

**AMTRAK REVISITED: RAIL PASSENGER SERVICE
IN NORTH DAKOTA**

by

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THE PASSENGER PROBLEM

With the exception of the heavily-traveled Boston-Washington corridor, service levels on American passenger trains are the lowest in the world. Largely, this decline has been the result of government emphasis on highways and private automobiles for movement of people between cities. Other modes of transit have filled the gap previously met by passenger trains; airlines have developed an internal system much more rapidly in the United States than elsewhere and the intercity bus system developed on a relatively untrammelled private basis.

Passenger trains are labor-intensive, due to the necessity for on-train services, fare collection, and because of agreements between the railroads and the operating brotherhoods. The railroads, which devote most of their interest to freight traffic, found it more profitable to discontinue the trains rather than to renegotiate the labor agreements. The pricing of rail travel was between bus and air fares, but on a fully-allocated basis, the rail fare would have to have been higher than air. If that were done however, virtually no one would ride the trains.

For this and other reasons (obsolescence of equipment and need for replacement, freight train interference, wish to be free of bad public relations, etc.) the major railroads moved to discontinue passenger service on a piecemeal basis during the 1950s and 1960s. Sometimes this was done through downgrading service on trains so as to reduce patronage. The train would show a greater loss and impress regulators with the urgent need for relief.¹

The ICC had supplanted the state regulatory agencies in permitting exit from the passenger train business in 1958. Less influenced by hometown considerations, the ICC was more lenient about allowing exit than the states had ever been. During this time, most of the major passenger routes were down to one train a day and even these were being posted for

¹See Thoms, *Regulation of Passenger Train Discontinuances*, 11 J. PUB. L. 103, 119-24; see also Fellmeth *supra* note 51, at 300-304.

discontinuance. The Commission attempted a sort of moratorium while Congress was deliberating what type of bill to pass.

Assuming the political necessity of passenger trains, and seeing that traditional regulation could not preserve the last trains on many routes, Congress wrestled with the need for government subvention. Proposals took two forms: subsidies or nationalization. Subsidies proved to be politically unpopular, since the beneficiaries would be the same railroads which had done their best to discourage the few remaining passengers, and nationalization sounded much too left-leaning for the Nixon administration.² The result was that Congress rejected both alternatives in favor of an ostensibly private National Railroad Passenger Corporation, first known as Railpax, but which soon emerged as Amtrak.³

²Harbeson, *The Rail Passenger Service Act of 1970*, 38 I.C.C. PRACTITIONERS' JOURNAL 330 (1971).

³Amtrak, standing for "American track" was thought up by image-makers Lippincott & Margulies in 1971 for what had tentatively been known as "Railpax" since the passage of the Rail Passenger Service Act of 1970. In 1979, amendments to the Rail Passenger Service Act made the definition official. 45 U.S.C. § 502(1) (1979).

THE AMTRAK APPROACH

On paper, the National Railroad Passenger corporation is a for-profit private entity and not a part of the United States Government.⁴ Even though Amtrak is considered private (and obligated to pay property tax to the local communities through which it runs) over one-third of its budget comes from government subsidy.

However, then, was Amtrak, as a private concern, supposed to succeed where other private lines had failed? The theory was that a streamlined system could reduce deficits by consolidating traffic on the stronger lines and consolidating terminals and other duplicating facilities. By ordering equipment on a nation-wide scale and operating on a country-wide basis, economies of scale could be attained in marketing, purchases, and operations.

Perhaps the Amtrak scheme was never expected to be a money-maker. Congress may have intended only an effort to get the passenger monkey off the railroads' backs. In this way, the Rail Passenger Service Act was a pro-railroad rather than a pro-passenger statute. Amtrak's first president, Roger Lewis, with his initial cautious moves seemed to betray the fact that Amtrak was meant to be a passenger euthanasia scheme.⁵ Every secretary of transportation since Volpe has come up with some variant of the slow withering-away of passenger service as his department's philosophy for Amtrak. However, Congress comes to the rescue of Amtrak again and again.⁶

⁴45 U.S.C. § 541 (1976).

⁵Southern Pacific president B.F. Biaggini predicted at the time that Amtrak's mission should be to "preside over the orderly dissolution of railroad passenger service," while Burlington Northern's president Lou Menk (also a director of Amtrak) urged the corporation to allow the long-distance train to follow the stagecoach into oblivion. On the long-term hostility of rail presidents to rail passengers *see generally* P. LYON, *TO HELL IN A DAY COACH* (1968).

⁶Act of Oct. 30, 1971, P.L. 91-518; Act of Oct. 28, 1974, P.L. 93-496; Act of May 26, 1975, P.L. 94-25; Act of Oct. 19, 1976, P.L. 94-555; Act of September 29, 1979, P.L. 96-73.

