jr. on behalf of Hon. Eddie Bernice Johnson to Stephen Gardner, President, National Railroad Passenger Corporation).

[2] 49 U.S.C. § 24308(a).

Question 2. Have you ever been unable to come to a contractual agreement with Amtrak? Are you currently in active negotiations with Amtrak regarding new or expanded intercity passenger rail service on Northern Indiana Commuter Transportation District-owned lines?

ANSWER. Given Amtrak's statutory access rights under 49 U.S.C. § 24308(a), Amtrak has a disproportionate advantage in contract negotiations over commuter railroads. The agency uses this authority to secure the right to operate on tracks owned, controlled, operated or managed by commuter railroads, enjoying the public capital investments made by state governments without providing sufficient value to compensate for its access. When possible, for example, Amtrak chooses to operate over commuter-owned railroads over freight lines because the commuter lines are already improved to benefit passenger operations and will not require the same level of investment by Amtrak to make them suitable for Amtrak's use.

In Northern Indiana, for example, the State of Indiana has invested hundreds of millions of dollars into the Northern Indiana Commuter Transportation District ("NICTD") to improve its lines by double tracking and adding other capacity enhancements designed to increase and both frequency and reliability of sits service offerings into Chicago. Amtrak already has a route into Chicago on the lines of Norfolk Southern, but despite the investments the federal government has made to improve service on the NS corridor, Amtrak has expressed interest in moving its service onto NICTD. While they have advised that they would only do so if they could negotiate an agreement for use of the NICTD corridor, because of Amtrak's statutory right, NICTD cannot refuse to negotiate. In addition, Amtrak has the statutory right to access and is only obligated to pay the incremental costs of its service on NICTD's line. These rights put NICTD, or any other publicly funded commuter line at significant disadvantage in the negotiating process, and are subject to Amtrak's unilateral decision whether or not to enforce its rights. In short, Amtrak's statutory rights put the commuter industry at risk of losing the benefit of the service enhancements made possible by its substantial investment in its system if it is required to allow Amtrak to take up capacity for commuter service, and receive minimal, inadequate, and as a result unfair compensation for providing Amtrak access.

QUESTIONS TO MICHAEL NOLAND, PRESIDENT, NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT, AND CHAIRMAN, COMMUTER RAIL COALITION, FROM HON. SETH MOULTON

Question 1. Is increasing speed a goal on your commuter rail system? How does the implementation of Positive Train Control contribute to efforts to increase network speeds?

Question 2. Has your system created initiatives to attract more riders? If so, have you seen the results of these initiatives?

ANSWER. Thank you for providing the opportunity to expand on my April 17 testimony in front of the Committee on Transportation and Infrastructure's Railroads, Pipelines, and Hazardous Materials subcommittee. Indeed, the industry's thoughts on improving commuter and passenger rail operations in the United States exceed what could be covered in a single hearing.

Commuter and regional passenger rail is one of the safest and most efficient modes of public travel and plays an important role in the US transportation network. Passenger rail provides direct and indirect economic value to a region, promotes economic investment in communities along its corridors, and provides an unparalleled capacity to move people and reduce greenhouse gas emissions.

As an industry, we pride ourselves on our safety initiatives, always looking to augment our safety-first culture. Positive Train Control (PTC) has further enhanced already safe commuter and passenger rail operations and provides a platform for the industry to further improve. This multi-billion dollar initial capital investment, and the on-going annual operating and capital funds needed to maintain the system—almost entirely resourced with local funding—are now part of our everyday operating environment.

The deployment of PTC was complicated, and the federally mandated timeframe required the industry to focus its efforts on standing up the system as efficiently as possible to meet the required deadlines. We have since discovered PTC's shortcomings: decreased operational performance, caused by both system reliability issues and lower overall train speeds. These operating performance impacts are a byproduct of both the maturity and limitations of the technology, and the conservative nature in which it had to be developed and deployed to meet the implementation deadline. Similar to the investments into Next Generation (NextGen) Air Traffic Control systems, continued investment in PTC and related technologies will provide railroads an opportunity to not only address these impacts, but also improve operational performance and efficiencies by extracting value out of system and the initial investment the industry has made.

