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TESTIMONY OF
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VIRGINIA RAILWAY EXPRESS
ON BEHALF OF THE
AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
BEFORE THE
SURFACE TRANSPORTATION BOARD
ON
RAIL CAPACITY CONSTRAINTS AND INVESTMENT NEEDED TO MAINTAIN
EFFICIENT AND RELIABLE RAIL PASSENGER SERVICE

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APTA is a nonprofit international association of more than 1,500 public and private member organizations including transit systems and commuter rail operators; planning, design, construction and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. More than ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

Introduction: Grow Rail to Grow America

Chairman Nottingham, Commissioners Buttrey and Mulvey, on behalf of the American Public Transportation Association (APTA), I thank you for this opportunity to appear before you today to discuss rail capacity constraints, and investments needed to maintain efficient and reliable rail passenger service. I very much appreciate that the Board is taking a comprehensive view, considering both passenger and freight needs, both of which are being jeopardized by a growing shortage of rail capacity. Public demand for more rail passenger service and for moving more goods by rail has been increasing and is projected to continue its increase. These trends could usher in a new era of railroad prominence and growth in America.

I am Dale J. Zehner, Chief Executive Officer of the Virginia Railway Express, a commuter rail system connecting Northern Virginia to Union Station in Washington, DC. The system operates on lines owned by two class I freight railroads and a terminal owned by Amtrak. I serve on APTA's Commuter Rail Committee, and testify today on behalf of the public transportation industry.

America long has enjoyed the most extensive and efficient transportation system in the world. Today, other countries are catching up. Policies that support the growth of railroads – passenger and freight – are critical to America's mobility and our ability to compete in a global economy. In this era of global competition the efficient movement of goods is critical, and this has heightened the importance of on-time movement of people as well as the need to reduce oil consumption through increased fuel efficiency.

Over the years, the American government, unlike the governments in many other countries, has failed to focus balanced policy attention on railroads. It is time to establish a new policy framework with the goal of adding rail capacity for both freight and passenger operations. This comprehensive approach will involve freight rail operators, passenger rail operators, and government. Only by working together will we meet the growing demands of America's economic and social future.

Positioning for a Rail Renaissance

APTA's vision of America's future is one with a significantly expanded rail network. Late in 2006 America reached the 300 million population mark. In a bit more than 35 years America will add another hundred million people to its population, bringing the total population to over 400 million. Most of the population will be living in metropolitan areas, making our use of land and transportation corridors all the more important. At that point, America will be fortunate if we had the foresight to discuss, plan and invest in a future of rail transportation today. As we look to the future, we know there is no possible way that our highways can accommodate all the anticipated growth on their own. In addition, the extensive fuel use by automobiles and the associated air quality issues are not in the best interest of our future, irrespective of the evolution of hybrid or similar cars. Rail transportation – both passenger and freight – needs to be an increasing part of the solution.

Transit ridership growth of 30 percent since 1995 is outpacing both the growth of our population – 12 percent – and the growth in the use of the nation’s highways – 24 percent – since then. Each weekday, 34 million trips are made on public transportation in our nation.

Increased public transportation will have a key role in future strategies to reduce America’s dependence on foreign oil, and to reduce climate changing greenhouse gas emissions. Earlier this year there was another announcement on public transportation and its contributions to decreased dependence on foreign oil. A report by ICF International calculates that public transportation today reduces petroleum consumption by a total of 1.4 billion gallons of gasoline each year. This means is the equivalent of 108 million fewer cars filling up – almost 300,000 every day, or a full supertanker leaving the Middle East every eleven days.

The past twenty-five years has been a period of significant change for the American railroad industry. While the Staggers Act of 1980 is rightfully credited with helping the once threatened railroad industry become profitable again, it has also led to significant consolidation and downsizing of America’s railroad network. Rail freight traffic has grown in many places to the limits of capacity.

Meanwhile, over this same 25 year period commuter railroads have blossomed, and have also been a major success story. Last year, passengers took 435 million trips on our commuter railroads, a nationwide ridership increase of 3.2 percent from the year 2005. The Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), enacted in summer 2005, includes significant funding to expand rail systems and build new rail systems. New systems began operation in Nashville, Tennessee and Albuquerque, New Mexico. These projects will help reduce congestion and provide mobility options, integrate regional economies, and provide one of the quickest ways for individuals and families to beat the high cost of gasoline.

Looking to the future, railroads – passenger and freight - are poised to play an even greater role in enabling commerce and economic growth. A look at the Los Angeles region’s Metrolink commuter rail system provides a projection of demand anticipated for commuter rail services. Freight and passenger rail traffic in the L.A. / Orange County / Riverside corridor is expected to leap from 172 trains today to a total of 265 trains by 2010, and to a projected 390 trains per day in 2025.

