# White Paper

# HOW AMTRAK CAN BEST-SERVE THE NATION'S MOBILITY NEEDS

## *What Went Wrong, and What Needs to Change*

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## Executive Summary

As Amtrak, the National Railroad Passenger Corporation, approaches its golden anniversary in 2021, it is quite apparent that it has squandered opportunities to mature into a stable and useful transportation entity, given the plethora of internal issues that have historically crippled Amtrak operating under the federal umbrella as a state-owned enterprise. Adding to this position is the impact from a shortage of experienced senior management.

With the exception of the tenures of a few experienced CEOs, Amtrak's leadership and its Board of Directors have fallen far short of establishing a viable corporate culture to comprehend and implement its national mission. Amtrak has also fallen far short of overcoming serious deficiencies in its safety culture. Compounding this deterioration in executive and senior management performance has been the repetitive compulsion of many Presidential Administrations to ignore Amtrak's enabling legislation, which required the appointment of experienced, seasoned people to the Amtrak Board whose knowledge and skills could be directly applied to Amtrak. For example, the current President, Donald J. Trump, has selected two nominees who actually voted against funding Amtrak when they served in Congress.

At present, the Amtrak Board is not providing meaningful stewardship and oversight of the business to ensure accountability. There appears to be a determination to rid the organization of competent, experienced middle management through buyouts and layoffs. It has stuck with an accounting system lacking standards that ignore GAAP (Generally Accepted Accounting Principles) while shifting costs from the Northeast Corridor and it related corporate costs to the long-distance network, which results in inflation of PRIIA (Passenger Rail Investment & Improvement Act of 2008)-mandated full-cost allocations to state-supported and long-distance routes. Such lack of transparency creates an amusement park hall of mirrors for Congress.

With great anticipation and input by Amtrak, Congress created PRIIA, legislation that apparently few politicians have yet been able to comprehend and articulate as to how it was structured to subsidize the deficit-ridden Northeast Corridor by charging an inflated, unaudited allocation of full costs to state-supported routes.

In essence, PRIIA has enabled Amtrak to avoid charging states along the Northeast Corridor for its twice-per-hour-in-each direction intercity trains traveling but 232 miles between Boston and New York and 225 miles between New York and Washington D.C., for a total of 457 miles—far below the 750-mile threshold applied to the rest of the country to force the other states to pay for their passenger train service. And even though the fees Amtrak charges to state-supported public transportation agencies such as NJ Transit, SEPTA, MBTA and MARC for commuter rail access to the Northeast Corridor were increased under PRIIA in 2008, Amtrak did not implement them until 2015.

As I see it:

- There is a low focus on the customer experience by following the Southern Pacific playbook to disincentivize and discourage long-distance travelers, fortifying Amtrak's position before Congress on how those routes are antiquated and should be cut or dismembered.
- Unacceptable product development with little interest, planning or proformas for long-distance routes, or improvement in state-supported corridors.
- Marketing strategy is confusing, especially west of the NEC, regarding seasonal/new routes and long-distance route frequencies.
- Attacks on Class I freight railroads, who have private ownership of the infrastructure used by Amtrak, by not acknowledging today's market values to reimburse their demands for timely dispatching and track access. This also involves not dealing with the inevitable impact of Precision Scheduled Railroading (PSR) on current schedules, let alone proposed expanded corridor schedules. Ironically, Amtrak assumes the Class I economic position to shake down SEPTA, VRE, and Metra commuter lines for access to depots and infrastructure in Philadelphia, Washington D.C. and Chicago.
- Amtrak persists on falling on its sword with the Gateway Project. If Gateway was not to be fully funded by federal and state government, and instead at Amtrak's or a Class I expense, how grandiose would Amtrak's plan really be as it plays politics with the Hudson River tunnels?
- Why has Amtrak opened the door to a campaign encouraging states to propose new corridor routes (Minnesota, Michigan, Wisconsin, Louisiana, Mississippi, Alabama), yet, those states remain oblivious to the true costs demanded by PRIIA? Is this simply a strategy to create new buckets of funding for Amtrak to shift toward the Northeast Corridor?
- Although Congress created an Amtrak OIG (Office of Inspector General), how independent is it when we continue to question its level of transparency and accountability to provide independent management reviews and audits focused on accounting standards and efficiency of operations, to certify the effective use of funds co-mingled with tax dollars? Why has no light been shed by the most recent, but now departed, OIG on the questionable actions of Amtrak regarding its cost allocation accounting system to sustain PRIIA while impacting allocation of full costs to state-supported corridors, and how costs are ascribed to the long-distance routes? As well, the absence of an effective OIG has perpetuated Amtrak's own interpretation of being a government-ordained monopoly to inhibit and prevent any meaningful competition on a state or national basis, allowing for Amtrak's domination of the Northeast Corridor.

