



ASSOCIATION FOR INNOVATIVE PASSENGER RAIL OPERATIONS

The Future of Passenger Rail

Ray B. Chambers - President

2703 Park Terrace Drive
Alexandria, Virginia 22307

304064

ENTERED

Office of Proceedings

March 7, 2022

Part of

Public Record

March 5, 2022

By E-Filing

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, D.C. 20423

Re: Gulf Coast Passenger Service Between New Orleans and Mobile
STB Finance Docket No. 36496 – Written Testimony of Ray B.
Chambers, AIPRO.

Dear Ms. Brown:

Attached is my written testimony from the above STB hearing. The oral version was necessarily abbreviated due to time constraints. The written submission contains substantive footnotes.

Member Fuchs informs me you can arrange for this be included in the official record.

Thank you so much.

Ray Chambers



ASSOCIATION FOR INNOVATIVE PASSENGER RAIL OPERATIONS

The Future of Passenger Rail

TESTIMONY OF RAY B. CHAMBERS

President – AIRPO

Docket No. FD 36496

**APPLICATION OF THE NATIONAL
PASSENGER CORPORATION (Amtrak)**

UNDER 49 USC 24308(e)

February 16, 2022

The Association for Innovative Passenger Rail Operations, or AIRPO, is a non-profit organization composed of independent passenger railroads and labor. We are dedicated to advancing passenger rail operations in North America.ⁱ We agree with the position of Senator Roger Wicker that there will be major benefits from reestablishing passenger rail service along the Gulf Coast. However, we do not take a specific position on the Amtrak petition. Rather our testimony today simply puts forward a policy proposal promoting competition in the selection of operators for passenger corridors subsidized by the statesⁱⁱ AIRPO will propose a List of candidates for competition.ⁱⁱⁱ The reinstatement of Gulf Coast Service be a prime candidate to review competitive options. This process will drive down project costs, introduce innovative operations, and permit introduction of service at the earliest time.

Intercity competition is authorized by the rail statutes and the money is available. Consider the following seven points:

- 1) **The IIJA opportunity for intercity passenger rail is beyond the capability of one company to fulfill.** The Biden Administration and the Bipartisan Infrastructure Law billions have created enormous potential. Neither Amtrak, nor any other single company, has the capability to achieve the goal of creating a high-performance intercity network. This will take a full-on effort by states and local authorities, Amtrak, private passenger operators, host railroads and labor.
- 2) **Federal statutes authorize competition.** Congress ended the Amtrak statutory monopoly in 1997 and has since passed many provisions authorizing competition on intercity corridors. Senator Wicker, the first witness in this hearing, was the sponsor of several of those provisions. **(See Endnote #2^{iv} -Competition Authorization for Intercity Routes)**

- 3) **Significant Federal funding is now available to states and commissions to initiate competitive operations.** Consider the IIJA \$65 billion in grants available for intercity corridors. At least \$12 billion, and probably much more, is in discretionary grants. States and commissions have equal access to this money along with Amtrak. The IIJA specifically allows states/authorities to find their partners and team with independent operators and host railroads to provide innovative passenger services.
- 4) **Independent operators can do the job.** AIPRO is a management and labor organization dedicated to expanded passenger rail producing good jobs. ^v Together our AIPRO companies run everything from streetcars to commuter rail, to intercity trains and high-speed rail. Individually and collectively, we run more trains and carry more passengers than Amtrak. In 2019 we carried nearly one hundred million passengers on eighty thousand trains throughout America. We provide a wealth of innovative experience on the global basis. Member AIPRO companies individually have the interest and capacity to bid on the Gulf Coast service with innovative solutions that will produce excellent and efficient service.
- 5) **Regulatory enforcement of passenger metrics and standards including on-time-performance (OPT) is a broken model. We need something new.** While the present system of mandatory track access and OTP enforcement has been a field day for consultants and lawyers, with cases running to the Supreme Court and back, it has largely failed. The results are ugly relationships that are counterproductive. We submit there is an alternative based on commercial negotiation. It is the commuter model that has worked well for our members across the nation. The program should be centered on direct stakeholder negotiation. While states will be the prime mover on these routes, we do **not** ask the Amtrak statutory access mandate be transferred to states. It has failed we need something new. Rather there should be agreement between the states, operators, and host railroads to settle disputes by arbitration overseen by the STB or the FRA.
- 6) **The host railroads must become true partners in intercity passenger rail expansion.** The earlier exchange on this panel between Wick Moorman and Member Karen Hedlund demonstrate that such a collaborative process is possible creating a true win-win for the key stakeholders. It has worked in the past and should become the modus operandi for future. Further, the significant added billions in IIJA grant funding will smooth the way to host railroads-passenger operator deal making that can accommodate expanded passenger rail service as well as improve freight throughput--both in the public interest.^{vi} This new supply of grant funding and innovative finance makes commercial negotiation, as opposed to regulatory cramdown, achievable.^{vii} True partnering with the host railroads for improved passenger service is the only realistic path forward. Competition to provide those passenger services will benefit the states, host railroads, and create a vibrant market such as we see in Europe. It will also benefit Amtrak. They will become a real marketplace competitor.

- 7) **Accounting transparency.** There is a lack of transparency and accountability in the 209 state-Amtrak cost sharing formula.^{viii} With apples-to-apples competitive bids it will be impossible to obfuscate hide numbers in general overhead. Competition will certainly benefit of all states and agencies that contract with Amtrak.

In closing we suggest the Surface Transportation Board with its responsibility for economic regulation can contribute to the creation of a world-class urban and intercity passenger rail network. We submit the Gulf Coast has exciting potential and is a good place to start. We humbly suggest the competition framework we are proposing **is** the future of passenger rail. The Surface Transportation Board can play a vital role. Thank you.