Amtrak, outside the Northeast Corridor (which it owns), functions through the mechanism of contracts with operating railroads. The railroads supply trackage rights and are reimbursed their costs plus a small profit. With any cost-plus arrangement there is room for a great deal of manipulation of apportionment of costs between passenger and freight service. There is room for excess padding of costs to Amtrak, which are thus folded into the cost base for Amtrak. The result is an Amtrak deficit; this of course, is picked up by the general taxpayer.

AMTRAK AND REGULATION

Since Amtrak is thought of as a proprietary program, it is a bit unusual to think of the Rail Passenger Service Act as a deregulation law. But inasmuch as it took passenger trains out from under ICC regulation, it can be seen as the first of the transportation deregulatory bills of the 1970s.

Upon passage, the Rail Passenger Service Act established a moratorium on abandonments, along with a delegation to the Secretary of Transportation to draw up a system for long-haul passenger trains.⁷ From October 1970 to May 1971, no passenger train could be discontinued.

Upon a railroad's contracting with Amtrak to provide service, the carrier was relieved of the responsibility for operating its own passenger trains.⁸ But if a railroad did not contract with Amtrak as its inception, it could not discontinue service until 1975.⁹ Most carriers were quick to take advantage of this provision, although some hung on for quite a while.¹⁰ Even Amtrak was subject to the ICC if it wanted to eliminate trains in the "basic system," but that provision was later removed by amendment of the Amtrak law. Presently, the ICC has no role in Amtrak and the passenger corporation is limited only by its own internal criteria (and whims of Congress) in discontinuing service.¹¹ As far as exit from the market is concerned, Amtrak

⁷45 U.S.C. § 521 (1976).

⁸45 U.S.C. § 561 (1976).

⁹45 U.S.C. § 564(a) (1976).

¹⁰The Rock Island lasted until 1978, the Southern until 1979, and the Rio Grande until 1983. These railroads, when they did discontinue service, were subject to ICC jurisdiction.

¹¹45 U.S.C. § 564(b)(c) (1980).

is a deregulator's dream. The route structure of the system is deregulated, and Amtrak can (theoretically) spend its resources as it sees fit.

Actually, Congress has not been content to let Amtrak pick and choose routes. Several times it has intervened to protect or institute certain politically-sensitive routes. Congressmen are reluctant to let a service which benefits their district disappear. The only substantial cuts to date have been those which were implemented by Congressional directive in 1979 and 1981. The Secretary of Transportation was mandated to draw up a revised system, which is the slimmed-down Amtrak network which is operated today.¹² Even then, Congress set some standards to insure "regional balance" into the criteria for discontinuance.

The ICC has never had any jurisdiction over Amtrak's fares, and the passenger corporation has tried all sorts of promotional schemes, excursion fares, and even one year giving children rides in exchange for Kellogg's box tops!¹³ This presents a problem because Amtrak is heavily subsidized and competes for traffic with carriers receiving no direct subsidy. As a result in 1978, Congress enacted a section giving some rudimentary control to the ICC if it discovers that Amtrak's rate-cutting is destructive or predatory as to its effect on a motor carrier.¹⁴ The ICC has not yet seen fit to exercise these powers. Amtrak, however, is directed to recover more of its costs from passenger fares. Currently, over 700 percent of Amtrak's revenues come from ticket sales.

The ICC had some oversight functions over Amtrak at the beginning. Section 801 of the original Act gave the ICC the power to require certain standards (sleeping cars on overnight runs, diners at mealtime, stations open for service before the train arrives, etc.) which the

¹²45 U.S.C. § 564(c)(1-3) (1980).

¹³*Interview with Paul Reistraap, former president, Amtrak, TRAINS Feb. 1981.*

¹⁴45 U.S.C. § 546(a) (1980).

Commission had denied it possessed in the *Sunset Limited Adequacies* case.¹⁵ These functions were not desired by either the ICC or Amtrak, and as part of general deregulation fervor, they were removed with the Amtrak Improvement Act of 1978.¹⁶

Amtrak's achievements include replacing and upgrading the passenger train equipment in the United States, improving and coordinating service, and reversing the secular decline in railroad passengers. Although there is less service today, what remains is of higher quality than was operated in the 1960s under private management.

¹⁵Act of Nov. 30, 1980, P.L. 91-518, title VIII, § 801, 84 Stat. 1339 (1980); Act of Nov. 3, 1973, P.L. 93-146, Section 14, 87 Stat. 554 (1973).

¹⁶Act Sept. 29, 1979, P.L. 96-73, title I, § 111(b), 93 Stat. 541 (1979).

AMTRAK AS A HARBINGER OF DEREGULATION

Rail passenger service — in 1970 handling less than five percent of intercity traffic — was considered a small, discrete area where one could see if deregulation would work. It was a pilot for the railroad industry, inasmuch as one segment of the industry operated without ICC supervision.

Amtrak is not the best example of deregulation because there is only one provider of service, the service is heavily subsidized, and politics have played a big part in operations of the system. As a matter of fact, Amtrak supervision in ten years has gone from the Interstate Commerce Commission to the Department of Transportation to Congress.

