

AMTRAK REVISITED

The 1972 Amendments to the Rail Passenger Service Act

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Since May 1, 1971, most of the intercity rail passenger trains in the United States have been operated by the National Railroad Passenger Corporation, better known as AMTRAK. This corporation is not a nationalized entity but a for-profit private corporation which has received much government financial support. AMTRAK was established by the Rail Passenger Service Act of 1970,¹ which was intended to call a halt to the decline of this means of travel throughout the nation, and to suspend the jurisdiction of the Interstate Commerce Commission over train discontinuance petitions.²

The corporation was severely underfunded and its first act was to cut the number of passenger trains operating in the United States in half.³ Many large cities such as Dallas, Cleveland, Little Rock, Toledo, Tulsa, and Mobile, as well as entire states such as Maine, Alaska, New Hampshire, Hawaii, South Dakota and Arkansas, are not served by the new system.⁴

The initial year of operation produced rather disappointing results. It took a long while to get passenger train service built up from such a low estate as that to which it had sunk. Time was required to build a staff, set up operating systems, and define objectives as well as to make the public aware that the new corporation was in the passenger business.⁵

The initial moves of the corporation were very cautious and did not bring forth dramatic results. AMTRAK has not yet attempted to operate its own trains with its own personnel, but has instead chosen to rely upon contracts with the railroads. This resulted in the immediate freeing of railroads from their passenger deficits and the creation of a cost-plus subsidy, with no incentive to the operating railroads to control costs.⁶

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1. 45 U.S.C. 501 (1970). See Harbeson, *The Rail Passenger Service Act of 1970*, 38 ICC PRAC. J. 330, (1971), Thoms, *AMTRAK: Rail Renaissance or Requiem?*, 49 CHI-Kent L. Rev. 29 (1972).

2. 49 U.S.C. 13a (1970).

3. Thoms, *AMTRAK: Rail Renaissance or Requiem?*, 49 CHI-Kent L. Rev. 29, 49 (1972).

4. N.Y. Times, March 23, 1971, p. 1, c. 1.

5. L. FRAY ET AL., *THE ROLE OF INTERCITY RAIL PASSENGER SERVICE V-11* (1973).

6. Thoms, *AMTRAK: RAIL RENAISSANCE OR REQUIEM#*, 49 CHI-KENT L. REV. 29, 54 (1972).

After a year of operation, AMTRAK's initial funds had run out and the Corporation was living off the buy-in payments from railroads, which had been required of participating carriers as a consequence of being relieved of the passenger burden.⁷ This left nothing for capital expenses, which were necessary in order to modernize service. AMTRAK, through its president, Roger Lewis, requested Congress for an additional \$170,000,000 to get the Corporation through the period ending June 30, 1973. From that date, the Corporation was free to petition the Interstate Commerce Commission for discontinuance of trains within the Congressionally-mandated "basic system."⁸

Although AMTRAK had felt it needed at least \$250 million to cover operating expenses, the Office of Management and Budget assumed that since the route structure was going to be reviewed in mid-1973, no program should be planned that would have to be revised at that date. OMB told President Lewis to apply for \$170 million, thus forcing AMTRAK to pour its capital funds into the operating account. This decision was backed by Daniel Hofgren, chairman of NRPC's Financial Advisory Board, who admitted this was a "special case" but that since AMTRAK was undergoing an "experimental period" he would recommend the minimal grant. Lewis went along with the charade, spurning Congressional largesse in a rare example of corporate asceticism.⁹ When asked why the Corporation sought such a relatively small amount, AMTRAK's president replied, "I think we've got to get far surer about what sort of passenger service is needed than we are."¹⁰ Lewis later told the Wall Street Journal that not only did AMTRAK not need the additional funds which the Senate had voted it, but he could not possibly find a way to spend it until 1974, should the funds be, in fact, appropriated to AMTRAK. This was too much for Senator Lowell Weicker (R.-Conn.) who demanded on the floor of the Senate Lewis' resignation. "Either Mr. Lewis is a fool or he's fronting for someone in the administration or the private railroad industry," Weicker declared.¹¹

The legislation which finally emerged from Congress on June 22, 1972,¹² was not only an appropriation bill, but a second-thought of the AMTRAK concept, with tighter controls by Congress, as well as a vote of no-confidence in AMTRAK's management. Section 1 of the new Act

7. 45 U.S.C. 561 (1970).