The intent of this White Paper is to probe history to dissect why Amtrak usually chose the wrong track that has led it to the bumping post today, and offer recommendations for change.

# Lost Opportunities

Amtrak was launched as the result of the Railpax Act of 1970, which was in response to the heightened concern that the Penn Central bankruptcy earlier that year would impact the Northeastern and Midwestern railroad network by spreading to other Class I freight railroads. The freight railroads' troubles can be tied to economic regulation dating to creation of the ICC (Interstate Commerce Commission) and its common-carrier obligation, and, especially, the emergence and expansion of government-constructed and -maintained highways and federally subsidized airlines

By 1970, the problems of the Northeastern railroads were further compounded by the migration of industry to the South and West, the ascendancy of airlines as a competitive mode of transportation, and the construction of the Interstate Highway System. (The difference in regions was the fact that the Western lines had far longer line-hauls and fewer factories to directly serve and switch cars.) Congress and the Nixon Administration had every right to be concerned with the imminent future of America's railroads. It wasn't until a decade later that the Class I's would be saved from this extent of economic distress by the Staggers Rail Act of 1980, which partially deregulated them.

In the pre-Staggers environment, revenue inadequacy of freight rail and the high losses of passenger rail did not mix well. The ICC-enforced cross-subsidizing of passenger losses from freight revenues was not a long-term answer (and would never have worked, since the U.S. entered a long-term recession from 1974-1982). What almost no one acknowledged was the fact that before the United States Postal Service, in September 1967, pulled the mail off the trains in favor of the airlines and trucking firms, carrying bulk mail or hauling RPO (Railway Post Office) cars in many cases was the difference between a passenger train running with minimal, acceptable losses and financially tanking. This certainly contributed to the Penn Central entering bankruptcy in June 1970, and Congress legislating the Railpax Act in October 1970.

Not even passenger train advocates on Capitol Hill could accept reality. They joined the choir promoting that, within a few years, passenger trains would be profitable. Under this aura, President Richard M. Nixon signed off on the Railpax Act, which operationalized Amtrak on May 1, 1971. On that date, more than 50% of America's passenger trains just vanished. When the Santa Fe learned how few of its trains would be left, its CEO, John Reed, noted it would have been cheaper to stay out of Amtrak and just operate its own trains. Indeed, many knowledgeable of the industry believed the federal government would have achieved a far better, less-expensive deal with purchase-of-service contracts of passenger trains managed by superbly run railroads like Santa Fe and Seaboard Coast Line.

Despite Amtrak's perpetual financial starvation, the USDOT transferred ownership of the Northeast Corridor to it in 1976 to give Conrail—cobbled together from six bankrupt Northeastern railroads into a government-owned company—a jump-start and a better opportunity to succeed as a private company. (Conrail was privatized about a decade later). This only served to exacerbate financial issues for Amtrak, for even though Congress immediately provided the sorely needed funds for Amtrak to contend with decades of deferred maintenance through NECIP (Northeast Corridor Improvement Program), the Reagan Administration and Congress cut funding for this program in the 1980s. Over the years, despite programs like NHRIP (Northeast High Speed Rail Improvement Program), which rebuilt and electrified the NEC from New Haven, Conn., to Boston and introduced the *Acela Express* trainsets, Congress has largely failed to recognize the fact that owning and maintaining such infrastructure was well beyond Amtrak's scope and the intent of its Railpax enabling legislation.

