A bold voice for transportation workers

WRITTEN STATEMENT OF
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BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON
COMPETITION FOR INTERCITY PASSENGER RAIL IN AMERICA

June 22, 2011

Chairman Mica, Ranking Member Rahall and members of the Committee, I am pleased to present the views of transportation labor on the topic of today's hearing – competition for intercity passenger rail in America. This year alone I have appeared twice before this Committee to express our opposition to the privatization and break-up of Amtrak and appreciate the opportunity today to explain why we are strongly opposed to the legislation proposed by Chairman Mica and Subcommittee Chairman Shuster.

We believe the appropriate topic for today's hearing should be how to expand and finally fully invest in Amtrak as the nation's only high speed rail provider. Unfortunately, Washington is best known for repeatedly engaging in the same debates and rarely learning from previous mistakes.

We have seen the many examples of botched public transit privatization experiments, the well documented failures of privatized federal prisons and the abysmal working and safety conditions found in privatized school bus operations. In fact, Amtrak was created in 1971 because the passenger operations run by the private freight railroads went belly up 50 years ago. Higher fares, shoddy service and injuries and fatalities followed the privatization of British Rail in the 1990s. Rather than learn from these mistakes, I fear that the Mica-Shuster legislation will dramatically repeat these financial and service failures.

We believe the only hope for true high speed passenger rail is for Congress to join President Obama and finally unleash Amtrak's potential. Instead of destroying Amtrak, Congress must fund the carrier at an adequate level, invest in infrastructure improvements, replace aging locomotives and rolling stock, and give the company's skilled employees a chance to deliver on the promise of faster and more frequent passenger rail service for more Americans.

We also wonder why the topic of today's hearing is "competition" for intercity passenger rail. The problem with our passenger rail system isn't a lack of competition from the private sector; it is a lack of reliable federal funding. We don't see private investors lining up at the door to run money-losing passenger rail operations. They are, however, hoping to take advantage of

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investments in Amtrak that have already been made by U.S. taxpayers, ongoing government subsidies, and artificial competitive advantages created by Congress. If you are a Wall Street investor this is a great deal – if you are a taxpayer, a passenger, or a worker, you will lose under the Mica-Shuster legislation.

No passenger rail system in the world succeeds because of competition – it succeeds because the public sector invests the resources necessary to build, expand and maintain the infrastructure. That is why the world's current and emerging economic powers are spending enormous government resources to retool and modernize their passenger and freight rail networks.

I do not suggest that the private sector isn't critical as well. The fact is that our transportation system is based on a simple model that embraces a robust role for the public sector at all levels and for significant private sector involvement. Much of the nation's infrastructure is built by private contractors but the public interest is protected by government oversight of how the funds are distributed and how the projects are delivered and completed. That is the way it has worked for decades across our entire transportation system. But if you ask private investors about the conditions necessary for them to invest in transportation projects, they will tell you that the predicate for the flow of private capital is a steady, reliable stream of federal investment. Without this crucial federal role private investors will not participate and unfortunately with major reauthorizations languishing in this town for years the hope for reliable, long-term federal investment continues to fade.

Let me offer our preliminary analysis of the Mica-Shuster privatization legislation.

First, the Mica-Shuster legislation is an Amtrak bankruptcy plan. Amtrak as we know it will disappear and along the way almost 20,000 jobs will be eliminated. The bill explicitly removes Amtrak from providing service on the NEC and requires the carrier to turn over its NEC assets to the government to eventually be given to a private company. Without Northeast Corridor operations, where Amtrak currently is operationally in the black, Amtrak can no longer run the national system. And believe me, no one is going to step up and run those services if profit is the single motive. As such, under this proposal those services will disappear across the nation's vital urban, suburban and rural passenger rail routes.

Second, it ignores the failures of the past by giving the green light to Wall Street and wealthy investors to cherry-pick those parts of the Amtrak network that can make a profit and let the rest of the system wither. That approach will not unleash the private sector's capability to provide passenger rail service to a nation starving for more train service – no, it will unleash Wall Street's skill of making money for Wall Street.

Third, basic rights and protections that cover current Amtrak employees wouldn't apply once the conversion to private operation of Amtrak's Northeast Corridor or off-corridor rail service occurs. This runs counter to claims that Amtrak workers would be held harmless by this proposal and that "current benefits and current wage levels" would be guaranteed.

The legislation dictates that private entities would be considered rail carriers "only for purposes of title 49, US Code." Since other important laws and protections are found elsewhere in the Code the meaning of this measure is that Amtrak employees would be stripped of longstanding protections.

The newly selected private rail service provider would evade the Railway Labor Act, thereby stripping employees of current rights to bargain collectively and union representation. And oddly, the Mica-Shuster proposal only says that the new rail carrier shall negotiate with representatives of the employees "to establish collective bargaining rights." Bargaining rights are not something that can be "negotiated" – they are provided by law. This proposal ignores this basic fact.