8. 45 U.S.C. 564 (b)(3) (1970).

9. Hebert, *AMTRAK: Asleep at the Switch*, THE NATION, Aug. 21, 1972, at 102.

10. BUSINESS WEEK, April 15, 1972, at 75.

11. PASSENGER TRAIN JOURNAL, Spring 1972 at 33-34.

12. Pub. L. 92-316, 86 Stat. 227 (1972).

provides that no officer of the Corporation will receive more than the compensation for cabinet-level officers (currently \$60,000 per year). The act goes on and says no present officeholder shall have his salary reduced while in service, except that the amount over \$60,000 must come out of corporate profits.¹³ Since profits are neither at hand nor just around the corner, the current president has had to accustom himself to a cut of over 50% of his original salary.

Lack of Congressional satisfaction with AMTRAK's handling of the passenger system is also responsible for Section 2 of the statute, which directs AMTRAK to, insofar as practicable, directly operate and control all aspects of its rail passenger service, and to take such actions as may be necessary to increase its revenue from the carriage of mail and express.¹⁴

The amendments of 1972 authorized the secretary to grant up to \$225,000,000 for maintenance, repairs, research and development, demonstrations, and capital improvements and further authorized an annual appropriation of \$2,000,000 per annum for service between points in the United States and Montreal, Canada; Vancouver, Canada; and Nuevo Laredo, Mexico. Such routes were to be considered to be within the "basic system", that is, the states involved would not have to pay for them, and they could not be discontinued until after July 1, 1973, and then only with the approval of the Interstate Commerce Commission.¹⁵

Service under this Act did not begin immediately. The first Congressionally-mandated train, from Seattle to Vancouver, began operations over the Burlington Northern on July 17, 1972. The train is run on a slow 4 ¼-hour schedule (competing buses take three hours) but it does make convenient connections with AMTRAK and Canadian National trains at both ends of the route. The *Pacific International* replaces a service discontinued on April 30, 1971. Establishment of service to Montreal was a more complicated business. Until May 1971, Penn Central and Delaware & Hudson had operated a through service between New York and Montreal via Albany. However, such a service would serve only New York State with no large cities north of Albany. In addition, the line terminated at a dead-end at New York's Grand Central Terminal. The Corporation thereupon chose to restore service to a route via Springfield, Mass. and White River Jct., Vt., which would permit a through routing through

13. 45 U.S.C. 543 (d) (1972).

14. 45 U.S.C. 545 (1972).

15. 45 U.S.C. 601 (1972). The Laredo route had not been operated since 1969, and was added at the insistence of Rep. Jake Pickle (D, Tex.) See THE NEW REPUBLIC, Nov. 11, 1972 at 10.

Penn Station to Washington, and incidentally include Vermont in the system. (Trains pass through parts of New Hampshire but stop at Vermont stations across the river.) The route is quite circuitous and time consuming (58 miles and 3 hours longer than the Albany line) and the run takes twice the time needed for competitive buses via the New York Thruway and Northway. It appears that AMTRAK tends to run trains where the votes, rather than the passengers are. Population in New England is higher than in northeastern New York and the trains have been active this past winter with the ski trade. The route from Washington to Montreal via New England had not been utilized since 1966—AMTRAK's first example of selecting a route not operated by passenger railroads in 1971. In addition, the service called for the cooperation of the Boston & Maine, Central Vermont, and Canadian National Railways, none of whom are AMTRAK participants. As a result, north of Springfield the trains are operated under contract between AMTRAK and the nonparticipating railroads, which had operated only freight service for the last six years. Neither of the Canadian trains has yet been designated a "passenger train service" subject to the regulatory authority of the Canadian Transport Commission, and thus are not eligible for Canadian subsidies. Nor is CTC permission necessary to discontinue Canadian operations.¹⁶ The first *Montrealer* commenced operations on Sept. 29, 1972.¹⁷