While America needs a transportation policy balanced on the strengths and synergies of roads, ports and rails, overall there should be a higher reliance on rail modes, which are much more efficient in terms of land and energy. Indeed, adding rail capacity is imperative also for its positive impact on parallel freeways already clogged with traffic. Our urban/suburban areas have roads that are not only hopelessly congested, but roads that have already been expanded to close to their maximum capacity. Adding highway capacity in these areas is enormously expensive. For a fraction of the cost of such road construction/expansion, existing railroad rights-of-way can be reactivated / expanded / improved to accommodate traffic and reduce highway congestion for both freight and passenger movements. In fact many railroad rights-of-way still have a viable footprint where main line tracks can be re-laid.

Tight Capacity Has Affected Passenger Railroads and Their Riders

Many rail passenger agencies, including my own, have paid large amounts for access rights and infrastructure improvements. Just last week a second Quantico bridge opened on the CSX system in Northern Virginia, adding critical capacity at a key bottleneck. This project was made possible through \$26 million in public investment, and is the product of negotiations between CSX, VRE and the Commonwealth of Virginia. The intent is for such infrastructure improvements to lead to better service. Even with the new infrastructure, however, rail capacity continues to be tight. On-time performance on VRE has dropped to 84.3% on the Fredricksburg Line and 91.9 percent on the Manassas Line. In Virginia, an agreement is in place providing for incremental increases in passenger train operating privileges as publicly financed capacity improvements are constructed to relieve bottlenecks.

Intercity rail corridor operations, often state supported, are also critical users of the privately owned rail network. In California, more than \$1.8 billion in voter-approved funding has been invested in state-supported intercity rail service. The public now has the travel choices they want and need, and California is now home to 20% of all Amtrak riders. Public investments have been used to rebuild tracks and signal systems to accommodate increased passenger operations and to pay for permanent access rights. In spite of these considerable investments and ever-increasing popularity, performance of passenger operations has deteriorated in recent years as rail congestion has grown. On-time performance on California's Capitol Corridor - over 90% two years ago - has dropped to 69% over the past six months. Performance in other corridors (all state supported) is down as well: San Joaquin Corridor - 65%; Surf-Liner Corridor - 77%; Washington State Cascade corridor - 55 %. Yet in spite of this spotty performance, public demand continues to grow: ridership in the Capital Corridor is up 12% this year, with revenues up 18%. When performance declines, and yet demand grows; the message is clear that the highway is a less desirable alternative to the tax-paying public.

Passenger and Freight Railroads Should Grow Together

America's rail freight operators and passenger rail operators share a common goal of seeing that the nation's rail network grow and expand. This can be accomplished in a mutually-beneficial way.

Historically, America's rail corridors have been used for both freight and passenger purposes. Many corridors go back to the time when federal land-grants were awarded as incentives for railroad companies to expand into developing sections of America. For a long period of time both passenger and freight services were operated by the private sector under laws governing public utilities. As passenger operations were abandoned by private railroads, services were often taken over by or supported financially by public entities.

Today, over 90 percent of commuter rail trips are on lines that are publicly owned. This includes large, long-established systems such as New York's Long Island Rail Road and Metro

North Rail Road, NJ Transit, the Southeastern Pennsylvania Transportation Authority, and the Massachusetts Bay Transportation Authority. Newer systems such as Florida's Tri-Rail, the Trinity Railway Express in Texas, the Rail Runner in Albuquerque, and the soon to be open system in Salt Lake City have opted to acquire their own rights-of-way. Chicago's Metra system and the Metrolink system in Los Angeles own some of their lines, while using other lines owned by freight railroads. Systems including the Virginia Railway Express, Seattle's Sounder, the Altamont Commuter Express and Nashville's Music City Star system operate entirely on tracks owned by freight railroads. In the case of the VRE, there are no redundant freight lines available for public purchase. Partnerships with class I's are not an option, but a necessity for VRE.

The only reasonable and sensible solution involves public investments, often on private property. To expand passenger rail capacity one must either take massive amounts of land and build dedicated tracks, or far more efficiently, invest in expanding capacity on existing tracks.

Those investments can take the form of either direct public assistance or tax credits to the owners of the existing tracks, or both. Either should carry with them the expectation that added capacity will be available for and will benefit passenger service as well as freight. This would come via service arrangements, on-time performance standards, or other efforts to enhance rail operations. Due to the relationship between the use of the underlying rail and the interstate commerce, the STB or other appropriate federal body must have a central coordinating role in assuring the fulfillment of these conditions.

Preparing for a Future of Growth

How will commuter railroads be able to achieve the expected rate of growth? Certainly, it will require a partnership among communities, freight railroads and government partners. Collectively, we need to figure out ways to grow to the challenge.