The Amtrak experience emphasizes one factor in deregulation: If Congress does not like the results, it can always recapture the power and attempt to regulate transportation itself. Since Amtrak is such a large recipient of Federal funds, it seems natural that Congressmen would want to direct what service is offered their constituents.

Amtrak represents an attempt to aid a regulated industry by unloading an unwanted and unremunerative service on the general public. The same has occurred with commuter rail transportation, and the establishment of rail to isolate money-losing Eastern lines from the nationwide rail system. Conrail became profitable enough to be moved into the private sector, it now operates as an ordinary freight railroad. Amtrak, although still subsidized, receives more of its funds from the fare box than any other passenger railway in the world. Amtrak's projections are not to require any government subsidy for operations after 2000. However, capital funding would still be needed for equipment, trackwork, signaling, electrification and other improvements to the rails which it, rather than freight railroads, owns.

AMTRAK AT TWENTY

The National Railroad Passenger Corporation enters its third decade as a fixture on the railroad scene. (For example, Amtrak is the largest customer of the Central Vermont Railway), and an important contribution to the profit and loss picture of many freight railroads. The Bush administration had abandoned the Reagan rhetoric of zero funding for Amtrak and has placed the passenger system in its annual budget. Twenty years of rail operation have given the NRPC legitimacy in the political world.

What It Does and Where It Goes

Amtrak operates rail passenger service in 45 states.¹⁷ Virtually all service is intercity traffic, linking metropolitan areas of one million or more. The passenger corporation is restricted to intercity rail passenger traffic,¹⁸ but it is also a contractor, providing commuter rail service for public transit authorities in Massachusetts and Maryland.¹⁹

In addition to the operation of intercity passenger trains, Amtrak does repairs, overhauls and rebuilding of rail equipment for other carriers at its Beech Grove, Indiana, shops, operates a fiber-optic system along its Northeast Corridor lines, leases space in its stations to concessionaires and conducts a package express service. A large amount of United States mail is carried in Amtrak long-distance trains.

Amtrak owns the railroad between Boston and Washington and branches to Harrisburg, Pennsylvania and Springfield, Massachusetts. In addition, the corporation owns a considerable

¹⁷Service to Wyoming was restored in June 1991. States excluded are Maine, South Dakota, Oklahoma, Hawaii and Alaska.

¹⁸45 U.S.C. 502 (5) (1990). See W. Thoms, *Relieve for the Iron Horse* 38-39 (1973).

¹⁹Such commuter services are not operated as part of the Amtrak system, but are strictly the responsibility of the suburban rail authorities. See McKinney, *Amtrak: The First 20 Years*, *Passenger Trail Journal*, May 1991 at 17.

amount of track in Michigan. Service is operated out of the hubs of New York,²⁰ Philadelphia, Chicago and Los Angeles. Most long-distance routes have one train daily; the most intensive service is found in the Northeast Corridor (Boston-Washington), between New York City and upstate New York and between Los Angeles and San Diego.

Outside of Amtrak-owned trackage, passenger trains are operated under trackage rights agreements with the co-operating railroads. Railways are required to provide their tracks to Amtrak at reasonable rates for operation of passenger services. Current policy of Amtrak is to confine its routes to the main lines of the freight railroads. Not only are these lines better maintained, but potentially such a policy can reduce costs resulting from avoiding secondary lines or passenger-only lines where Amtrak could be stuck with the bill of maintenance costs which are ascribable mostly to passenger operation. This means that when a freight railroad downgrades a main line, Amtrak will usually cooperate in finding a reroute.²¹ As railroads have merged, there have been changes in the designation of mainline track and a certain amount of consolidation of routes. Amtrak, then, is providing passenger service as a by-product of a rail network designed for the carriage of heavy freight.

Labor Agreements

As a privately-owned railroad (albeit one with government subsidy and encouragement) Amtrak is considered a carrier under Part I of the Railway Labor Act. Its employees are not government workers; they are free to strike.

²⁰All Amtrak service in New York was consolidated at Pennsylvania Station in April 1991. Amtrak then vacated historic Grand Central Terminal.

²¹Interview with James Larson, Amtrak vice-president, operations and planning, Passenger Train Journal, May 1991 at p. 49. A principal reroute was encountered in 1990 when the New York/Washington-Chicago trains were rerouted off the old Pennsylvania main line and on to the mainlines of Conrail (ex-New York Central) and CSX (ex-Baltimore and Ohio).

At Amtrak's inception, it contracted with freight railroads to provide crews and station personnel. Now, Amtrak is a railroad in its own right. It owns its busiest lines and operates undertrackage right agreement with host railroads elsewhere.

In 1982, after passage of the Northeast Rail Services Act, Amtrak Northeast Corridor employees had the option of remaining with Conrail in freight service, going with the newly-constituted commuter rail operations, or becoming full-time Amtrak employees. Within the last 10 years, Amtrak has become its own employer of all on-train crews (engineers included), and all station personnel.