Amtrak employees would lose all wage rates, benefits and protections currently included in their contracts when a new entity takes over the service. If you look carefully, the proposal doesn't extend current protections to employees – it only says that new carriers will negotiate with representatives of employees (who, by the way, have lost their labor law rights and presumably their union representation) over "appropriate labor protections." If Amtrak employees are allegedly held harmless why is the new private carrier negotiating over "appropriate labor protections?" In the real world, this directive is meaningless and is designed to disguise the fact that employees have lost their protections in law and in their union contracts. So contrary to public claims, nothing in this bill guarantees "current benefits or current wages."

Mica-Shuster also eliminates coverage for employees of the new entities under Railroad Retirement, the railroad pension, unemployment and disability benefits system covering almost a million active and retired workers. All other interstate carriers – Amtrak, the freight railroads and certain commuters – are covered by this law but the Mica-Shuster bill creates a new class of private carrier that would be permitted to evade these obligations.

This removal of future passenger rail employees from Railroad Retirement would be devastating to current and retired employees. It would jeopardize the solvency of the system, and would impose enormous tax increases on the current employers that participate in the system.

Think about it this way: current retirees, spouses and survivors, numbering more than 547,000, will suffer so that private carriers run by some of the world's wealthiest people like Richard Branson can evade longstanding railroad pension obligations to feed their profits and shareholders. This is obviously a vision we strongly reject and we urge Congress to stop this run-away plan to expand privately run passenger rail operations at the expense of a 75-year-old pension system. I might add that the freight railroads have expressed serious concerns regarding the application of the Railroad Retirement Act to the new rail carriers created by this legislation.

Assurances have also been made, at least rhetorically, that the Mica-Shuster plan will give Amtrak employees the right to transfer to a job with the new private carriers. The truth is that the legislation only requires new carriers to provide a "hiring preference to qualified Amtrak employees." The words "job guarantee" appear nowhere in the bill – perhaps it is hidden somewhere in an appendix we haven't seen.

Mica-Shuster fails to afford employees any legal or contractual rights to follow their work or even a fair and transparent system to transition to a new carrier. At least PRIIA, approved by this committee in 2008, provides both protective conditions and a process of negotiation and arbitration to transition any displaced workers to a replacement carrier. Also, protective conditions exist in current Amtrak labor contracts, but of course these agreements would have no application to the new carrier and those worker protections would be lost as well. With Amtrak losing the Northeast Corridor, and of course other routes open to competition, the company would have no ability to move its employees to other jobs within Amtrak or have the resources to compensate the thousands of employees that become displaced.

In reality, the only thing the Mica-Shuster proposal guarantees is the chance for Amtrak employees to be considered for employment. Weak hiring preferences don't help pay mortgage, child care or college tuition bills.

Beyond the employee issues let me review some of our thoughts about the privatization model that forms the foundation of Mica-Shuster and specifically about injecting competition into passenger rail.

We think this approach is fundamentally flawed because it ignores what our transportation system was built to accomplish in the first place.

Well known scholar and privatization expert Elliott D. Sclar from Columbia University in 2003 succinctly summed up the problem regarding the British Rail experiment: "the larger mission of public service became devalued from a primary goal to a secondary goal. Each of the new profit-seeking companies that now fulfill a piece of the process has a primary fiduciary concern with cost-minimization, consistent with the larger goal of maximizing shareholder value. The public service mission central to a national railroad system became of necessity secondary to the profit motive of individual suppliers."

Regarding fragmentation, Sclar continued: "Numerous regulatory entities have been established, because fragmented companies with differing responsibilities do not adequately protect all parties: the infrastructure owner that must maintain the system at a fair price; the operating companies which must fulfill their franchise agreements; and last but not least the public, which must be kept safe and protected from exorbitant fares. In Britain, this fragmentation has meant that no one was in charge of long-term strategic planning or financing for the British system as a whole. This is in stark contrast with Amtrak, which has clearly delineated its long-term plan for high speed service in the Northeast Corridor."

Sclar also noted the "brain drain" problem that surfaced following the British Rail privatization. "... the transformation from public to private saw a wholesale removal of employees and managers who understood the system in all its complexities. One of the major expenses the British government now faces is the reconstruction of its institutional base."

This Sclar study was completed almost eight years ago but the problems inherent with passenger rail privatization are the same and the story of British Rail is well known and understood. Promises of service enhancement went unfulfilled; fares went up; safety suffered and tragically accidents claimed lives.

Interestingly, the lead sponsors of this proposal, Chairman Mica and Subcommittee Chairman Shuster, have pointed to Virgin Trains as a model to emulate here in America. While we haven't had a great deal of time to evaluate Virgin's operations I think it is a fair to say that claims of operational and financial success don't mesh with what has really occurred. Government subsidies have been necessary to support this so-called for-profit operator, delays and service problems plague the system, and jobs have been eliminated.

Let me conclude with a broad overview of what this privatization experiment means to our nation's passenger rail system.