It is important to question why Congress has allowed appointment of Board members that do not meet the criteria of Amtrak's enabling legislation, which required appointees to evidence a high degree of competency and experience to serve Amtrak:

***49 U.S. Code §24302. Board of Directors***

(*a) Composition and Terms.*

(C) *8 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with general business and financial experience, experience or qualifications in transportation, freight and passenger rail transportation, travel, hospitality, cruise line, or passenger air transportation business, or representatives of employees or users of passenger rail transportation or a State government.*

Such experience relevant to Amtrak would include rail operations; food and beverage services; human resources; labor relations; union negotiations/contracts; marketing/branding; strategy/planning; accounting; customer experience; product development. These areas represent the essence of what Amtrak has required from a Board to provide successful stewardship, to ensure the legitimacy of transparency, and have the knowledge to insist upon accountability.

Then there is the financial factor: Amtrak uses an accounting system that ignores GAAP (Generally Accepted Accounting Principles) while shifting costs from the Northeast Corridor and its related corporate costs to the long-distance routes. This results in the inflation of PRIIA-mandated full-cost allocations to state-supported and long-distance routes.

This is an example of how Amtrak is out of step with business world reality where firms learn the importance of building relationships; how to measure risk for profit; how to play nice in the sandbox with the bigger boys who control destiny; and to understand the difference between cost and price. This is evidenced by Amtrak's promulgation of a "new and improved" strategy focusing resources on inter-regional corridor development by playing to the demands of Congress for profitability. Why this corridor proposal could be DOA in Congress:

**States**
Stripping away the veneer on PRIIA as a call to arms for state treasurers and auditors, it is presumptuous of Amtrak to believe any state currently served by a federally financed long-distance train will trade that in for a corridor of under 750 miles that will require that state to pay all costs per Amtrak's cost allocation methodology. Nor do I think any currently unserved state would jump at the opportunity to pay Amtrak's rates. As well, where would the intended corridor be located? How would schedule frequency be determined? How would connections to the long-distance national network be facilitated? With buses?

**Class I Freight Railroads**
As a result of the successful consolidations of Class I's, occurring mostly in the 1990s, combinations have reduced them to two in the East (Norfolk Southern and CSX), two in the West (BNSF and Union Pacific), two U.S. operations of Canadian lines in the Midwest (CN and Canadian Pacific), and one in the Midwest to the South and Gulf (Kansas City Southern). As redundant main lines were abandoned, where was Amtrak? Was Amtrak at the table to offer input re: current and future plans? Was Amtrak ignored? Or did Amtrak likely offer no input or opinion?

As the Class I's evolved into successful business entities, they embraced marketing, pricing and competition to carve out their markets; serving their markets with hot scheduled fast freights. Today, most of the Class I freight rail system has embraced some form of Hunter Harrison's Precision Scheduled Railroading (PSR), which requires running elongated timed freights. Given the reduction of main lines in many areas to but one track with bi-directional signaling, and few long sidings to divert a PSR freight train into for a passenger train traveling at a different velocity, the passenger train loses.

However, given the public embrace of litigation by Amtrak against the same Class I's, why would any Class I work with Amtrak to expand its capacity and/or frequencies on such limited, privately owned infrastructure? Although Amtrak has been a member of the same Association of American Railroads (AAR) that has directed litigation against Amtrak over On Time Performance (OTP) metrics imposed upon freight railroads by Amtrak and the Federal Railroad Administration, AAR has also taken the lead in making light of Amtrak's refusal to acknowledge the enhanced market value of track access and timely dispatching. Is any Class I is willing to open up more of its infrastructure to Amtrak to operate additional passenger trains?

**Income Protection Costs**
Another economic issue is the congressionally decreed arbitration agreement of five-year severance/benefits to be paid out, on a sliding scale, to union members who lose their job when a train is cancelled. The income protection cost per crew member per train crew per long-distance train, which will have three to six sets of crews, is potentially huge.