PTC's impact on train handling and resulting operational performance come in various forms, but the most prevalent are related to technology reliability, PTC technology performance trade-offs associated with implementation timelines, and how operating crews interact with the technology. The first two are byproducts of the nature in which PTC was implemented, where certain limitations in capability and performance were accepted as a necessary trade-off in order to implement the systems in the timeframe required. Limitations to Global Positioning System (GPS) accuracy and reliability, as well as the use of conservative enforcement algorithms that approximate performance of several vehicle types are examples of known limitations that have an impact on operational performance [1]. While the industry is working with its PTC suppliers to improve these elements, this requires continued research well as continuous investment to update both the hardware and software deployed across the system.

As noted above, the implementation of PTC has also changed how train engineers operate their trains, including impacts on train handling. Our train crews, seasoned conductors and engineers, have provided great insight into the daily performance restrictions that have resulted under this new safety overlay system. As an example, when an engineer is operating a train and their speed is approaching the track speed limit, warning alarms sound in the operating cab of the train to alert the engineer that a braking enforcement is imminent. To avoid risking a PTC braking enforcement (a computer-enforced train stop), engineers keep their trains well below authorized track speeds, and likewise, begin braking far in advance of what is actually necessary to safely operate the train.

To be clear, we are not advocating that engineers operate their trains in excess of authorized track speeds but have observed that PTC often indirectly compounds the safety margins that were already present in railroad operating rules and regulations. If a train is authorized to travel over a segment of track at 50 mph, the engineer will often operate their train at 2–3 mph below the authorized track speed to avoid the potential of PTC enforcement by the nature in which PTC was implemented. Reduction in available track speed can result in a loss of 3%–4% of safe and approved operating speeds. This loss of operational performance translates directly in to longer travel times for our riders, reduced efficiency and increased energy consumption, and reduced capacity on the overall rail network. By extension, this loss also is a diminution of the capital investment our industry has made in the rail system's infrastructure.

To define this issue and identify opportunities to safely improve operating performance, we suggest that the Railroads, Pipelines and Hazardous Materials Subcommittee consider instructing the Department of Transportation to undertake a detailed study of the impact of PTC on railroad operating performance. As part of this study, it would be helpful to understand the level of investment required to continue to make the technological improvements required, and if there are any regulatory modifications that could be made to improve passenger railroad operations with PTC. This will help the industry further maximize the investment made in the technology and support the passenger rail industry in delivering the competitive transportation solution that rail provides.

An example of what could be considered is the speed limits set for classification of track [2]. Under FRA rules, track speeds are set to ensure safe operating performance with associated levels of maintenance and grade crossing warning protection. These standards have been in place for many decades and have not been examined in relation to how railroads operate today, with technologies such as PTC and current railroad operating practices. Class IV track, for example, has a maximum authorized speed of 80 miles per hour (mph). We know our equipment, maintenance and inspections practices have greatly improved since this standard was put in place. Can FRA Class IV track speeds be adjusted from 80 mph to 85 mph safely? By holistically examining the safety margins in place, and the flow-down effect of how different regulatory requirements translate to operating a modern passenger

[1] Additionally, certain PTC technologies that utilize traditional cab-signal track circuit codes to enforce speeds are limited by the number of electrical signals that can be sent through the rail without interference. In practice, if the safe design speed of a curve is 55 mph, but the PTC system only has speed codes for 30 and 60 mph, the operating speed for the entire track circuit that includes that curve is limited to 30 mph (a 25 mph difference).

[2] Maximum authorized operating speeds are governed by track safety standards contained in 49 CFR Part 213.

railroad today, the industry would be better positioned to mitigate the unintended operational restrictions imposed by compounding requirements, such as PTC.