We have always argued that if permitted to cherry-pick lucrative routes, and if permitted to keep the cost of infrastructure replacement and upgrades off the books, a carrier could show a profit on some routes. On the Northeast Corridor today, Amtrak is operating in the black "above the rail." This is all interesting but has nothing to do with how a nation runs and maintains a national passenger rail network that serves our national interests.

Amtrak's national network – imperfect indeed and a victim of decades of chronic underfunding – is a necessary component of America's multi-modal transportation system. Yes it receives federal subsidies but so does our entire transportation system.

As I said previously before this Committee, our transportation system isn't just about the wealth it creates for transportation providers – it is about the wealth it creates for the users of our economy, the people and businesses that need transportation need reliability, safety and efficiency. And it is about the millions of good, skilled jobs it supports throughout the system.

Mass transit systems don't make money – the employers that rely on those systems to transport their employees do, the countless communities served in which small businesses thrive do. Airports and air traffic control aren't about profits – they are about the billions of dollars in wealth they create transporting people and cargo around the world. Highways and ports are not profit centers in and of themselves – they are profit centers for persons and businesses that rely on surface transportation and water infrastructure to keep our economy on the move. Finally, without maintaining proper public oversight of our transportation system America runs the risk of creating a balkanized network based on the principle that private investors will chase profits in the system while failing to provide vital services that all regions of the country need regardless of profitability.

Our passenger rail system is no different. It will never make money once you calculate the true cost of the system and infrastructure. But just ask the users of the system what life in America would be like without Amtrak's Northeast Corridor and other key corridor services. Ask the

millions who ride the highly successful Acela service whether they think we should risk one of the world's most important transportation corridors to a privatization experiment. Ask the users if we should place the Northeast Corridor up for sale and risk having shareholder value and profit motives collide with service, safety and reliability.

The Mica-Shuster bill would decimate our national Amtrak system through a risky privatization plan that ignores recent lessons and entrusts Wall Street and wealthy investors with one of the nation's most vital transportation arteries in a region that produces 20 percent of America's GDP.

Along the way, Amtrak would go bankrupt, thousands of jobs would be destroyed, bargaining rights would be eliminated, pension benefits taken away, and in the end, this will be the generation that ruined our national passenger rail network.

We're unwilling to take so many risks. We urge the Committee and Congress to reject this wrong-headed transportation policy experiment and instead work on a bipartisan basis to fund a long-term high speed rail program with a well-funded Amtrak as its centerpiece and an engaged private sector as a necessary and vitally important partner.

Thank you for allowing us the opportunity to present our views.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name:
Edward Wytkind

(2) Other than yourself, name of entity you are representing:
Transportation Trades Department, AFL-CIO

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES **If yes, please provide the information requested below and attach your curriculum vitae.**

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

No Federal grants, subgrants, contracts or subcontracts were received by Edward Wytkind or the Transportation Trades Department, AFL-CIO during the current fiscal year or either of the two previous fiscal years.

Edward Wytkind

June 21, 2011
Date

A bold voice for transportation workers

Edward Wytkind
President
Transportation Trades Department, AFL-CIO

Edward Wytkind is the President of the Transportation Trades Department, AFL-CIO (TTD), a Washington, D.C.-based labor organization representing several million workers in the private and public sectors of the aviation, mass transit, rail, trucking, highway, longshore, maritime and related industries. TTD is a separately managed national transportation policy and legislative organization within the institution of the National AFL-CIO, which represents 10 million workers in the United States. Immediately prior to his election as President in the fall of 2003 by the Executive Committee, Wytkind served as TTD Executive Director for 13 years.

Wytkind oversees TTD's daily legislative, policy, regulatory and political programs and initiatives, serving as transportation labor's chief spokesman. One of Wytkind's primary duties is to work together with TTD's 32 member unions representing transportation labor's collective interests before the United States House and Senate, the executive branch and independent agencies, boards and commissions of the federal government including the U.S. Department of Transportation and its many agencies, the U.S. Department of Labor, the National Mediation Board, the National Transportation Safety Board, the Surface Transportation Board, the White House and others. Wytkind also regularly testifies before Congress and provides a transportation labor perspective to conventions, conferences and other labor, industry and government meetings. Wytkind has also served as a transportation advisor in previous presidential elections and transitions. He has also been a guest lecturer at several universities.

Many of the issues Wytkind works on fall under the topics of increasing investment in our nation's transportation infrastructure; improving workplace safety and security; protecting workers from outsourcing, ill-effects of bad trade policy and globalization; and improving worker rights.

Wytkind is currently appointed by the U.S. Trade Representative and Secretary of Labor to serve on the Labor Advisory Committee for Trade Negotiations and Trade Policy, which consults the President and Congress on trade policy issues including proposed agreements and treaties. He serves on the Board of Trustees for the Mineta Transportation Institute and has served on the Eno Transportation Foundation's Board of Advisors.

Wytkind is from Los Angeles, California, and today holds membership in the Office and Professional Employees International Union. He earned a Bachelor of Arts degree from the University of California, Santa Barbara. He is married and resides in suburban Washington, D.C.