BEFORE PRESIDENTIAL EMERGENCY BOARD NO. 242

STATEMENT OF JOE McHUGH
AMTRAK VICE PRESIDENT FOR GOVERNMENT AFFAIRS AND CORPORATE COMMUNICATIONS

Thank you, Mister Chairman, for the opportunity to address this Board. My name is Joe McHugh, and I am the Vice President for Government Affairs and Corporate Communications for the National Rail Passenger Corporation, commonly known as Amtrak. I appreciate the opportunity to come before you today to explain the unique situation in which the Company presently finds itself, both economically and in its relations with the Federal government.

Amtrak exists at the intersection of private enterprise and public policy. This situation has required us to be students of both economic and political realities, and to acknowledge frankly that our survival has often entailed something of a high-wire act, balancing the interests and sometimes conflicting intentions of our supporters while we work to meet our financial obligations and preserve passenger rail service in the United States.

Amtrak is a unique entity, and in many ways, it is a creature of Congress. Interaction with that body is one of my chief responsibilities, and I am responsible for our liaison and communications with Congress. I have been with Amtrak for thirteen years, a career that has encompassed some of the company's better moments and some of its tougher ones. It is a unique institution but it is an institution, and it has a record that we can be proud of. We have preserved a national rail passenger network in the United States, and we have institutionalized the highest speed rail service in the nation's history.

We carried over twenty-five million passengers last year, and we have a solid core of dependable riders and supporters.

For all that, we are not a profitable operation. Amtrak is dependent on the Federal government for investment funds for its capital program, and it could not make its payroll without a government operating subsidy – a grant that totaled $485 million in fiscal year 2007, as well as a capital subsidy of $495 million. I'm going to discuss that subsidy and its centrality to Amtrak today. I will briefly describe the company's earlier history, but I will concentrate on the last ten years, and focus on the last five. It is those years that brought the company to the place it occupies today. It has been an up and down story, and it includes some serious financial problems, a congressional intervention, and the latest in a long series of government demands for efficiency and oversight.

The U.S. Congress established Amtrak in 1970, with the passage of the Rail Passenger Service Act ("RPSA"). Congress created the company to relieve the freight railroads, which were then regulated, of their common carrier obligation to provide passenger service. The continuation of an unprofitable private enterprise for a public purpose constituted an unfair burden on a portion of the private sector that was already in serious economic trouble, and the decision to create Amtrak was a welcome one. The Act created Amtrak as a corporation, and assigned ownership of its preferred stock to the United States Government[1] and ownership of its common stock to the four participating railroads that elected to take it in lieu of a tax deduction. The Federal government assigned the company $40 million in direct aid, $100 million in government-insured loans, and a substantial private contribution from the freight railroads.

The RPSA envisioned a profitable company, and statements by key Administration figures such as the Transportation Secretary reinforced this belief. It was unrealistic. The Northeast Corridor required substantial capital outlays to counteract the effects of deferred maintenance after Amtrak purchased it in 1976, and the aging and inherited fleet was in urgent need of repair. Congress acknowledged these facts in 1978 by removing the legislative requirement for profitability. Amtrak operated as a stipendiary of the Federal government until 1997, when the Amtrak Reform and Accountability Act ("ARAA") set a "profitability deadline" for 2002. Amtrak was unable to do this, and nearly went bankrupt trying.

The Federal government intervened in 2002 with a financial bailout. The sudden injection of Federal funds was vital to the company's survival; without it, Amtrak would probably have ceased operations. But essential though this aid may have been, there are limits to the government's generosity. One side effect of the bailout has been a steady increase in the stringency and number of Federal reporting requirements. Amtrak is routinely scrutinized by the Department of Transportation ("DOT") and the Federal Railroad Administration ("FRA"), and it has been required to make particular efforts to reduce costs. Congress and the FRA have forced the pace of reforms by limiting the availability of funds.

Congress passed the Amtrak Reform and Accountability Act in 1997. As the authorizing legislation for national rail passenger policy, it enjoyed overwhelming bipartisan support. It was meant to change the way the company did business, and to reduce its dependence on the Federal government. It ended the process whereby Amtrak issued stock to the Federal government in exchange for its annual grant money, and it removed Amtrak from the list of government mixed-ownership corporations. It also made some significant changes in top-level corporate governance.

