



A bold voice for transportation workers

November 7, 2011

The Honorable Joseph C. Szabo
Administrator
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

VIA <http://www.regulations.gov>

Re: Docket No. FRA-2009-0108, Notice No. 1: Alternate Passenger Rail Service Pilot Program

Dear Administrator Szabo:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am writing to comment on the Federal Railroad Administration's (FRA) Notice of Proposed Rulemaking (NPRM) on the Alternative Passenger Rail Service Pilot Program.¹ While we understand the limited scope of this pilot program and appreciate the FRA's approach in the NPRM, we nonetheless remain opposed to efforts to privatize passenger rail service currently performed by Amtrak as provided for in the NPRM.

As the FRA correctly notes, the NPRM is in direct response to a statutory mandate included in the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). Specifically, Section 214 of PRIIA directs FRA to conduct a rulemaking process "to develop a pilot program that permits a rail carrier or rail carriers that own infrastructure over which Amtrak operates certain passenger rail service routes to petition FRA to be considered as a passenger rail service provider over such a route in lieu of Amtrak."² We understand that the pilot program is limited to no more than two routes and cannot exceed five years from the date of PRIIA's enactment. We also note that there are several conditions and mandates included in Section 214 and incorporated in the NPRM designed to protect affected employees and to preserve efficient passenger rail service if an alternative carrier is indeed chosen to provide service.

¹ TTD consists of 32 affiliated unions including the following that make up our Rail Labor Division: American Train Dispatchers Association; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers, and Helpers; International Brotherhood of Electrical Workers; National Conference of Firemen and Oilers, SEIU; Sheet Metal Workers International Association; Transportation Communications International Union; Transport Workers Union of America; United Transportation Union

² Alternative Passenger Rail Service Pilot Program. 76 Fed. Reg. 55336 (September 7, 2011).

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



We specifically appreciate the fact that proposed Section 269.15(b) states that any person used by a rail carrier in the operation of a route under the proposed rule would be considered an employee of that rail carrier and subject to the applicable federal laws and regulations governing similar crafts and classes of employees of Amtrak. If an alternative to Amtrak to provide rail service proceeds, it must be ensured that employees on the new provider are covered by the same rail and labor laws that currently apply to Amtrak. Section 269.15(b) must be read and interpreted to accomplish this objective. All rail workers at an entity providing passenger rail service need and deserve to be covered by the statutory scheme designed for their workforce. Furthermore, it would be inherently unfair and inconsistent to allow someone to bid on rail service contemplated in the NPRM but to do so by avoiding certain legal requirements that currently cover Amtrak.

We agree with FRA's analysis that it is unlikely that any railroads will participate in this pilot program. The operating subsidy required by Section 214 is currently not funded by Congress and the financial risk and challenges associated with providing passenger rail service would discourage for-profit entities from competing for this service. In fact, we have long argued that the intercity passenger rail service that Amtrak provides must be seen as a public service. To demand that the carrier "turn a profit" is both simply not practical and not based in experiences here and in foreign countries. We have seen far too often the privatization of passenger rail services leading to increased fares, significant employee layoffs, and the degradation of maintenance and safety. For example, as well-known scholar and privatization expert Elliott D. Sclar from Columbia University stated in 2003 regarding the privatization of British Rail: "The public service mission central to a national railroad system became of necessity secondary to the profit motive of individual suppliers"³. He went on to note that the fragmentation of the privatized system meant that "no one was in charge of long-term strategic planning or financing for the British system as a whole."⁴ While this ill-fated privatization scheme has some differences from the pilot program at issue in this NPRM, we would be remiss to not re-iterate our vision for a national passenger rail system – a system that includes Amtrak as the centerpiece.

Recent successes at Amtrak also indicate that privatization proposals are ill-timed. The rail carrier and its skilled employees are performing better than at any time in its history. Amtrak recently announced an all time ridership record for Fiscal Year 2011, a year in which it served over 30 million passengers. All Amtrak business lines – Northeast Corridor, state-supported/short distance, and long distance – saw growth last year, and it is notable that the long-distance routes, which this pilot program would include, saw their best ridership in 16 years. Furthermore, Amtrak's management has demonstrated a relentless focus on creating one of the world's great intercity passenger railroads and delivering on the high-speed rail vision of the Obama Administration. The future of the company is promising – if the company and its workforce are given the chance to succeed.

³ Elliot D. Sclar. *Amtrak Privatization: The Route to Failure*. Economic Policy Institute (2003) at 25.

⁴ *Id.* at 27.

We acknowledge the FRA's responsibility to carry out the statutory requirements set forth in Section 214 of PRIIA, and we note the proposed rule's close adherence to the language of the statute. We were opposed to Section 214 at the time of its enactment and remain opposed to privatization of Amtrak's vital services. America's successful national passenger rail carrier should be allowed to continue thriving; it must not be picked apart piece by piece.

Transportation labor appreciates the opportunity to comment. Thank you in advance for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a large, stylized flourish at the end.

Edward Wytkind
President