We know from studies, surveys and rider feedback that our customers demand greater schedule frequency—especially outside of the traditional morning and evening peak periods—reduced time to and from their destinations, more reliable service, and amenities such as wi-fi on-board our trains. The challenge is how we meet these customer expectations, maintain stable operating budgets, and provide the necessary investments to deliver the service that our customers demand. We believe that the opportunity to study the impact of PTC (and associated operating regulations) on railroad operations has the ability to deliver improved performance without compromising any aspect of safety, and at little or no additional cost. When aligned with long term and continued investments in infrastructure and improved PTC capability and functionality, Congress can help ensure that commuter railroads can reach they full potential as an essential transportation mode, just as it has with highway and air travel (e.g., dedicated long-term funding programs).

Question to Debra A. Johnson, General Manager and Chief Executive Officer, Regional Transportation District (RTD), Denver, Colorado, from Hon. Valerie P. Foushee

Question 1. Why is it important for passenger rail agencies to know when hazmat is being transported on their property?

ANSWER. RTD does not share trackage with freight operations but does operate parallel to freight. Emergency response is best served with increased time to prepare and respond. Early notification of potential hazards allows crews to be on alert. This is similar to having personnel on high alert, for example, when a credible threat is made against an organization.

Questions to Debra A. Johnson, General Manager and Chief Executive Officer, Regional Transportation District (RTD), Denver, Colorado, from Hon. Seth Moulton

Question 1. Is increasing speed a goal on your commuter rail system? How does the implementation of Positive Train Control contribute to efforts to increase network speeds?

ANSWER. Increasing the speed of commuter rail system is not currently an RTD goal. Several factors contribute to this assessment:

- RTD's rail network has a significant amount of single-track sections. Increasing speeds only to reach a control point or interlocking and having to stop to wait for an opposing train operating in the opposite direction diminishes the return on any time gained through faster speeds.
- To effectuate increased speeds, RTD would need to reconfigure its existing Positive Train Control system, including the highly complex wireless grade crossing technology currently in place. Implementation of the existing system was an extensive and complicated effort that is still being perfected. Reconfiguring the system to accommodate increased speeds and maintaining this new system would be a costly and time-intensive endeavor.
- The proximity and number of stations reduces the effectiveness for potential high speeds, as trains need appropriate distance to attain that speed and then appropriate distance to slow down and stop at the next station.

Question 2. Has your system created initiatives to attract more riders? If so, have you seen the results of these initiatives?

ANSWER. RTD has implemented several initiatives aimed at incentivizing transit use, including but not limited to the following:

- In August 2022 and July and August 2023, RTD offered zero fares across its entire system as part of the Zero Fare for Better Air initiative. The collaborative, statewide initiative was made possible by a grant program administered by the state. The grant program was designed to reduce ground-level ozone by increasing the use of public transit. The zero-fare periods aligned with Colorado's highest ozone months. While ridership increased significantly during these periods, staff has not determined whether the program influenced commuting behaviors in the long-term.
- In September 2023, RTD launched Zero-Fare for Youth, a one-year pilot program that aims to enhance the lives of RTD customers and communities by reducing transportation costs for families. By inviting individuals 19 years of age

and under to use the system at no cost, the agency removed barriers to education and employment, while creating access to destinations across the metro Denver region. While the overall success of the program will be evaluated closer to the conclusion of the pilot period, reports from local school districts, most notably Denver Public Schools, indicate that the program has had a considerable positive impact on truancy rates. The agency will continue offering zero-fare youth transit in future years through state funding.

- Following an industry peer review of RTD's transit policing model conducted in 2021, RTD shifted its transit network security operations toward a community policing model, bolstered by sworn police officers, with a corresponding reduction in the agency's reliance on contracted security personnel. Responses to customer and agency employee surveys indicate that respondents now have a higher perception of personal security both utilizing transit and waiting at stops and stations. Staff believes this enhanced perception of security will yield a sustained increase in ridership.

