GETTING OUR NATION'S FREIGHT RAIL SYSTEM BACK ON TRACK

Our nation's freight rail system has existed for more than 150 years because it has historically been viewed – both by the federal government and the companies that operate on it – as a long-term asset that requires regular investments in order to continue its vitality. These regular investments have been made both by the federal government and freight railroads as part of an enduring long-term partnership. That partnership includes a duty on the railroads to provide rail service in a way that benefits this country.

In recognition of the freight railroads' importance to the U.S. economy and the American people, Congress imposed a common carrier obligation on the railroads that requires railroads to "provide reasonable service for a reasonable rate upon a reasonable request from a shipper." This common carrier obligation continues today in federal law and is a bedrock principle of our rail system. To enforce this obligation and ensure that the railroads were not engaging in unfair practices, Congress created in 1887 the Interstate Commerce Commission (ICC), which was the first regulatory commission in the history of the United States. Today, the Surface Transportation Board (STB) is the modern successor to the ICC and is the federal agency responsible for enforcing the common carrier obligation of the railroads.

Congress renewed its commitment to our nation's rail system and this long-term partnership through the 2021 Bipartisan Infrastructure Law (BIL), which committed a record $66 billion in federal funding for passenger and freight rail infrastructure. Of this funding, $20 billion will directly benefit major U.S. freight railroads via a $16 billion investment in Amtrak's national network, which runs on freight rail tracks in much of the country, and $4 billion in grant programs. The remaining billions in federal rail investment will provide additional, indirect benefits to the major freight rail carriers. Historically, the railroads have matched these types of public investments with their own investments. Unfortunately, that is no longer the case.

The largest freight rail companies, known as Class I railroads, have not demonstrated the same commitment to investing in their infrastructure or their workers in recent years, undermining not only the BIL but also the entire national supply chain. The Class I freight railroads' recent shift to a business model that prioritizes short-term profits over long-term sustainability jeopardizes the long viability of our freight rail system. This must change.

We call on the Class I freight railroads to reverse their current slash-and-burn mentality and instead make the necessary investments in the freight rail workforce and capital infrastructure to guarantee the long-term stability and prosperity of our freight rail system. We further call on Congress to give the Surface Transportation Board the necessary tools to enforce the railroads' common carrier obligation and ensure that the railroads are following the law and living up to the partnership established long ago.

The historic Bipartisan Infrastructure Law will make record public investments of at least $66 billion over the next few years in our passenger and freight rail systems. Multiple grant programs will collectively provide record resources for Amtrak, expand freight rail service at ports to better move goods, invest in grade crossing safety and separations, upgrade freight rail infrastructure, advance intercity passenger rail, and make available low-cost financing for both freight and passenger rail providers.

While the federal government is making a record investment in our nation's rail systems, the railroads themselves have done the exact opposite since they transitioned to a business model known as "Precision Scheduled Railroading" (PSR) – a way of doing business that TTD has repeatedly expressed its strong opposition to. While its name might suggest that this practice is intended to provide better, more efficient service to its customers, this couldn't be further from the truth. On the contrary, this model exists solely to squeeze every last nickel and dime out of the industry at the expense not just of their workers, but also of the very customers they are supposed to be serving. The bottom line is that PSR prioritizes short-term profits over the long-term health of our freight rail system.

The Class I railroads have achieved record profits – over $146 billion since 2015 – to the detriment of workers, rail shippers, and consumers. In nominal terms, these profits are more than even what the railroads made at the height of their robber baron days in the 19th century. To achieve these savings for their shareholders' benefit, this PSR business model has stripped rail networks of their human and physical capital. Since 2015, these railroads have laid off 45,000 workers, which is the equivalent of 30% of their total workforce. Simultaneously, the railroads slashed their investments in physical infrastructure like railroad tracks and sold off or sidelined essential equipment. The four largest railroads in the United States (BNSF, UP, NS, CSX) have collectively cut $32 billion in capital expenditures since 2015 versus their 2015 baseline. These decreases do not account for the inflation that has happened since 2015, which makes the decline in investment even worse.