**Non-Connecting Corridors**
Amtrak is compromising the essence of a true national system by emphasizing that its future lies in corridor services, rather than long-distance trains. A business-savvy Amtrak should make the case for both, acknowledging how corridor and long-distance services interchange their passengers.

**Equipment**
Although new single-level corridor equipment will be on line in several years, it is already dedicated to select states, with little extra capacity for new routes. Given that, will Amtrak attempt to operate equipment beyond its depreciation life—and charge the states for it? Has Amtrak's Board thought through these issues before approving its new, corridor-based plan?

## Management: Rapid Turnover Creating a Lack of Continuity

Amtrak was in trouble from its beginning. It was saddled with antique equipment to basically re-start the network it inherited, picking the routes with the most population to serve. But in its early years, Amtrak was fortunate to recruit a competent middle- and lower-middle-level of management that refused to accept defeat.

Amtrak enjoyed the brief tenures of a few experienced railroad CEOs: Paul Reistrup (1974-1978) clearly understood the basic element of several frequencies per long-distance route. He pushed through the order for Amfleet cars from Budd to modernize the Northeast and Midwest corridors. Alan Boyd (1978-1982) ensured the first Superliner order for long-distance routes with Pullman Standard. However, except for brief times under the leadership of CEOs W. Graham Claytor (1982-1993), David Gunn (2002-2005) and Wick Moorman (2016-2017, albeit in a transitional role), Amtrak has not been led by experienced railroaders.

Graham Claytor and John Riley, the FRA Administrator who recruited him, clearly knew that operating more trains would increase revenues over costs. They appreciated the fact that when a group of long-distance trains were forced to be cut by the Carter Administration in 1979, only their revenues disappeared—costs did not go down. Under Claytor, several new western Superliner trains were started, with through cars to Chicago via the *California Zephyr* at Salt Lake City (*Pioneer and Desert Wind)*. Indeed, Claytor created the last new long-distance train, the *Auto Train*, with Congress approving funds based upon his proforma.

Given a history of picking CEOs with little or no railroad experience, except for the individuals cited above, one would have hoped that, after 48 years in business, Amtrak would have been blessed with a wealth of knowledgeable, experienced middle and senior managers to keep it on the rails. However, this too has been compromised, as the focus of some CEOs has been to buy out or lay them off.

## Operations: Marketing/Branding/Strategy/Planning

Outside the Northeast Corridor, there is little marketing beyond what some states contribute (California, Washington, Oregon, North Carolina). California's JPAs (Joint Powers Authorities) took issue last year when Richard Anderson reversed their long-standing program discounting travel in the off season after New Year's. Recognizing the pushback from those JPAs, Anderson realized those agencies were closer to their market than Amtrak's Washington D.C. headquarters, and reversed his position.

Fundamental strategy on how corridors and long-distance sectors should be constructed and viewed to cross-serve each other (much like regional airlines feed traffic to large carriers at hubs), appears to be missing. Amtrak doesn't seem to understand that, outside the Northeast Corridor, other corridors share similar characteristics that would define success, including the convenience of schedule frequency and, at a minimum, an auto-competitive speed to facilitate business and pleasure day-trippers.

Apparently, for reasons that incorrectly focus on end point-to-end point, the long-distance routes do not receive their due for serving numerous multi-markets enroute. Many provide the only direct transportation via rail service, experiencing similar average passenger-miles traveled as airlines. Unlike airlines that run end point-to end-point with varying load factors, the long-distance trains turnover an average of 2.5 times enroute.

An example of how Amtrak is politicized is the recent proposal to discontinue routes, or make bus substitutions mid-route, instead of recognizing how corridors should be built within the inter-regional long-distance train network. Indeed, what would be the impact on serving those multi-markets, were Amtrak to better-understand marketing and increase service and schedule convenience beyond once per day on the long-distance routes? Instead, Amtrak proposes un-connecting corridors under 750 miles in length to require that states, in lieu of the feds, pay full costs.