Its most significant changes, financially speaking, were its incorporation of the "glide path" to profitability and its requirement that Amtrak address work rules and contracting of work in its next round of negotiations with its bargaining partners. The work rule issues are, as our Chief Operating Officer) Bill Crosbie will tell you, ongoing; some have been addressed, some have not. By far the most significant matter was its effect on funding. Congress appropriated no money whatsoever for operating costs in fiscal year 2000 and fiscal year 2001, and the consequences for Amtrak were nearly ruinous.

The ARAA profitability requirement lapsed in 2002. That summer, Congress intervened with a supplemental appropriation that saved Amtrak from bankruptcy. From the expiration of the ARAA down to the present day, Congress has not passed a reauthorization bill for Amtrak, and so has not "reauthorized" a legislative statement on national rail passenger policy. The principal expressions of congressional intent for Amtrak have come in the form of funding language in the annual appropriations bills. It is from these and various related acts that we must infer legislative intent. Congress is now considering an authorization bill for Amtrak; S.294, the Passenger Rail Investment and Improvement Act of 2007, passed the Senate last month and we hope that the House will take it up soon. It offers some ideas about the current and future congressional intent for Amtrak, and we will therefore refer to it as a likely but not certain outline of congressional intent, as the need arises.

The ARAA's enactment followed hard on the heels of Amtrak's 1997 Presidential Emergency Board ("PEB"). In September of that year, Amtrak went to a PEB with the Brotherhood of Maintenance of Way Employees ("BMWE"). At that point, the PEB recommended significant wage hikes. Amtrak and the BMWE ultimately entered into an agreement on the basis of representations from the Administration that Congress would fund the financing of the agreements. Congress declined to take such action three weeks later, and Amtrak was left with a $150 million hole in its budget.

Amtrak cannot afford a repetition of this outcome. The 2007 offer Amtrak made to the Brotherhood of Locomotive Engineers and Trainmen ("BLET") represents the outside limit of the company's ability to pay. Even that agreement will be affordable only if the company manages to meet *every single one* of its revenue projections for the coming year. Those projections are increases from a record year; if the company doesn't meet them, something, somewhere, is going to have to give so that we can meet payroll obligations. Unfortunately, the results of the 1997 negotiations have reduced the company's margin of safety; much of our fleet and our most salable properties were sold or mortgaged to make payroll. We can't afford another expensive settlement, and we can't afford a reapportionment of our existing budget that reduces funding for essentials. The back pay issue is the principal financial difficulty, and Amtrak believes that for the Unions' demand for full back pay could only be met through direct talks between the unions and Congress.

Like any owner, the government invests in its property; it also absorbs a portion of the cost of its operating loss. In 1981, the government paid Amtrak $1.25 billion – a number that, in nominal dollars, is only slightly smaller than the company's 2007 appropriation, which was $1.294 billion. In real dollars, of course, the purchasing power of today's appropriation is considerably smaller. Government investments have risen and fallen over time, but the broad trend – and the current trend – is declining, and while the legislature is willing to invest in Amtrak, there are limits on its generosity. This has been true for much of the company's recent history. In 1997, the company's labor settlement followed the financed Acela and Superliner fleet purchases, ballooning the company's debt to $4 billion. It was a terrible moment for a new bill to come due, and borrowing to meet it was a ruinous strategy – like using a credit card to meet payroll. This ballooning debt coincided with incremental decreases in Federal operations expenditures, and not even sharp increases in capital funding could immediately reverse the trend. The property began to deteriorate.

When Amtrak began the current round of bargaining in 2000, Congress gave it no operating subsidy money whatsoever. It was at this point that we came face-to-face with some basic budgetary problems. The company had no ability to 'salt funds away" from year to year, and it couldn't operate without Federal funding. It also had to find funds to meet unfunded Federal mandates.

It was obvious to everyone involved that this situation could not go on forever. David Gunn came to Amtrak in 2002 as CEO, and found that he faced a deteriorating physical plant, and a company short of money and deeply in debt. Most of the salable assets had been sold; a ten percent layoff of management employees helped but did not solve the problem.

At Gunn's insistence, Congress intervened to prevent a shutdown. It provided an immediate infusion of operating money to keep the company afloat, and provided the necessary operating subsidies in following years. It also provided the capital investment money Amtrak needed to repair and restore deteriorating assets. But it came with strings; Congress and the DOT required efficiency programs, cuts in organizational headcounts and budgets, and attention to certain areas such as food and beverage service. This involved a significantly expanded level of oversight. That Amtrak should be subject to oversight by the legislature was nothing new. The various acts of Congress that regulated Amtrak in its formative years established a clear accountability requirement. Congress legislated reporting requirements as part of the original RPSA, and subsequent acts established further reporting requirements. Some were periodic, while others were unique and were focused on specific aspects of the company's management. The common threads among them were a specific interest in the company's finances, and a desire for efficient use of Federal money.