One of the results of this takeover has been that Amtrak has the first straight-time contract of any railroad. Employees are paid on the basis of an eight-hour day, rather than any mileage formula. This change made it possible for Amtrak to reduce its operating losses and hence its need for subsidy. Amtrak has a far more favorable situation than the private railroads had in operating their passenger service, and is in better shape to compete with airlines and buses for the travel dollar.

because of its control of the work force, Amtrak is able to establish its own crew bases and seniority districts. At present, there are no plans for a universal roster and Amtrak trainmen cannot bump less senior railroaders to any job in the country.

Because of its separate status, Amtrak continued operating over its own lines during the nationwide railroad strike of 1991. However, train operation ceased on those lines operated over freight railroads.

The fact that there has yet been no strike against Amtrak does not mean complete employee satisfaction. Rather, it may be a political realization that were there a strike, the passenger corporation would just cease running and not receive the Congressional subsidies it still requires.

Since the Railway Labor Act does not outlaw secondary boycotts, Amtrak is vulnerable to having its facilities picketed by other railroads or even airlines. If this were to happen, its unionized employees would be expected to honor those picket lines.

Eminent Domain and Trackage Rights

Passenger trains may provide operating headaches for freight railroads. Their trains require speed and priority. Passengers complain if they are sidetracked for freights. They require a degree of track maintenance which freight trains might not need. While some railroads welcome the cash flow which Amtrak rental payments give them, other railroads just wish that Amtrak would keep its trains off their lines for good.

The law requires that the railroads make their tracks available to Amtrak for operation of its regular services, as well as for special trains and detour moves.²² The Amtrak act also provided for a 25-year period during which a host railroad must keep its tracks in at least as good operating condition as they were when Amtrak commenced operation.

In practice, Amtrak operations which work closely with private railroads in choosing lines and designated preferred and alternate routes. This makes good business sense for Amtrak, as the passenger corporation wishes to avoid a situation where a lines is primarily operated for passenger service and Amtrak would then have to pay most of the maintenance. A railroad must come to terms with Amtrak over operations, or an arbitrator is named to set terms for Amtrak's use of the line. (With detours, ad hoc decisions are made, and the route chosen depends upon reasonable alternatives. For example, Amtrak has been prevented from using Rio Grande's Royal Gorge route through Tennessee Pass, when the Grande's Moffat Tunnel route

²²45 U.S.C. § 562(a) (1982).

was blocked. However, an alternative route on the Union Pacific through Wyoming has been available to Amtrak.)

If a route is necessary, and the railroad refuses to make its track available, Amtrak does have the right to condemn the line through eminent domain powers.²³ This has only been used on one occasion to date.

Since 1972, Amtrak has operated the Montrealer between Washington, D.C. and Montreal, Canada on a circuitous route through New Hampshire and Vermont. North of Springfield, Mass., the train followed the Boston & Maine Railroad to White River Junctions, Vermont, where a Central Vermont crew took over the run into Canada. Track became worn out and, in places, a 10 M.P.H. speed limit was imposed. Amtrak suspended the popular train in 1987 and initiated proceedings to condemn Boston & Maine's track. Upon meeting a condemnation price set by the ICC, Amtrak immediately turned over the line to the Central Vermont Railway, which like Amtrak, was a tenant of Boston & Maine's. (Amtrak, after the line was repaired, switched to an all-Central Vermont routing via New London, Conn.)

Although the ICC had approved the \$2.3 million condemnation,²⁴ Guilford Transportation, corporate parent of Boston & Maine, appealed the decision to the courts. The United States Court of Appeals for the District of Columbia Circuit held that the condemnation was not for Amtrak's purposes, but for the maintenance of a competing railroad. The court held that the Act does not permit Amtrak "to take property by eminent domain for which it concededly has no need itself merely because there is another private party that would like to

²³45 U.S.C. § 562(d) (1) (1982).

²⁴National Railroad Passenger Corp. — Conveyance of B&M Corp. Interests in Connecticut River Line in Vermont and New Hampshire, 4 I.C.C. 761 (1988).

have it and will pay Amtrak for the privilege of having it condemned.²⁵ Congress later passed legislation allowing such transfers.²⁶ The D.C. Circuit Court of Appeals stated that the new legislation must still call for a valid exercise of condemnation powers.²⁷

The power of eminent domain remains intact, but Amtrak must use it for its corporate purposes, i.e., rail passenger service, and must not be a cat's paw for a covetous freight railroad. Amtrak, of course, would prefer not to have to maintain its own lines for a one-train-a-day schedule, and generally works in cooperation with freight railroads, using their best lines. Avoiding the cost of using its own railroad, Amtrak usually functions under a contractual trackage-right arrangement with its host mainline. Still, the amicable agreements worked out have the underlying threat that the passenger corporation can use its statutory powers to compel the lines to reach an agreement.