QUESTIONS TO DAVID W. DECH, EXECUTIVE DIRECTOR, SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY (TRI-RAIL), FROM HON. SETH MOULTON

Question 1. Is increasing speed a goal on your commuter rail system? How does the implementation of Positive Train Control contribute to efforts to increase network speeds?

ANSWER. We do not currently have any projects planned to increase the maximum authorized speed of our railroad, We have a MAS of 79 mph. We have 19 stations and rarely would have an opportunity to run over 79 mph given the spacing between our stations.

If we were to plan on increasing the speed, PTC upgrades would be a significant factor in evaluating the cost vs. benefit as this would necessitate almost a complete overhaul of the software and braking algorithms.

Question 2. Has your system created initiatives to attract more riders? If so, have you seen the results of these initiatives?

ANSWER. We have added our first ever set of express trains as part of a pilot program to increase ridership. These trains only have 5 stops instead of 19. We are still evaluating but the program has had moderate success with ridership around 400 passengers per day on the set and growing.

We have added two additional trains in the late evening hours in an effort to capture increased ridership from our airports. We met with airport leadership, airport unions, and surveyed employees to find the times that best fit. The results thus far have been mixed. We have ramped up our marketing and outreach.

We have increased the trains that we will run for special events, Taylor Swift, Ultra Music Festival, etc., in an effort to expose our system to new riders. These trains have been very successful.

We sent teams to Miami to court local businesses as well as low-income area to advertise our discount programs.

QUESTION TO KEVIN S. CORBETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NEW JERSEY TRANSIT, ON BEHALF OF THE NORTHEAST CORRIDOR COMMISSION, FROM HON. VALERIE P. FOUSHEE

Question 1. What does the development of the Northeast Corridor Inventory, as required in the Bipartisan Infrastructure Law, mean for the projects on the Northeast Corridor, many of which are 100+ years old?

ANSWER. The creation of the Northeast Corridor (NEC) Inventory is providing greater certainty for the advancement of NEC projects. The NEC Inventory includes a list of projects that have been consistently documented and tracked in the NEC Commission's multiple planning publications. This vetting and documentation, which is being done as part of the NEC Commission's routine annual processes, now allows the Federal Railroad Administration (FRA) to have a convenient, valid, and predictable menu of options to choose from for its grant programs that have been funded by the Bipartisan Infrastructure Law.

The NEC Inventory and NEC Commission processes are a "win-win" for all parties, as the FRA now has a stronger knowledge base and greater familiarity with details for all of the projects, resulting in a faster and more efficient review of grant applications, while NEC rail operators have more confidence regarding whether and when their projects will move forward. Such progress is critical to replace and improve and upgrade the NEC 's aging infrastructure that, as noted, has been in place for more than a century.

QUESTIONS TO KEVIN S. CORBETT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NEW JERSEY TRANSIT, ON BEHALF OF THE NORTHEAST CORRIDOR COMMISSION, FROM HON. SETH MOULTON

Question 1. Is increasing speed a goal on your commuter rail system? How does the implementation of Positive Train Control contribute to efforts to increase network speeds?

ANSWER. Yes, increasing speed if safely feasible is a goal. However, it must be noted that implementation of Positive Train Control (PTC) has arguably made the actual work to increase speeds more complicated as the onboard and wayside equipment configurations have to be modified in order to make changes to speed limits. If the speed change is equipment specific, such as with particular types of locomotives, all of those locomotives need to be boarded and have the speed change done manually by the appropriate personnel from NJ TRANSIT or the vendor of the PTC system. For changes to track speeds the transponders on the rights-of-way need to be reprogrammed with new speeds, and adjustments must be made to the overall design of the transponder sequence as braking distances increase if speeds are increased. This would involve design work by a vendor and then the changeout of the transponders located between the rails in the affected area by NJ TRANSIT personnel—all of which carry significant costs.

Question 2. Has your system created initiatives to attract more riders? If so, have you seen the results of these initiatives?