The company's financial focus since 2002 has been on the return of the property to a "state of good repair." I credit David Gunn for his focus on this: he spent a lot of money on the Corridor and on our equipment, and the company's considerably improved physical state is a tribute to this focus. Amtrak is working hard to improve the quality of its service, and it is trying to pay down the debt we have.

I think it's important to consider the legislative background for this and other changes. Congress has yet to come to us with the suggestion that we should increase our expenditures. Indeed, every indication we have tells us the opposite is true. The ARAA authorization expired in September, 2002, and it has not yet been replaced by a new authorization bill which would set national rail policy for Amtrak. S.294 has passed the Senate and is awaiting consideration by the House. In the intervening years, we have had to divine legislative intent with regard to Amtrak from the annual appropriations legislation and the references to Amtrak in various related acts. The intent we have noticed and outlined here is quite clear: Amtrak will continue to receive a subsidy, but Congress wishes to reduce it, and we expect funding will continue to decline. There is no enthusiasm for further large appropriations.

The retroactive pay issue is a central one in our dispute. The unions believe they have a right to retroactive pay. They were told in 2002 that Amtrak could not afford it and would not agree to it, and several of the organizations chose to settle shortly thereafter. Other organizations chose not to settle, believing, perhaps, that the events of subsequent years would bring an intervention from parties who were more likely to give them what they wanted. That expectation was not borne out, and Amtrak is now confronted with a demand that it cover the cost of a losing hand.

Amtrak does not have the ability to do that. It has conceded what it can afford to concede, offering wage increases that are substantial and a signing bonus that represents all we can afford to give. Amtrak is not in a position to offer more. We have not accrued funds to cover a back pay settlement, both because we have needed every penny we could get for daily operations and maintenance, and because our appropriations operate under a set of rules very different from those that govern conventional corporations.

In Washington, the same rule applies to financing and leave: use it or lose. Amtrak has not accrued money for retroactive pay, because Congress would have reduced its financing if Amtrak ran a cash surplus. Moreover, a cash "cushion" would simply have become the starting point for negotiations. As it is, the protracted negotiations have pushed the company to the outermost boundary of its resources.

Our position on this matter is simple: the Unions' demand for retropay beyond Amtrak's $4500 proposal should be resolved by the unions and Congress. Congress has made its intent clear through numerous appropriations bills; it has not at any point allocated any funding for back pay, nor has it increased our appropriation. My sense is that there is no support in Congress for the funding of back pay – and because of the budget implications if such a request came from within Amtrak, my belief is that this is a matter the unions must raise independently with Congress.

The ARAA also repealed the prohibition that the original RPSA contained on contracting out of work not covered by collective bargaining agreements. It did away with the federal requirement that Amtrak pay employees whose jobs were eliminated when service was cut or reduced to fewer than three times a week, the Federal prohibition on contracting out work, and allowed the company to reduce some of its substantial fixed costs. Congress clearly believed that the Act would help Amtrak negotiate work rule changes and efficiency improvements – and it clearly wanted those changes. The legislation passed both the House and the Senate with overwhelming bipartisan support.

The existing set of labor agreements reopened in 2000. Discussions between Amtrak and the unions made little progress. The concurrent negotiations between the freight railroads and their unions probably exercised an effect; Amtrak does not strictly conform to the freight industry settlement pattern, but the freight agreements provide a benchmark for negotiations.

Unfortunately, this conclusion coincided with the company's brush with bankruptcy. Because we needed emergency appropriations just to make our payroll, David Gunn made it clear that the company would not be able to afford back pay. He stated this as a negotiating principle, in the hope that a clear understanding of the company's financial position would, when combined with a financial disincentive, lead to an early solution. To some degree, he was right; Amtrak settled with unions representing about a third of its work force in 2003 and 2004. Portions of those pattern-setting agreements (notably health care cost containment) were incorporated in the BLET-pattern offer that Amtrak has currently placed on the table. We hope this offer will establish a pattern for this and subsequent settlements.