The Future of Amtrak

After 20 years of operation, Amtrak is a definite steady component of America's transportation system. However, it provides frequent and speedy transportation only in the Northeast and in California. Otherwise, the system is of limited utility to business travelers. (Overnight services which attract a sleeping-car trade are Washington-Chicago; New York-Atlanta; Chicago-Denver and Boston-Washington. Otherwise, the routes are too lengthy and time-consuming for business travel.)

W. Graham Claytor has been president of Amtrak since 1982. Formerly chief executive of the Southern Railway and more recently, Secretary of the Navy, Claytor has been responsible

²⁵Boston and Maine Corp. v. I.C.C., 911 F.2d 743 at 749 (D.C. Cir. 1990).

²⁶Independent Safety Board Act Amendments, Pub. L. No. 101-641 § 9(a), 104 Stat. at 4658, amending 45 U.S.C. § 562(d) (1) (1990).

²⁷Boston and Maine Corp. v. I.C.C., 925 F.2d 427 (1991).

for the nationwide labor agreements, for the continued re-equipping of equipment, and by the purchase of stations and rail lines. Most impressive has been the reduction of subsidy requirements. In March 1991, the passenger railroad's revenue-to-cost ratio was 83 percent.²⁸ As a result, President Claytor forecasts no need for Federal subsidy beyond 2000. (However, he does count on appropriations for capital improvements, including rolling stock.)

On June 17, 1991, Amtrak inaugurated a new route, from Denver to Seattle via the Union Pacific and Wyoming. The Wyoming portion of this line was actually part of the original Amtrak system; transcontinental service was routed via the Union Pacific when Amtrak started up 20 years ago. The route was transferred to the more scenic Rio Grande in 1983. The Wyoming train splits off from the California Zephyr in Denver, giving the traveling public an additional transcontinental route. Of the remaining states not served by the Amtrak system, Maine is currently served by Canada's VIA Rail, but service between Boston and Portland seems a reasonable possibility in the near future.²⁹ A difficulty in the establishment of service to the Pine Tree State is a lack of a convenient connection between North and South Stations in Boston. Service to Oklahoma and South Dakota is more difficult to establish. In Alaska, the state-owned Alaska Railroad provides service between Anchorage and Fairbanks, and Hawaii merely has one line, the 3-foot-gauge Lahaina, Kaanapaali and Pacific, which is operated for tourists on Maui.

First priority of Amtrak management is to upgrade the two long-distance trains that run tri-weekly (New York-Chicago Cardinal and Los Angeles-New Orleans Sunset to daily status. New equipment arriving on the property will enable these services to be improved.) (The utility of a train that operates less than daily, particularly for the carriage of mail and express, is limited. For one thing, people have trouble remembering what day the train runs.) Revival of

²⁸RAILPACE, June 1991, at p. 18.

²⁹Passenger Train Journal, May 1991 at 49.

Chicago-Florida service and establishing services on the North Western Railway through Iowa are other definite possibilities.³⁰ In 1996 contracts signed with the original railroad members in 1971 will expire. Amtrak will have to negotiate new trackage rights agreements and some massive route changes may then occur.³¹

Since its rate structure is unregulated, Amtrak has been using sophisticated yield management to find the rate which will maximize revenues. President Claytor has said, "We now charge the fare, on every route, that will produce the greatest possible revenue. If we have done this right, if we raised our fares we'd get less money. If we lowered our fares, we'd get less money."³² Current policy is to try and serve more airports, although a joint-ticketing arrangement with Midway Airlines at Philadelphia flopped when the airline, facing bankruptcy, contracted and closed its hub.³³

At 24,000 miles, Amtrak comes second only to Burlington Northern as America's longest railroad, although 97 percent of this system is over trackage rights on freight railroads. It caters to business travelers on the Northeast Corridor and on routes in California, Pennsylvania and New York, but otherwise caters to the discretionary market, with its emphasis on long-haul, once-a-day trains. On its 20th anniversary, longtime rail editor J. David Ingles wrote:

...Amtrak is parallel to other forms of transportation in the U.S., something lost on many people not involved in the field. We all pay taxes to support the highways on which we drive their rigs. Ditto for the publicly owned airports, which support the commercial airlines, passenger and freight.

³⁰Schafer, Amtrak's Atlas, Trains, June 1991, p. 49.

³¹Id.

³²Quoted in Trains, June 1991, p. 24.

³³Passenger Train Journal, May 1991, p. 24.

...Amtrak, certainly, is but a small part of the transportation picture. But it's a relatively visible part, and perhaps the most visible of all railroads. As cities come to perceive the need for a return to some degree of reliance on urban rail transportation...Amtrak is bound to receive some trickle-down recognition and support. If nothing else, Amtrak is now a grown-up member of America's railroad family in the transportation community...a family and community whose lives are unalterably intertwined with both our personal lives and our nation's economic life.³⁴

Surely Amtrak is one of the few areas where the voter/taxpayer comes in contact with the railroad industry. And, for better or for worse, the railroads are still judged by the public for the way they treat the railroad passenger.