AMTRAK's Mexican service was even later in appearing. When the Office of Management and Budget impounded funds for the service, AMTRAK had to abandon its plan for a St. Louis-Nuevo Laredo train which would restore passenger service to the state of Arkansas and to Dallas, in favor of a through service to Mexico, connecting with the *Texas Chief* at Temple, Texas. This plan proved to be impractical, since border authorities, fearful of drug smuggling, refused to permit through cars to cross the Rio Grande. In addition, if a train were to make reasonable connections with the *Texas Chief* it would miss by a few hours the scheduled departure of the *Aguila Azteca*, premier train of the Ferrocarriles Nacionales de Mexico, and vice versa. Finally, the decision was made to forget the U.S. connections, and to run a tri-weekly shuttle train from Fort Worth to Laredo, Texas via Santa Fe and Missouri Pacific, incidentally restoring service to Austin. At Laredo, passengers are transported by bus across the border to a connection with the train to Mexico City.

16. National Transportation Act, 14-15-16 Eliz. II Chapter 69 (1966-67). See McLaren, *The Passenger Train Rationalization Process*, 10 WESTERN ONTARIO LAW REVIEW 108 (1971).

17. N.Y. Times, Oct. 1, 1972, p. 1, c. 1.

The *Inter-American* began its not-quite-international run on January 27, 1973.¹⁸ Connecting passengers were subject to an 18-hour layover in Fort Worth or anything from 7 to 35 hours delay in San Antonio.

Other provisions of the 1972 amendment provide that AMTRAK may promote special fares for military and blind persons, and that government agencies shall authorize train travel on the same basis as travel by other modes.²⁰ The amendments also provide for monthly reports by AMTRAK concerning revenues, expenses, passenger loads and on-time performances to Congress and annual reports by the Secretary of Transportation and the ICC.²¹ The new law provides that the Corporation will be subject to the Freedom of Information Act.²² The amended law also directs the ICC to rule upon an application by AMTRAK to use railroad tracks and facilities within 90 days, and provides that the ICC may in emergencies such as floods, strikes and wrecks require a railroad to make its tracks and facilities immediately available to NRPC for the duration of the emergency.²³

AMTRAK has authority to establish "experimental" services at any time. The services may be withdrawn if they prove unsuccessful. The new law establishes criteria for establishment of additional routes: current and future population, economic conditions, adequacy of alternate modes and the cost of adding the service.²⁴

The remainder of the 1972 amendments deal with including terminal company employees in the category of displaced employees to be protected under the Act, and directing AMTRAK to take such actions necessary to see that railroad employees eligible to receive passes on April 30, 1971 are allowed to travel on such a basis by AMTRAK. The railroads, which had promised these workers free transportation as a condition of employment, must compensate AMTRAK on such terms as are agreed to by the parties or arbitrated by the ICC.²⁵

18. AMTRAK News Release 73-2, January 16, 1973.

19. 45 U.S.C. 546 (a) (1972).

20. 45 U.S.C. 546 (f) (1972).

21. 45 U.S.C. 548 (1972).

22. 5 U.S.C. 552 (1972).

23. 45 U.S.C. 562 (1972).

24. 45 U.S.C. 563 (1972).

25. 45 U.S.C. 565 (1972). By order of December 20, 1972, corrected on December 21, 1972, the ICC found AMTRAK's space-available policy of free transportation on the worker's "home" railroad and half-rate transportation on "foreign" railroads to be substantially in compliance with the requirements of this law. The Commission found AMTRAK's costs incurred in transporting deadhead passengers to be a mere \$.00079 per passenger mile, which would result in a New York-Washington "cost" of 7 cents and New York-Chicago "cost" of 72 cents. The ICC further ordered that the revenues received from reduced-rate

In addition, the Secretary of Transportation was authorized to guarantee loans to AMTRAK up to an aggregate of \$150,000,000 through June 30, 1973, and up to \$200 million thereafter for improvements in roadbeds, rolling stock and other corporate purposes.²⁶ The language here used expressly gave the Secretary power to issue such notes, thus eliminating a technical defect under which the banks were unwilling to lend AMTRAK more than \$45 million of the \$100 million previously guaranteed.