I have expressed this hope because Amtrak cannot afford any settlement larger than the one we currently have proposed. In effect, we will continue to be dependent upon a Federal operating subsidy, and this situation will not change. Our budget for FY 2008 incorporates an operating subsidy of $475 million, and this number is slightly lower than the originally proposed sum. Both sums, I should note, were lower by a substantial margin than the sum incorporated in the authorization bill currently before Congress.

Neither the FY 2007 nor the FY 2008 appropriations came anywhere close to the level of funding that S. 294 would authorize if it passed in its current form – and the funding levels S.294 authorizes will only decline from FY 2009 until the end of the authorization period, FY 2012. It's hard to predict the amount of money we are going to get, but it is easy to predict the trend, and it's downward. By FY 2012, the authorized sum will be lower than the actual appropriated sum for 2007, and those will be real dollars – inflation, and rising gas prices, will make that sum smaller still. Our allies in Congress are aware of this, and they have been unanimous in urging that we appreciate that our budget appropriations are only going to get smaller.

We have talked at great length about Amtrak's operating budget needs, and I want to take some time to discuss our capital needs. In FY 2008, we have requested $760 million for our capital needs. Those needs fall principally into two categories: the fleet and our infrastructure; the latter is largely but not entirely the Northeast Corridor. Amtrak is also responsible for funding some Federally-mandated infrastructure projects off the Corridor, such as compliance with the Americans with Disabilities Act ("ADA").

I would ask you to keep the enormity of our capital needs in mind. Our fleet is aging, and it is run hard: in every category of rolling stock – diesel engines, electric engines, and coaches – our annual mileage is the highest in the country, and by enormous margins, even multiples; our electric engines get five times the mileage of their Southeast Pennsylvania Transit Authority ("SEPTA") or New Jersey Transit counterparts, our diesels get twice the mileage of CSX and UP engines, and our coaches – well, the *highest* annual mileage on a comparable commuter operation is slightly less than half of the annual mileage of Amtrak's lowest-mileage portion of its fleet. Our highest-mileage cars get more than three times the mileage of the hardest-run commuter fleet. Business growth is stressing this fleet, and it's aging, which means that replacement costs loom on the horizon – with the promise of higher maintenance costs if we elect to wait.

While we account for capital and operating needs separately, it is important to remember that Congress tends to see a single number, and that number is the bottom line. Congress doesn't necessarily think of our needs in terms of investment and operating subsidies, it thinks of them in terms of a line item in an appropriation. Changes to our funding are a zero-sum game, and we do not want increases in operating funding to come at the expense of our capital budget.

We are lucky, under the circumstances, to enjoy the broad-based political support that we have. There's a clear consensus that Amtrak should exist, and at least acceptance of the need for Federal funding. What we lack is a consensus on the shape the company should take, on the desired economic and funding models, and to some degree, its basic mission. Should it be a public service or a private company with government owners?

This is not a hopeless situation. Our recent performance and the long-term societal trends suggest that Amtrak has a brighter future. Rising fuel costs, airport congestion, and state support for corridor service are all heartening developments. We are seeing the opening phases of an emerging political consensus that supplements our traditional supporters, and that's a heartening development. We're seeing a lot of riders returning to trains, and a lot more coming to them for the first time. Those are encouraging developments, but they're not yet mature enough for us to divine a clear consensus about our supporters' intentions and vision; we know they want to make a safe, convenient, predictable and affordable trip between New York and Washington, DC; we don't yet know what the consensus vision of Amtrak is going to be.

The most concrete expression of that political consensus is legislation. Funding legislation allows us to divine the congressional intent for funding, but for a clear statement of national political intent, we need an authorization bill to set national policy. We hope that the House will take up S. 294 in the spring. This bill clearly codifies a congressional intent for the existence and funding of Amtrak. Congressional intent for the company is not so clear; of the 37 amendments offered in the Senate, three were meant to abolish long distance trains, while three would authorize studies for new long distance routes.

The one thing we can say with confidence is that there will not be more funding. As I have mentioned, S. 294 envisions a gradual drop from a theoretical maximum of $600,000 in 2009 to a funding level lower than the sum we were authorized in 2007. In practice, our funding appropriations are going to be lower than the levels Congress authorizes. All of our planning and budgeting needs to take this projected decline into account.

This is not an intuitively obvious situation. It seems clear, after all, that the government should appropriate what it authorizes. The fact is, however, that the authorization and appropriations processes are entirely distinct. They are managed by separate organizations, and while the authorization will be there (once it passes) to guide the work of the Appropriations Committee, that committee has to deal with a Congress full of competing interests. Amtrak is just one of many such interests, and there is nothing that can compel a lawmaking body to pass another law. We can only offer guidance.