The Rail Passenger Service Act has held remarkably few changes in its twenty years. Originally conceived as a way to bail out Penn Central, it now has stood as a relatively good example of public-private cooperation in providing a continuous and convenient public service, reaching most areas of the United States. At least in the areas of 100-500 miles (too far to drive, too short for a plane) Amtrak can be a viable transportation option, particularly when combined with other modes to provide a thoroughly intermodal transportation service.

³⁴Ingles, *All Grown Up?*, Trains, June 1991, at 5-6.

COMMUTER RAIL SERVICES

Origin of Rail Suburban Passenger Service

Commuter service on the railways is provided to several metropolitan areas through the authority of state transportation authorities. The term "commutation fares" originated in the late 19th century. To encourage multiple riding from suburbs to major cities, railroads would "commute" or reduce the fare for regular customers. In time, the verb "commute" was taken to apply to the travel of the regular passenger, or "commuter", between the suburbs and cities.

As a result of traffic trends and the popularity of local rail travel, commuter trains were operated strictly within suburban areas and mostly for the benefit of monthly commutation ticket-holders. Because huge fleets of equipment were required for what was essentially a twice-a-day movement (into the city in the morning, back to the suburbs at night), commuter service became unprofitable and one by one, railroads moved to discontinue it.

What commuter service remains today is provided by governmental assistance. In the Northeast, state governments are often the rail operator as well. The Northeast Rail Service Act of 1981 provided for an Amtrak Commuter Services Corporation to contract with the states to operate passenger trains formerly run by Conrail. (Pub. L. No. 97-35, 95 Stat. 828, Title E (1981)).

Conrail was required to run trains until 1982, but the authorities in each state had to decide whether to run the commuter trains on their own or have Amtrak Commuter do it. However, Amtrak Commuter wound up with no customers and was thus stillborn (although Amtrak does operate some commuter service as a contractor for state authorities).

Since 1983, commuter rail authorities have leased former Conrail facilities to operate trains in the Northeast Corridor. This change resulted in a large number of Conrail trainmen being transferred to commuter operating authorities, where their wages were lowered to a level closer to that of subway and trolley motormen.

Commuter Service Provided to U.S. Metropolitan Areas (1991)

California

Authority: California Department of Transportation
Operators: Southern Pacific (CalTrain)

Connecticut

Authority: Connecticut Department of Transportation
Operators: Metro-North Commuter Railroad (to New York),
Amtrak (Shore Line East)

Florida

Authority: Tri-Rail
Operators: CSX Transportation

Illinois

Authority: Regional Transportation Authority
Operators: Chicago & North Western, Burlington Northern, Norfolk Southern,
Metra, SouthShore

Indiana

Authority: Northern Indiana Commuter Transportation Dist.
Operators: SouthShore

Maryland

Authority: Maryland Department of Transportation
Operators: CSX, Amtrak (MARC)

Massachusetts

Authority: Massachusetts Bay Transportation Authority
Operators: Amtrak

New Jersey

Authority and Operator: New Jersey Transit

New York

Authority: Metropolitan Transit Authority
Operators: Metro-North Commuter Railroad

Pennsylvania

Authority and Operator: Southeastern Pennsylvania Transportation Authority

Amtrak is forbidden to engage in the commuter business directly, being an intercity operator. However, many services operated by Amtrak have been politically inspired short-range trains (Philadelphia-Harrisburg; Washington-Martinsburg WV; New Haven-Springfield

MA; Chicago-Valparaiso IN (discontinued in 1991)) with commuter-like operations. Amtrak presently operates as a contractor in Boston and Washington Areas, as well as contracting for the Connecticut Shore Line East operation out of New Haven. Future plans are for Amtrak to operate service east of Baltimore for MARC (Maryland Rail Commuter) and south of Washington for Virginia Railway Express. Fourteen percent of Amtrak's revenues come from the contract operation of commuter trains.³⁵

What Regulation Remains Over Commuter Traffic

Technically, the ICC retains jurisdiction over any passenger train in interstate commerce (49 U.S.C. 10908). Permission has been required of the Commission for discontinuance of any passenger train. But the Amtrak law obviated the need for discontinuance proceedings for trains in the Amtrak system, and the ICC has power to exempt a rail operation from regulation if it has only a negligent effect on interstate commerce (49 U.S.C. 10505). So few passenger trains are subject to ICC regulation today.

With specific regard to commutation service, the ICC is authorized to exempt from regulation commuter trains. The exemption is only available to rail mass transportation provided by a local public body, or a railroad contracting to provide mass transportation on a regular and continuing basis (49 U.S.C. 10504 (1982)). Charter and sightseeing services are expressly excluded. The fares charged must be subject to the approval of the governor of the state in which the commuter trains operate.³⁶

Because of the necessity for local approval of fares and schedule changes, and because most of the travelers are local commuters, Congress allows these exceptions, reasoning that the

³⁵Keeney, *Amtrak Hits Big 20*, *Modern Railroads*, May 1991, p. 39.