During the height of the pandemic supply chain crisis, these massive workforce and equipment reductions made freight rail service the biggest bottleneck in the country. By turning their backs on smart long-term investments in workers and equipment, freight railroads ensured that our nation's supply chain, workers, and small businesses needlessly suffered. After years of dramatic and unnecessary cuts to their workforces and capital assets, these Class I rail carriers found themselves shorthanded both in workers and equipment in the midst of the supply chain crisis, at one point even going so far as to ration service between the congested Port of LA-Long Beach and Chicago. Poor freight rail service has been the biggest bottleneck in our supply chain crisis and poor rail service has been entirely caused by the Class I's decision to prioritize short-term profits over good rail service and the long-term health of the system.

At this moment, the railroads are not living up to their common carrier obligation. The current service provided by the railroads is falling well short of what their customers and this country needs and cannot be considered "reasonable" by any sensible definition of the term. Unfortunately, because the common carrier obligation is not clearly defined and the term "reasonable" is in the eye of the beholder, the Surface Transportation Board, shippers are reluctant to bring common carrier cases and it is difficult for the agency to enforce the railroads' common carrier obligation. We have endorsed legislation in Congress that would more specifically define the common carrier obligation by explicitly considering factors such as staffing levels and availability of equipment and better enabling the STB to enforce this obligation, including by requiring railroads to increase employment levels or bring more equipment into the system. We urge Congress to swiftly pass this legislation before further irreparable harm is done by the railroads to our freight rail system and this country.

The crisis in our freight rail system, which was caused by the railroads' decision-making over the past few years, demonstrates the downside of regulatory agencies enforcing the common carrier obligation on a customer by customer basis. To that end, we believe a more holistic look is warranted. More than 40 years ago, Congress last significantly reformed the laws governing the railroads because our freight rail system was on the verge of bankruptcy. When it reformed these laws, Congress directed the STB to conduct a yearly "railroad revenue adequacy" test that looks at whether railroads are earning sufficient revenue when determining whether the rates charged by railroads to their customers are reasonable. While mindful of some of the implementation challenges the STB has had in conducting the yearly revenue adequacy test, we believe consideration is warranted for the STB to create a parallel test that would look at whether the railroads have enough workers and physical infrastructure to meet their common carrier obligation for rail service.

Such a human and capital infrastructure "stress test" would proactively ensure the railroads could indeed meet their common carrier obligation rather than waiting until things got so bad that emergency orders from the STB were needed, as has been the case recently. There is recent precedent for such a test. After the Great Recession of 2008, which was caused by the financial crisis at the time, Congress directed the Federal Reserve to conduct "stress-tests" of large banks to ensure that those banks are sufficiently capitalized. The success of such "stress-tests" can be found in the fact that no large banks have failed since they were implemented. Rather than continuing to experience repeated railroad service failures, the implementation of a "stress-test" for railroads to ensure they can meet their service obligation could have similar success.

For more than 150 years, our nation's freight rail system has thrived because it has been treated as a long-term asset that requires regular investments in order to continue its vitality. Infrastructure, especially railroads, by definition is a long-term asset. Railroads were never meant to be judged by quarterly net profits or operating ratios. What we invest in and build today will last for decades to come.

The federal government has partnered with the railroads to make those investments given the scale of need, but that partnership comes with an obligation from the railroads that they would provide the service that this country needs. TTD has always, and will always, support strong federal investment in and partnership with our freight and passenger rail networks. But it is unacceptable for that investment and our supply chain to be undermined by the greedy business practices directed by the stock speculators and so-called "activist investors" who now set the course for the freight railroads.

If freight railroads don’t reverse their own horrific slash-and-burn business practices and start reinvesting in their workforces and networks, the long-term stability of the freight rail system is in jeopardy and there is no guarantee we will have a freight rail system for another 150 years. If the railroads won’t change their ways, then Congress and the Surface Transportation Board need to step in and force the railroads to make the necessary changes our country, rail customers, and workers need before it's too late. Time is of the essence.

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