I should take a moment to add that this phenomenon isn't the only issue. When Congress is unable to enact a budget before the end of the fiscal year, it has to enact a "Continuing Resolution," which authorizes all agencies that receive Federal funds to operate at a lower level of funding until it can pass the actual appropriation. In practice, this trims the authorization – sometimes by a substantial amount, if the passage of the budget is problematic; I would note that the budget for the current year had not passed the Congress, much less received presidential approval, at the beginning of December – 2 months into the fiscal year.

I should close by observing that we have not been shy about acknowledging these matters. We have gone repeatedly to Congress to explain our financial situation. It is not a secret; the unions know about it, too. We have been in touch with many members of Congress, and I think there was a general realization that the change in the composition of the 110th Congress would bring things to a head. We have been out making the case to members, and I think it's important to note the reaction: our operating budget is ten million dollars lower than it was in the previous year. This is not a sign of congressional intent to address the issue of the Unions' back pay demand.

That appears to leave us with an implicit requirement that we fund the agreement from our own resources. And that is exactly what we tried to do when we offered the BLET a contract earlier this year. It was a good contract; it included a substantial signing bonus and pay raises. It was the best we could do – and if we don't have another record year, if we don't make every single revenue projection, it will be better than we could do, and something will have to give in our budget so that we can make payroll. There is no more money in the pipeline; I have testified already about the pattern of our authorizations, but the pattern of declines in our actual appropriations precedes the pattern that the authorizing bill specifies. There's not going to be more money – and our capital needs are looming.

Those capital needs are going to keep us from adding our voice to any request that Congress address the Unions' back pay demand. There is only one funding pie for Amtrak, and we cannot afford a repartition that leaves our key functions with smaller pieces of it. A railroad is a very capital-intensive enterprise; the freights invest around 17% of their annual earnings in capital maintenance and improvements, about five times the national industrial average. Capital improvements make for safer public travel and safer working conditions for our employees. If we can bring the railroad to a higher state of good repair, we should be able to lower or at least contain operating costs. The capital monies are invested in Amtrak's rolling stock and physical plant, and on the largely capital components of some of its legal mandates, such as ADA compliance. They contribute materially to the state of good repair of the rolling stock and fixed plant, ensure that the property retains its value and utility, and help contain operating costs. Above all else, they ensure that the experience of travel is safe for our passengers, and that the tasks of work are safer for our employees. Those are not financial considerations. They are the greatest responsibilities this company has, and they are a consideration that is almost literally beyond price. I hope the Board will take into account the very grave responsibility that the board and management of this company have to ensure that the property is maintained and operated safely. This responsibility underpins everything we do, and funds for labor, equipment and materials are its sustenance.

Thank you for the opportunity to testify.

---

[1] Encyclopedia of American Railroads, "National Rail Passenger Corp"

JOE MCHUGH — INDEX OF EXHIBITS

1. McHugh Bio
2. Rail Passenger Service Act (Excerpts on creation/organization)
3. Amtrak Reform and Accountability Act
4. S. 294
5. Latest House Appropriations Language
6. Excerpts from S. 294 re: Long-Distance Route Studies
7. Amendments to S. 294 eliminating Long-Distance Routes
8. FY 08 Grant and Legislative Request of February 15, 2007
9. CRS Issue Brief for Congress: Amtrak: Budget and Reauthorization, August 1, 2005
10. GAO Report "Amtrak Management: Systemic Problems Require Actions to Improve Efficiency, Effectiveness, and Accountability" 06-145
11. Excerpt of the Full Committee Print for FY 2008 Appropriations (laying out reporting/accountability requirements)
12. CBO Study: The Past and Future of U.S. Passenger Rail Service, September 2003
13. February 2005 Annual Report to Congress
14. GAO Report 98-151, "Intercity Passenger Rail"
15. White House statement opposing House Appropriations bill, July 23, 2007
16. House/Senate floor statements showing dichotomous views of Amtrak (Senators Bond, Carper, Kennedy, and Sununu during debate on S. 294)
17. The Hartford Courant article – "Amtrak's Time Has Arrived: Let's get Rolling on the Rail," December 2, 2007
18. The Wall Street Journal article – "For Amtrak, the Climate Changes," October 31, 2007