³⁶See *Southeast Pennsylvania Transp. Auth. — Exemption from 49 U.S.C. Subtitle IV, I.C.C. Finance Docket 30145* (1983).

effect on interstate commerce is minimal. Currently Amtrak shares some stations with commuter trains but does not issue interline tickets or check baggage. This lack of interface causes some problems for through travelers, for example, from Northeast Corridor points to cities and towns on Long Island.

Most passenger trains in the United States are commuter trains. The Long Island Rail Road alone carries more daily passengers than does Amtrak. Huge urban terminals such as Grand Central in New York, North Western in Chicago, and Townsend Street in San Francisco are devoted completely to commuter traffic. In Philadelphia, the Central City project united the formerly separate Pennsylvania and Reading terminals and commuter systems with a 2-mile tunnel. This is, to date, the only rail commuter system running through a city from suburb to suburb. (Most commuter trains end at dead-end terminals within the central city.)

Since 1965, funding has been available through the Urban Mass Transit Administration for commuter service. Through UMTA assistance, the nation's commuter fleets have been replaced and revitalized and new terminals and other fixed facilities have been constructed.

PRIVATE TRAIN OPERATION

Although Amtrak operates as a monopoly over most routes in its system, there is some room for competition. Within the Northeast Corridor, for example, you can ride Amtrak trains or commuter trains between most of the major cities. Auto-Train operated a private service between Florida and Virginia throughout the 1970s; that service is presently being operated by Amtrak. VIA Rail Canada, Inc., the Canadian intercity passenger system, operates its Atlantic Limited daily through the Maine North Woods. And the state-owned Alaska Railroad provides daily service between Anchorage and Fairbanks, as well on several branch lines.

Private operators can and do enter the railroad passenger business. Currently the major operator is the American-European Express, which operates a luxury "cruise train" between Washington and Chicago, serving the Greenbrier resort en route. With fares considerably higher than first-class Amtrak, the AEE tries to create a cruise experience. At one time the company ran its trains as separate sections of Amtrak's Capitol Limited and Broadway Limited; now the Express runs under contract with CSX between the Windy City and the Nation's Capitol.

These services are handled by contract with the private railroads and are exempt from ICC regulation under 49 U.S.C. 10505. Other "cruise trains" have not fared so well; Transisco Tours dropped its San Jose-Reno gamblers train in Spring 1991 after a few months of disappointing patronage. Cruise train operators are active, in connection with cruise ship stopovers, on the Alaska Railroad and also on the Canadian Pacific.

More common are tourist railroads which operate passenger service, often with historic steam locomotives, for sightseeing and vacation purposes, rather than for point-to-point transportation. The oldest of these lines, the Strasburg Rail Road in Pennsylvania, is a common carrier of freight and passengers, operating under ICC regulations. Only the Baltimore & Ohio is older. The Tourist Railroad Association (TRAIN) lists over one hundred tourist railroads. One

of the most historic and popular is the Durango & Silverton Narrow Gauge Railroad in Colorado. A former Denver & Rio Grande branch, it was transferred to shortline operation by action of the Interstate Commerce Commission. (Durango & S.N.C. R. Co. — Acquisition & Operations, 363 I.C.C. 292 (1979)).

In addition to the private trains and tourist railroads, excursion trains are found on mainline railroads under special contracts with the host line.

By virtue of its statutory monopoly, Amtrak has the right of first refusal over these lines, and a railroad must come to an agreement with the passenger corporation for these special moves, or have the movement submitted to arbitration by a special panel. If Amtrak does not want to perform the transportation, a private railroad or private car operator (many of whom are railroad historical societies) can contract for such one-day service. Limitation of these moves has been largely due to the difficulty tour operators have encountered in obtaining insurance.

GOVERNMENT ASSISTANCE AND REGULATION OF PASSENGER TRAINS

The Federal government, through the Federal Railroad Administration, still provides up to one-third of Amtrak's operating budget. This makes Amtrak the largest recipient of funds through FRA, but it also makes the passenger system the most cost-effective of any national railroad. (Amtrak, of course, is still considered a private, not a nationalized carrier; President Claytor has cited this as one of its strengths: "If it weren't for that, a lot of us wouldn't be here, because I don't think it is possible to run a railroad as a government agency and not have it be a disaster." — *Trains*, June 1991, p. 25.)

State governments, with some assistance from UMTA, are the funding factors behind commuter service. Most commuter services cross state lines (SEPTA goes into Delaware and New Jersey; metro-North serves Connecticut, MARC serves D.C. and West Virginia) and those states incidently served generally pay the operating state for the stations served by those trains.

Some passenger service is operated by state-owned railways. Alaska took over its operation of the Alaska Railroad from the Federal government in 1985, and New York operates service up to 115 miles on the Long Island Rail Road. States also support additional Amtrak service under the Section 403(b) "put up or shut up" program — California is the leader in such services.