ANSWER. There are a number of initiatives NJ TRANSIT has undertaken to attract more riders, all of which collectively have had positive impacts as evidenced by our rail ridership coming back at a strong and steady pace. These initiatives include:

- FLEXPASS—This was a creative pandemic-era ticket pilot program that was extremely popular and attracted riders, both current and new, who traveled several days a week, and so did not need a monthly pass.
- Four seasonal marketing campaigns targeting first-time riders, as well as those who haven't ridden for six or more months.
- Effective communication campaigns to reinforce the customer experience improvements, safety and the reliability of our system, including "While You've Been Away," "Ride Kind," and "Daily Dose of Progress," among others.
- Mobile App Enhancements to improve customers' travel experience, including Station Arrival Alerts, How Full is My Train/Bus, and more—4.8 stars with 217,000+ reviews in the Apple App Store.
- Special Promotions to attract riders during events, including discounts and special offers for Valentine's Day, Earth Day, Fleet Week, Take Your Children to Work Day, the North 2 Shore Festival, and more.
- Marketing Activations at high visibility events, including the Atlantic City Airshow, events at major colleges & universities, and at the busy Secaucus Junction Rail Station during concerts & sporting events at MetLife Stadium, among others.

QUESTION TO DARREN M. KETTLE, CHIEF EXECUTIVE OFFICER, SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (METROLINK), FROM HON. VALERIE P. FOUSHEE

Question 1. You shared that Metrolink service linking with Brightline West, once constructed and operating, is scheduled to run hourly, independent of the regular commuter schedule.

How will this impact other Metrolink operations?

ANSWER:

Added Maintenance Capacity

Because Brightline West intends to connect its Las Vegas service with Los Angeles via the Metrolink Rancho Cucamonga station, its opening is forecasted to significantly increase the number of Metrolink customers. As such, Metrolink is increasing maintenance capacity overall within its system and growing its vehicle fleet to accommodate future service growth. Specifically, the agency intends to build a new maintenance facility in Orange County that includes additional service and inspection tracks, a locomotive and passenger railcar heavy maintenance shop, and a permanent materials storage building.

Pulse Scheduling

Metrolink will also "pulse" its schedule to provide customers with seamless connections to the high-speed rail service. An intuitive, reliable, hourly service between Rancho Cucamonga and Los Angeles Union Station will sync with the private operator's schedule, thereby ensuring little down time for customers looking to get to and from Las Vegas.

QUESTIONS TO DARREN M. KETTLE, CHIEF EXECUTIVE OFFICER, SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY (METROLINK), FROM HON. SETH MOULTON

Question 1. Is increasing speed a goal on your commuter rail system? How does the implementation of Positive Train Control contribute to efforts to increase network speeds?

ANSWER. Increasing system speed and travel time competitiveness is dependent on several factors, including track design, signal spacing, track infrastructure, and signal and crossing design and infrastructure. Increasing speeds is a goal but one that requires addressing one or more of these factors.

Positive Train Control (PTC) is a safety overlay system which is intended to enforce the existing and underlying speed limits, whether track, signal, or authority based. Some speed limitations are dependent on track and signal geometry, design, infrastructure, or operating rules and PTC can't be used to increase these speeds.

However, there are some instances where PTC can be used to increase the capacity of the system. Industry efforts are underway to leverage PTC to accomplish Quasi-Moving Block (QMB) and Fully-Moving Block (FMB) methods of train control, which would allow higher throughput of trains. Metrolink will be initiating a feasibility study and possible implementation plan for Higher Reliability/Capacity Train Control (HRCTC). HRCTC is the next generation of train control that leverages PTC to deliver options like QMB technology.

Question 2. Has your system created initiatives to attract more riders? If so, have you seen the results of these initiatives?

ANSWER. Metrolink has several initiatives underway to earn back pre-pandemic riders and attract new customers.