A new section was added at the end of the bill, providing that the Secretary of Transportation must by March 15, 1973, report to the Congress on the effectiveness of AMTRAK and recommendations for the future course of the system. Such a report shall include:

- (1) recommendations for the operation by AMTRAK directly of *all* aspects of passenger service.
- (2) An assessment of how fairly AMTRAK's board represents the interest of passengers and, if necessary, recommendation for change in the composition of the board.
- (3) Estimates of potential revenues from the transportation of mail and express on passenger trains.
- (4) Analysis of on-time performance with recommendations as to the elimination of delays due to freight interference.
- (5) Recommendations with respect to the establishment of the optimum intercity passenger system after July 1, 1973, as to which lines should be included and which discontinued.
- (6) Recommendations for improvement of track and roadbeds.

In addition, recommendations may be made "for legislative enactments or administrative actions which would enable the Corporation, after July 1, 1973, to discontinue more rapidly and efficiently those routes which do not meet the criteria recommended by the Secretary. . . ."²⁷ This amendment was added by the House of Representatives, and many observers felt this was reflective of the House's relative lack of sympathy for continuance of money-losing runs. Under union pressure, a section which would recommend work-rule changes which might preserve passenger service was dropped.²⁸ It is submitted that this was an unfortunate

pass transportation should be credited against the railroads obligations, which would reduce these obligations to zero. ICC Finance Docket No. 27194, Determination of Cost Reimbursement under Section 405(f) of the Rail Passenger Service Act of 1970, as Amended (1972). AMTRAK is presently appealing this decision.

26. 45 U.S.C. 602 (1972).

27. 45 U.S.C. 645 (1972).

28. Conference Report No. 92-634, U.S. CODE CONGRESSIONAL AND ADMINISTRATIVE NEWS, July 20, 1972 at 2164.

move, since this is one area where real savings could be made. Although management and labor are coming to agreement concerning work-rules in freight and yard service so as to maximize economic operations, the same does not hold true for passenger trains. Since there is a cost-plus factor in AMTRAK service, management and labor have no incentive to eliminate unnecessary positions, for the bill can be passed on to AMTRAK and eventually the taxpayer. It is conceivable that a railroad could trade-off productivity gains and work force reduction in freight service for overmanning in passenger service, which would be ultimately supported by the public purse. On the other hand, it is well to remember that organized labor is the only politically potent group supporting the AMTRAK concept, and without its assistance there might be no American rail passenger service at all.²⁹

Although Congress had allocated \$227,000,000 for AMTRAK in the years 1972-1973,³⁰ the separate appropriation bill limited the Corporation to \$170,000,000, the amount originally requested by AMTRAK.³¹ In September 1972, President Lewis went back to Congress to ask for the additional \$57,000,000 to be used for purchasing *Turbotrains* and the upgrading of roadbeds as well as for establishing Chicago-Laredo service through Arkansas.³² However, Congress only appropriated an additional \$9,100,000 for international service through Dallas and Little Rock and for losses on Washington-Montreal, Seattle-Vancouver, and Washington-Parkersburg, W.Va. services, plus the establishment of an additional route between Oakland and Bakersfield, California.³³ These funds have since been permanently impounded by the Office of Management and Budget.³⁴

By the end of 1972, AMTRAK had made some substantial progress. The long-term decline of passenger patronage had been reversed, and passenger loadings were up 11%. Revenues had increased and losses reduced, thus dramatically changing a secular trend which had been indicated since the Second World War.³⁵ AMTRAK had acquired its own

29. See, e.g. Testimony of Anthony Haswell, Esq. before the Subcommittee on Transportation and Aeronautics of the Committee on Interstate and Foreign Commerce, House of Representatives, 92d Cong., 1st Sess., Serial No. 92-54, at 572-4, 588-9 (Nov. 11, 1971).