Economic regulation of passenger trains is a thing of the past; but Amtrak and commuter operators are subject to the FRA's safety regulations, including the possibility of drug testing and licensing for railroad employees. The FRA classifies track speeds for passenger trains and makes sure that rolling stock meets its standards. In that respect, many aging private car fleets are now sitting on sidings as they no longer comply with FRA and Amtrak standards.

Passenger service is but a small part of railroad operations, but its visibility and utility serve to heighten public awareness of the need for rail service and for maintaining safe and speedy mainline railroads.

New passenger cars, such as those ordered by Amtrak in 1991 (140 Superliner double-deck cars from Bombardier Inc. and 50 single-level Viewliner cars from competitive bidders) must meet requirements mandated by Congress in the American with Disabilities Act. Enacted in July 1990, the law requires all new rail passenger cars to be accessible to individuals with disabilities. Currently, much of the fleet is high-platform cars which require negotiation of stairs — although the Superliners have wheelchair-accessible lower levels. Another Congressional requirement is that the new fleet have waste-retention toilet systems. Apparently Amtrak had been dumping waste along rights of way, and Congress had to step in after the passenger corporation threatened to stop service to Florida if state authorities were to clamp down. (Keeney, *Amtrak Hits Bid 20, Modern Railroads*, May 1991, p. 39.)

The new law requires commuter equipment as well to be handicapped accessible and environmentally sound. The 21st century will see need railroad passenger equipment which will be a lot easier to use than the basic 1950s design which underlies most intercity rail equipment today. (However, our nation's rail passenger fleet is newer, on the average, than the age of commercial airliners in service today.)

APPENDIX

AMTRAK IN NORTH DAKOTA

North Dakota has had continual Amtrak service since the rail corporation began operations on May 1, 1971. Since its inception, Amtrak has operated the "Empire Builder" (named for James J. Hill, the Great Northern's founder) between Chicago and Seattle through the state on the old Great Northern line, serving Fargo, Grand Forks, Devils Lake, Rugby, Minot, Stanley and Williston. For a time in 1979-80, due to equipment shortages and budgetary limitations, the Empire Builder operated on a thrice-weekly basis. In 1980, the train was the first to receive the then-new Superlines double-decker cars. Because the route is Amtrak's northernmost, reliable equipment was needed for daily operation during the winter. Between its end points the Empire Builder also serves the major cities of Spokane, Minneapolis/St. Paul and Milwaukee.

Between June 5, 1971 and October 7, 1979, Amtrak operated an additional train through North Dakota on the former Northern Pacific route through Jamestown, Bismarck and Dickinson. Called the North Coast Hiawatha, the train was added at the instigation of then-Democratic Senate Leader Mike Mansfield of Montana. (Schafer, Amtrak's Atlas, Trains, June 1991, at p. 52.) It was eliminated with a general cutback of Amtrak operations late in the Carter administration and is not likely to resume operation, as that part of the BN system has been downgraded or turned over to Montana Rail Link operations.

Although the Empire Builder's route has been unchanged throughout Amtrak's history within North Dakota, there have been dramatic changes outside the boundaries of the Peace Garden State. Since October 1981, through service has been operated to Portland, with the trains combined until Spokane. (Schafer, supra at 53.) In the fall of 1979, service south of Fargo was rerouted to the ex-Northern Pacific line through St. Cloud, thus ending service to Wahpeton

(which was served by a station stop at Breckenridge, MN). For a brief period in 1989-90, Amtrak experimented with a connecting bus trainside at Grand Forks to the VIA Rail station in Winnipeg, but a combination of disappointing patronage, a strike at Greyhound, and cutbacks in VIA Rail service caused the operation to be dropped. It is still possible for train passengers to transfer by bus to Winnipeg, but it involves a long layover and cab ride in Grand Forks, no through ticketing or checking of baggage, and an uneasy reception by heavily unionized Canadian transport workers, who refuse to let the bus load at Winnipeg's bus terminal or sell tickets until Morris, Manitoba.

Within the state, Amtrak owns most of the stations and leases space in BN facilities at Rugby and Stanley. Amtrak employs its own crews, who work between Minot and St. Cloud and between Minot and Havre, Montana. Dining and sleeping car service is provided all the way between Chicago and the Pacific Coast. The route of the Empire Builder is unique in the fact that it is not paralleled by an interstate highway. In addition, the route gets heavy tourist traffic to Montana's Glacier Park in the summer and to Whitefish and surrounding ski resort in the winter. Amtrak operates over trackage rights on BN throughout the state. In the late 1980s, BN wished to reroute the passenger train over the Surrey Cutoff, which would eliminate service to Grand Forks and Devils Lake. Faced with losing potential traffic or the expense of upgrading secondary freight line, Amtrak reached a compromise allowing for slower speeds between Fargo and Minot.

Although timekeeping and weather-influenced delays have been problems for passenger service, North Dakota appears secure in retaining its mainline passenger train throughout the remainder of the century. In a state with few transportation alternatives, Amtrak has a crucial role to contribute.