Student Adventure Pass

Metrolink launched its Student Adventure Pass, a state grant-funded pilot program that enables K–12, college, and trade school students throughout Southern California to take the train at no cost. Between October 2023 and April 2024, more than 209,000 riders took advantage of the program. The share of Metrolink's total riders that are students grew from 17% to 25%. Today, 34% of these students are new riders, an indication Metrolink is successfully integrating our service into the lifestyles of the next generation of riders.

Partnerships for Special Events

For the past two years, Metrolink and Insomniac Events have teamed up to offer late-night trains for music festival goers, particularly for events at the NOS Events Center in San Bernardino. These special trains provide safe and convenient transportation for attendees, mainly in the 18–35 age range, to get home without needing to drive. This partnership aims to enhance the festival experience, reduce traffic and parking problems, and provide increased revenue to Metrolink.

Metrolink is also offering special round-trip service to select Los Angeles Angels home games during the 2024 baseball season. Adult roundtrip tickets are $10 per person, and up to three kids ages 17 and under can ride free with each paying adult, making the Angels Express an affordable option for families. Metrolink's Anaheim stop at the Anaheim Regional Transportation Intermodal Center (ARTIC) is adjacent to Angel Stadium, allowing for a short walk to the ballpark.

Additionally, in partnership with the X Games, Metrolink has extended service on the Ventura County Line to provide X Games Ventura attendees an affordable and convenient transportation alternative to driving. Special service to the event-adjacent Ventura-Downtown/Beach Station, which is normally only serviced through Amtrak, reduces car reliance while helping to familiarize infrequent or new riders with public transit. Metrolink offered this enhanced service in 2023 and will again be providing extended service in 2024.

Mobility-4-All

Mobility-4-All provides a 50% discount on any Metrolink ticket for those who qualify via their California Electronic Benefit (EBT) card. Since launch of this program in September 2022, monthly ridership by low-income riders has grown by more than 30% year-over-year. More than 1,000 new low-income riders take advantage of the program each month and low-income fares account for nearly one in ten Ticket Vending Machine transactions.

$15 Summer Day Pass

On weekdays between the Memorial Day and Labor Day, Metrolink offers a $15 Summer Day Pass. The seasonal promotional fare is designed to attract infrequent or first-time riders and out-of-town visitors by offering unlimited rides at a fixed price. In 2022, the first year the pass was offered, nearly half of all passes (48%) were purchased by new customers.

Free Fare Days

Metrolink's free fare days (Transit Equity Day, California Clean Air Day and Earth Day) regularly result in record ridership levels by encouraging those who do not normally take the train to try the service. The highest ridership days this fiscal year were:

	Date	Ridership
Clean Air Day	10/4/2023	26,077
Earth Day	4/22/2024	25,906

More off-peak trains

For the last 30 years, Metrolink service has catered to 9 to 5 commuters, offering peak service in the morning to primary job centers such as downtown Los Angeles and Orange County and then returning in the evening. Today, as remote work and hybrid work schedules remain common, travel patterns have changed. To respond, Metrolink has announced it intends to transform its operations to meet weekend and off-peak demand, which has returned more strongly than peak ridership. The recommended schedule to transform our system to a regional rail model would increase service by 36 trains per day, with 178 total trains operating in the system, and would spread service across the day and into the evening. The schedule would promote transfer opportunities through "pulse" scheduling across lines, providing a more competitive travel time when compared to driving.

The initial implementation of regional rail service occurred on the northern Los Angeles County Antelope Valley Line in October 2023 with a 58% increase in revenue train-miles and demonstrated exciting results. Most of the new service was added during non-commuter hours. For the four months following the expansion of service on the Antelope Valley Line (accompanied by systemwide roll out of free student fares in the same month), total ridership increased by 27% compared to the same period of the prior year. We expect to see further increases in the long-term, but the short-term results are promising. We believe that a full roll out of optimized service with pulse scheduling and distribution of trains to cover non-peak times will be a successful model and transform the transportation landscape for Southern California.

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