

WRITTEN TESTIMONY

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TO THE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

HEARING ON
EXAMINATION OF COMMUTER RAILROAD ISSUES AND CHALLENGES

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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.