30. 45 U.S.C. 601 (1972).

31. Federal Railroad Administration News Release No. FRA—2872, Aug. 15, 1972.

32. Wall St. J., Sept. 27, 1972, p. 5, col. 2.

33. Wall St. J., Oct. 18, 1972, p. 27, col. 3.

34. Atlanta J., Jan. 10, 1973, p. 6C, col. 1.

35. Letter of Transmittal accompanying Annual Report of National Railroad Passenger Corporation, 1972 (Feb. 1, 1973). This trend had continued from the middle 1920's, with the exception of the war years. See generally R. FELLMETH, *THE INTERSTATE COMMERCE COMMISSION* 285-310 (1970).

locomotives and cars, ordered new *Turbotrains* from Canada and France, simplified tickets and improved reservations procedures, and measurably bettered on-train services under direct AMTRAK supervision.³⁶

On March 15, 1973, the Department of Transportation filed its report and recommendations with Congress, as required by Section 806 of the amended Act.³⁷ The report cited the above improvements, but concluded that many of the changes were not yet apparent to the traveling public, would take additional time to implement, and that it was not possible "at this time to assess with any finality the success of the effort to revitalize intercity rail service. There are some notable gains, which support the general assessment that AMTRAK has made progress toward improving intercity rail service."³⁸

The recommendations of the Secretary were generally favorable to the AMTRAK experiment. The Transportation Department favored the continuance of the program along present lines and recommended further loans and grants to the Corporation.³⁹ It recommended further passenger input into the decision-making process through the establishment of an advisory committee,⁴⁰ continuance of the present programs in obtaining mail and express traffic and expenditure of funds for track renovation.

With regard to route structure, the report urged AMTRAK to slightly retrench its system. Examining the long-haul route structure, the Department identified the following as "problem" routes with estimated allocated deficits of more than 2.5¢ per passenger-mile in fiscal year 1975:

Chicago-Houston
Chicago-Florida
Chicago-Washington/Newport News
New York/Washington-Kansas City

The report recommended that the Chicago-Florida and New York/Washington-Kansas City routes be dropped, that Chicago-Houston trains be combined with Chicago-Los Angeles trains in off-peak periods between Chicago and Newton, Kansas, and that the route segment between Richmond and Newport News be abandoned. Service between Chicago and Florida would be rerouted via the Chicago-Richmond and New York-Florida routes, thus preserving service for through travel-

36. DEPARTMENT OF TRANSPORTATION, REPORT TO CONGRESS ON THE RAIL PASSENGER SERVICE ACT, March 15, 1973 at 4, 12.

37. 49 U.S.C. 645 (1972).

38. *Supra* n. 36 at 3.

39. *Id.* at 4.

40. *Id.* at 69.

ers but ending all AMTRAK service in Alabama, as well as to the important cities of Louisville and Nashville.⁴¹ AMTRAK later announced that the *Texas Chief* to Houston would be rerouted to run through Dallas, restoring service to that city which had lost all passenger trains in 1969. The rescheduling would effectuate a connection with the *Inter-American* at Fort Worth.⁴²

The short-haul picture looked more optimistic, with only two routes: Chicago-Milwaukee and Washington-Parkersburg, estimated to have deficits greater than 2¢ per passenger mile in fiscal year 1975. It was recommended that *Turbo trains* be initiated on the Chicago-Milwaukee run to boost patronage and lower costs, and that the Washington-Parkersburg service be discontinued as hopeless.⁴³ Since this latter run was an "experimental" service, established unilaterally by the corporation under Section 403(a) of the Act⁴⁴ as a result of political pressures, no regulatory approval was needed for discontinuance of this train, which AMTRAK removed from service on May 5, 1973.⁴⁵

Four recommendations were made for further amendments to the Rail Passenger Service Act. The first proposed amendment would change Section 404(b)(3) of the Act⁴⁶ to eliminate the ICC's jurisdiction to investigate and suspend discontinuance of trains in AMTRAK's basic system, thus leaving AMTRAK free to discontinue trains at will, subject only to the right of State and local agencies to request continuation of service on a reimbursable basis.⁴⁷