## Operations: Food & Beverage Services

At issue is how Amtrak has violated the basic tenets of its Railpax enabling legislation that required it to provide access on board to reasonably priced food/beverage (F&B) services. As dining car costs today are tied to off-loading Amtrak's costs upon the sleeping car passengers, whose meals are included in their fares, this most likely explains the high cost per meal. Why did Congress not demand an external forensic audit to validate Amtrak's cost assumptions?

## Finance/Accounting

Where has the curiosity of Congress been not to have concern over Amtrak's non-GAAP accounting, which protects the deeply deficit-ridden Northeast Corridor to rely upon PRIIA to require non-NEC states to purchase service and equipment agreements from Amtrak. This dismisses the economic reality of incremental costs impacting state frequencies, while dismissing the cost of capital to lighten the deficit from the Northeast Corridor Amtrak owns and maintains. Although this explains how Amtrak dismisses GAAP, where is the demand from Congress for external forensic accounting audits to review and validate all of Amtrak's cost assumptions and appropriate classification?

Beyond Amtrak re-directing federal funds intended for the long-distance sector to shore up the Northeast Corridor, why does Amtrak not refute public and media belief that the NEC is "profitable"? It is not, because the heavy infrastructure maintenance and repair costs are not deducted from total revenues. Were true and accurate accounting required, deducting such infrastructure costs would clearly evidence the high deficits incurred by this Amtrak-owned and -operated infrastructure.

Knowing the deepening deficit of the Northeast Corridor, Congress has attempted to stem the losses by requiring non-NEC states to pay for their corridor trains per Amtrak's full-cost methodology under PRIIA. Implicit in PRIAA's design is how it usurped state funds. What state treasurer actually knew that those funds would subsidize the NEC?

How constitutional was it for the federal government to impose PRIIA upon some states to deplete their resources to support another group of states? What about those non-NEC states seeking to develop rail corridors to enhance their own mobility and economic development? It is questionable if even a Freedom of Information Act request would adequately identify what states have paid this in FY19 (through Sept. 30), or verify what Amtrak charges for locomotives and cars by type? Could such data state-by-state be obtained through the Northeast Corridor Commission through PRIIA Section 212?

# Recommendations for Restructuring

The following recommendations should be seriously considered if the intent of Amtrak's creation is to be embraced and governed in a manner that better-serves America's mobility needs and fosters development of a balanced transportation network.

## Amtrak's Future: A 2020 Election Issue

The intent of this White Paper is to clearly arouse Congress, the public and the media to create a meaningful dialogue so that Amtrak's future becomes a national campaign issue in 2020—specifically, to inform and motivate state treasurers and auditors as to how their states have been subsidizing the Northeast Corridor, and have been saddled with the high costs of PRIIA-based train service per Amtrak's cost methodology.

## Leadership Structure

A desired result of making Amtrak a national political issue is ensuring that the Board of Directors and executive/senior management team places the public interest first. One course of action is to place Amtrak in receivership under the exclusive custody of the FRA Administrator, who would be empowered to reformulate the operation by appointing an interim Advisory Board consisting of experienced railroad executives. Amtrak must have the right mix of competence, expertise and experience to accept and carry out its national mandate, discard its self-protective monopolist position and fairly compete as a viable business with other such firms. The template exists, and there is precedent: Consider the quality of the experienced railroaders appointed to the original Conrail Board, which was a federal government-created and -funded salvage of the Penn Central bankruptcy. Is there the political will to take a similar step with Amtrak?

## Financial Actions

As currently structured, PRIIA potentially is unconstitutionally biased in its intended leverage against non-Northeast Corridor states to subsidize states along the NEC. PRIIA cannot remain untouchable, to the detriment of the 39 non-NEC states. (Pennsylvania and New York also get hit by PRIIA for services within their states, even though they are NEC states for minimum distances.)

PRIIA protects Amtrak from competition, feeding Amtrak's lack of foresight, encouraging a status quo mentality.

The FRA needs to determine why PRIIA was structured in such a biased manner not to charge Northeast Corridor states for Amtrak trains traveling less than 450 miles between Boston and Washington, yet charge the non-NEC states at fully allocated costs (a faulty methodology that defies GAAP) for their trains under 750 miles.