Ray B. Chambers - President – AIRPO

Ray.chambers@aiprorail.org 202 257 4099

<https://www.aiprorail.org/members>

ENDNOTES

ⁱ **Association for Innovative Passenger Rail Operations.** The core mission of AIPRO is to promote the simple idea that passenger rail transportation should be open to competition. With the enactment of the \$1.2 trillion IIJA, with a minimum of \$65 billion for intercity passenger rail, we believe that advancement of intercity passenger service cannot be achieved through Amtrak alone. There must be full engagement by Amtrak, but also by passenger sector operators, labor, host railroads and state and local authorities. AIPRO will put forward proposals to the USDOT and STB to advance the agenda of competition to provide better safer and more efficient operations. Our Board is composed of Gerald Francis, Chairman (Keolis); Gregg Baxter, Vice Chair (Herzog); Fred Craig (Transdev); Steve Bethel (RATPdev); Jeff Joines (BMW/Teamsters); Jon McGrath (McGrath Rail). In 2013, AIPRO ran a survey that showed the independent operators ran 250,000 daily trains carrying eighty million people, mostly in commuter operations. We believe that figure was closer to one hundred million passengers in 2019 in both commuter and intercity. Internationally, AIRPO members carry billions of passengers every year. We have a significant international footprint, a major American presence, and a great deal to offer in transforming our urban and intercity passenger rail system into a high-performance network of which America can be proud.

ⁱⁱ **Intercity Passenger Rail Standards.** The franchise standards for intercity passenger rail corridors need to be set by set by the FRA under terms of the new IIJA Corridor Identification and Development Program.

ⁱⁱⁱ **Candidates for Competition List.** For all corridors under 750 miles the states must be the lead stakeholder in planning and developing the service. AIPRO will prepare a preliminary list of candidates for competition on intercity corridors. States would be able to select any qualified company submitting a bid. This will be an alternative to the “Amtrak Connects US” map which is a detailed plan for the future of intercity rail expansion. The Connects US map is a useful tool and the AIPRO List will draw from it.

^{iv} **The Competition Authorization for Intercity Routes.** Amtrak was formed 1971 and given a statutory monopoly. The Amtrak Reform and Accountability act of 1997 ended the monopoly. The PRIIA Act of 2008 created a framework for competition on intercity routes. Section 209 required states to take full responsibility for subsidies on all routes under 750 miles. It created a methodology to allocate Amtrak costs to prevent monopoly abuse. The 209 system is not working well. Section 301 provided capital grants to those states that were mandated to subsidize intercity routes. This was a tradeoff and version of the highway model. States receiving these grants were required to select their operator competitively or justify to the Secretary why sole source is more cost effective. Sec. 217 provides that when a state selects an alternative operator to Amtrak it must transfer facilities and equipment to the state through an STB binding arbitration. Section 214 created a pilot program to permit Alternative passenger service on three long distance routes. All of these provisions were smothered in the administrative cradle over the following years. The FAST Act of 2015 clarified and increased the mandate for competition on intercity routes. While streamlining the long-distance pilot program it also inserted a specific new clause that guarantees “Nothing In this section shall be construed as prohibiting a state from introducing competition for intercity passenger rail transportation or services on its state supported route or routes.” The IIJA of 2021 expands the competitive authorization specifically authorizing private carriers to compete on intercity corridors and to be partners with states/authorities in seeking grants.

PRIIA 301 standard to apply. AIPRO will ask the FRA to apply 301 competitive standard to IIJA passenger rail capital grants to states or public agencies providing intercity service on routes of less than 750 miles. Under this proposal as a condition to passenger rail grants, the FRA must require that (Sec 301 statutory language) *“if applicant has not selected the proposed operator of its service competitively, the applicant 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.”*

^v **Labor Partners** – AIPRO is fully committed to the principals of federal railroad law and to working with labor in implementing the competition agenda as the best way to expand passenger rail service and create more well-paying rail jobs. Both the Maintenance of Way and Signalmen are proud members of AIPRO and have as Board seat. Our operating companies are committed to collaborative relationships with labor organizations in the expansion of passenger rail.

^{vi} **Freight Rail Public Interest.** Freight rail provides enormous congestion and pollution relief benefits. A train can move a ton of freight 480 miles on a gallon of fuel moving 40% of American long distance freight volume while accounting for just 1.9% of transportation related greenhouse emissions. A single freight train takes several hundred trucks off the highway. The public benefits of increased freight rail may be equal to those of expanded passenger service.

^{vii} **Freight Railroads have new interest in passenger railroading as good customer.** Coal shipments are in decline, and more freight railroads are beginning to consider passenger service as an opportunity. The trade-off for agreement to passenger metrics and standards will be major ROW improvement to pay the full public benefit. These contracts can include penalties for failure and rewards for success. We suggest, through a “quick fuse” competitive process, this approach can be tested on the Gulf Coast reactivation. This could be the beginning of a new paradigm for passenger rail in America that will produce an efficient high performance urban and intercity passenger rail network. If indeed, we are wrong, and access and OTP agreements cannot be reached commercially, the Amtrak statutory regulatory access to STB would become the default position. But we should at least give the commercial process and market-based competition a chance.

^{viii} **Amtrak-State Cost Sharing Formula.** The General Accountability Office has found the Sec. 209 system “complicated and opaque.” In a recent report the Amtrak Inspector General criticized Amtrak’s lack of accounting transparency. The direct result is that Amtrak relations with states are often strained. AIPRO submits that only the emergence of comparable intercity rail service providers with apples-to apples competitive proposals will fix this problem.