The American economy depends on the efficient movement of people and goods. Rail freight systems operating at full capacity and providing maximum return to shareholders is good for some, but it is not where America's interest should stop. In Tennessee, Virginia and many other states, a lack of rail freight capacity has resulted in more truck traffic on the interstate highways causing congestion at near-crisis proportions. America needs new policies that will enable economic growth rather than hinder it.

Just as additional capacity is needed for freight; it also is needed for passenger service. It is in the public interest for rail passenger and rail freight interests to work cooperatively with one another toward equitable agreements for the joint use of freight rail rights-of-way. It is APTA's expectation that in most instances this will be accomplished in negotiations between the parties. However, when these negotiations fail, the lack of a suitable forum for working out timely and fair solutions often has hindered vital public transportation services.

The questions should be: 1) How can the freight railroad get a fair deal for the use of its property, and 2) How can we deliver to the public critical rail passenger projects without prolonged delay or consternation?

Good Transportation Policy will Lead us to More and Better Rail Service

Certain rail bottlenecks in the national railroad system may require a national level effort. The CREATE and Alameda Corridor projects are examples. Consistent with earlier discussion, an additional Trans-Hudson rail tunnel would be another example of a project with critical national overtones. The Projects of National Significance program in SAFETEA-LU needs to become a place where multi-modal railroad megaprojects judged to have the most national merit can look to for appropriate funding. For this program to be effective, the timing of the review process must be in step with the strategic dealings of the project itself.

An overarching issue will be to get projects done sooner. Projects that sit on the drawing board do no good for the American economy. Project sponsors who have gotten bogged down in the federal funding process or in negotiations with freight railroads are beginning to consider whether the only way to get projects done in a reasonable timeframe is to forego these partnerships. The process should be better than that. A central theme of SAFETEA-LU was to expedite program delivery.

As Congress and the Administration pursue the policy goal of energy independence, our transportation policy in many ways favors our petroleum-dependent modes and not our energy efficient systems. In contrast, Europe and Japan have long used rail systems to replace short-hop airlines and a significant amount of inter-city auto travel in those areas.

Finally, it is absolutely critical that we figure out a way to arrest the ever-escalating private railroad requirements for indemnification, hold-harmless agreements, and supportive liability insurance requirements whenever a freight corridor is used for passenger services. Some freight railroads are now requiring coverage of \$500 million – a requirement that will shut off most efforts to initiate rail passenger service. One approach would be to build on the Amtrak Reform and Accountability Act of 1997, which caps passenger claims at \$200 million, but this needs to be clarified to make certain that it applies to all claims. Other approaches could include establishing a federally funded railroad liability and indemnity program to which all U.S. transportation properties could subscribe and contribute that would provide the required railroad-required liability indemnification protection at less cost than when pursued on an individual basis. Another approach could be a Price-Anderson type approach which would require private or pooled insurance, but would provide that accidents above a certain level would be dealt with by the federal government.

Conclusion

In conclusion, America needs to grow its railroads. While some may see passenger and freight railroads as distinct and on different economic paths, I believe there are synergies that must be recognized and captured through policies that look at railroads in an inclusive way.

With only a limited number of transportation corridors, strategies must include freight and passenger rail interests working together. With the completion of the interstate highway system, some have suggested that the national purpose of the federal surface transportation program has been lost. As America competes in the global economy, it is our transportation, logistics and education systems that will give us the advantage. Energy independence and emergency response are among other strategic national goals supported by an increased emphasis on rail.

What does APTA see as the keys to addressing the nationwide shortage in rail capacity? Following are six critical factors.

1. Establish a policy context where rail capacity needs are viewed, considered and addressed in a comprehensive way that involves both passengers and freight.
2. Build additional rail capacity and infrastructure to accommodate additional rail freight and passenger service, particularly in metropolitan areas where bottlenecks can paralyze the system.
3. Investments need to come from all sectors. There should be additional public investments in passenger rail capacity. Second, additional private capital is needed for the freight rail network. Third, public funds should be invested in the private rail network when a public benefit such as public transportation service can be derived from the investments.
4. There should be a process to assure the reasonable and timely consideration of the need to provide passenger rail service on privately-owned rights of way.
5. Freight railroads have an obligation to honor agreements with rail passenger agencies in regard to the on-time performance of operations. Better enforcement mechanisms are needed.
6. Liability requirements need to be brought under control. Otherwise, growth in passenger operations will be forever stymied.

Congressionally created commissions are looking at these issues in depth, and APTA will continue to work with these Commissions and with the Board. As our transportation networks serve Americans in their daily lives, we must take the needed steps to assure that this transportation network is making our regional and multi-state economies work better, and is working to enhance America's position in the global economy.

I thank the Board for advancing the dialogue on the future of our rail system with today's hearing.