The FRA needs to advise Congress that either all state corridor trains operate without cost to their respective state(s), or, the states along the Northeast Corridor pay in accordance with the same allocation of cost methodology. In essence, the FRA must ensure that Congress accepts the legal concept of "most favored nation" that commits Congress to the explicit intent of the legal position that no state shall pay any less (or not at all) as compared to the other states purchasing passenger rail services.

The FRA needs to order, or should be requested by Congress, to seek a competent external forensic audit to ensure that Amtrak adheres to GAAP in allocating and collecting its costs. This would involve state-supported corridors, long-distance routes, the Northeast Corridor, and commuter lines operating over the Northeast Corridor.

Importantly, the FRA must determine why Amtrak initially elected not to charge and collect from the Northeastern commuter lines for their far-heavier use of the Corridor from when it was legislated in PRIIA in 2008? Why was this basic accounting not even implemented until finally mandated by Congress in December 2015? What was the rationale behind not charging those same states for Amtrak's intercity services along the NEC?

As part of this, the FRA would require external financial modeling to determine the economics of doubling daily long-distance routes. A favorable outcome would produce a proforma for Congress to approve an order for new Superliners, with enough capacity for seasonal trains or extra sections, or even more economical accommodations.

## Operations

To eliminate conflicts involving Amtrak and the commuter operators using the Northeast Corridor, as well as to lessen operational conflicts caused by multiple operators dispatching the Northeast Corridor, the entire NEC should be placed as a ward of the USDOT/FRA. This would fix the problem created in 1976 when the USDOT turned ownership of the NEC to Amtrak, ignoring the enabling legislation that did not provide for Amtrak to become an infrastructure owner/operator. Following that, neither DOT nor Congress saw fit to properly fund Amtrak for this costly responsibility to address deferred maintenance, replace bridges, maintain catenary, etc., which ended up causing Amtrak to use funds from the National Network, triggering PRIIA.

Another point favoring single ownership/operation of the NEC by USDOT/FRA would be to move toward creating a highly competitive environment by encouraging open access or franchising to vetted, qualified private operators, as well as to facilitate commuter rail lines operating run-through services beyond their current terminals. This would also transform commuter lines into true regional services, and as a byproduct, enhance their equipment asset management.

Beyond the problematic Northeast Corridor, private operators with their own equipment should be encouraged to provide seasonal services, without Amtrak preventing competition. For example, in its heyday, the *American Orient Express* nicely served that niche. It is time to take note of how the European Union is swiftly moving to enable private operators to compete, even returning overnight trains to their schedules. In fact, several government-owned European railroads are seeking to provide competitive services in other European countries looking to lower costs through competition.

As we seek to restructure Amtrak, we must also revise its enabling legislation, more clearly defining "profitability." What are the expectations of operating as a business? As an example, the Alaska Railroad embraces a very forward-looking, all-encompassing approach to marketing by operating its growing passenger services, encouraging charters, offering off-season specials, etc.

A major role for USDOT/FRA will be to work with the Class I's and what evolves from Amtrak and the states providing corridor services to determine to what extent will constructing additional main line track dedicated to passenger trains provide additional capacity for *all* parties. Such infrastructure improvement would be funded by federal, state, county and municipal sources, Class I's and Amtrak. There is precedent. Note how well the State of California is currently working on that funding basis with BNSF to construct additional main line track to facilitate increased Amtrak *Pacific Surfliner* intercity trains, North County Transit District *Coaster* and Metrolink commuter trains, and BNSF freight operations between Los Angeles and San Diego on the LOSSAN Corridor. Perhaps the finest example is the Capitol Corridor, where the Peninsula Corridor Joint Powers Board has worked closely with Union Pacific to expand passenger rail services and accommodate/improve UP's freight rail business.

Implementing these recommendations on a timely basis can provide inter-regional and intercity rail travel a long-awaited breath of fresh air by better use of funding, and far less susceptibility to politics, and those politicians who don't consider the nation's travel needs a priority.