The second proposed amendment would exclude from the ICC's jurisdiction over adequacy of passenger service those aspects "relating to scheduling, frequency of service, and consist of trains."⁴⁸

The third proposed amendment would change sections 601 and 602 of the Act⁴⁹ to provide open-ended appropriation authorization, without fiscal year or dollar amount limitations, and extend the limitation of loan guarantees to \$500,000,000.⁵⁰

Finally, the Secretary proposed changing the date of AMTRAK's an-

41. *Id.* at 79-91.

42. TRAINS, May 1973 at 8-9.

43. *Supra* n. 36 at 93-94.

44. 45 U.S.C. 563 (a) (1972).

45. Wall St. J., April 6, 1973, p. 20, c. 6.

46. 45 U.S.C. 564(b) (1972).

47. *Supra* n. 36 at 104-108.

48. *Id.* at 108. The proposed change would amend 45 U.S.C. 645 (1972).

49. 45 U.S.C. 601-2 (1972).

50. *Supra* n. 36 at 109-110.

nual report to March 15, to coincide with the reporting date of the Transportation Department and the Interstate Commerce Commission.⁵¹

It is submitted that the final amendment is administratively desirable and the third financially unobjectionable, adoption of the first two proposed amendments would be unwise. AMTRAK was founded "for the purpose of providing modern, efficient, intercity passenger service."⁵² To attain this goal, Congress directed the Secretary of Transportation to establish a "basic system" of routes over which AMTRAK should operate.⁵³ What emerged was a skeletal system, viewed as the absolute minimum of train service acceptable to the nation, for a base upon which to build. AMTRAK has already cut back service on its experimental routes and reduced frequency within the basic system. It has applied for discontinuance with the Commission of the routes mentioned in the Secretary's report. There is nothing in the history of AMTRAK to indicate that the corporation has been particularly bold or energetic in its efforts to obtain a greater share of the passenger trade.

Under these circumstances, who is to say that AMTRAK might not use unlimited power to cut back all service to one or two profitable routes, were it given the opportunity to contract at will? This has been the experience under private management, and this was the evil which the Rail Passenger Service Act was intended to remedy. The powers of the Corporation are sufficiently broad and general to allow it to enter into any business, provided it is somehow connected with rail passenger operations.⁵⁴ Although the Interstate Commerce Commission has generally been no friend of the railroad passenger,⁵⁵ the present procedure at least acts as a balance against a precipitate withdrawal of service motivated by excessive concern with profits and lack of concern for the traveling public.

The first two years of AMTRAK operations give cause for cautious optimism about the future of railroad passenger service. No doubt the impending fuel shortage in the United States will compel policy-makers to seriously consider shifting the bulk of intercity travel from gas-hungry automobiles to more efficient and less fuel-consuming modes

51. *Id.* at 110. The proposed change would amend 45 U.S.C. 548(b) (1972).

52. 45 U.S.C. 501 (1972).

53. 45 U.S.C. 521 (1972).

54. 45 U.S.C. 545(a) (1972).

55. R. FELLMETH, *THE INTERSTATE COMMERCE OMISSION* 285-310, 394-402 (1970). *Cf. also* Thoms and Laird, *Derailing the Passenger*, 36 *ICC PRAC. J.* 1118 (1968), Laird and Thoms, *End of the Line*, 15 *LOYOLA L. REV.* 263 (1969).

such as bus and railway.⁵⁶ AMTRAK can make a positive contribution by relieving congestion on other modes and by reducing the resource and environmental burden on transportation.⁵⁷

56. OFFICE OF EMERGENCY PREPAREDNESS, THE POTENTIAL FOR ENERGY CONSUMPTION IN THE UNITED STATES, p. ii and Appendix C (1972).

57. L. FRAY ET AL., THE ROLE OF INTERCITY RAIL PASSENGER SERVICE, parts IV and V *passim* (1973).