TESTIMONY OF

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BEFORE THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

ON

"NATIONAL RAIL POLICY: EXAMING GOALS, OBJECTIVES, AND RESPONSIBILITIES"#

SUBMITTED BY

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The American Public Transportation Association (APTA) is a nonprofit, international association of nearly 1,500 public and private member organizations, including transit systems and commuter, intercity and high-speed rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient, and economical public transportation services and products. More than ninety percent of the people using public transportation in the United States and Canada are served by APTA member systems.

INTRODUCTION

Chairman Denham, Congresswoman Brown, and members of the Railroads, Pipelines, and Hazardous Materials Subcommittee, on behalf of the American Public Transportation Association (APTA) and its more than 1,500 member organizations, I thank you for this opportunity to testify on the development of the next passenger rail authorization bill. My name is Michael Melaniphy, and I am the President and Chief Executive Officer of the American Public Transportation Association. We understand that the committee intends to focus on legislation to replace the expiring Passenger Rail Investment and Improvement Act (PRIIA) and we are also submitting our views as they relate to the requirements to implement positive train control (PTC) on the nation's commuter railroads under the Rail Safety Act.

APTA believes that the nation needs an integrated network of passenger rail services, including high-speed rail where appropriate, that connects with the existing Amtrak system, and with commuter rail and transit operations. Such a system should be part of a multi-modal, inter-connected national transportation system that enables the nation's air, rail, bus, ferry and highway systems to function more efficiently. Travelers using this system should be able to make seamless connections between modes and between major metropolitan regions linked by rail service. As our population and these regions grow, we will need more intercity passenger rail, including high-speed service, as an alternative to both the air and highway systems, which in some places are already operating at close to capacity. As the nation's population swells by nearly 150 million people between 2000 and 2050 we need to make investments in our transportation infrastructure that provide transportation choices and serve national goals.

Rail, both passenger and freight, offers unique opportunities and benefits that warrant a strong federal commitment to fund and implement policies that will allow for expansion. Rail is energy efficient and environmentally beneficial. The permanency of rail corridors has the power to focus economic activity and development. Rail's contributions to more efficient mobility not only enhance the productivity of the regions it serves, but also our nation's economic competitiveness.

ABOUT APTA

The American Public Transportation Association (APTA) is a nonprofit international association of more than 1,500 public and private member organizations, engaged in the areas of bus, paratransit, light rail, commuter rail, subways, waterborne services, and intercity and high-speed passenger rail. This includes: transit systems; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. More than 90 percent of the people using public transportation in the United States and Canada ride APTA member systems.

PRINCIPLES ON HIGH-SPEED AND INTERCITY PASSENGER RAIL

To meet the rapidly expanding needs of an ever-growing and highly mobile population, the United States must develop a fully integrated multimodal high-speed and intercity passenger rail system. It is more important than ever for the U.S. to invest in its infrastructure as the

efficient movement of people and goods is essential for sustained economic growth and recovery. Investing in intercity and high-speed rail projects will produce new passenger rail networks that will create hundreds of thousands of private sector, construction and manufacturing jobs as well as stimulate domestic business growth that will generate additional jobs in related consumer-driven industries. According to a study done by Glen Weisbrod for APTA, expenditures for high-speed rail construction are estimated to support 24,000 jobs for each billion dollars of investment.

In support of this vision, APTA's Legislative Committee recently adopted principles for a federal high-speed and intercity passenger rail (HSIPR) policy. These call for new dedicated revenue sources other than those currently supporting the Highway Trust Fund, a streamlined National Environmental Protection Act (NEPA) review process, and an efficient combination of private and public sector leadership in the development of new rail service. APTA's recommendations call for significant private sector participation in the planning, construction, and financing of new rail infrastructure. Such projects should be financed through a combination of federal, state, local, regional and private funding.

We fully recognize the current fiscal pressures that our country faces and the challenges that creates for Congress in identifying and allocating financial resources and setting priorities across the federal budget. We do not make these funding recommendations lightly. However, we also believe that investments in infrastructure, including passenger rail, are among the highest value investments the nation can make. We know this committee recognizes the importance that transportation investment holds for our nation's economic competitiveness and prosperity, and whether we talk of high-speed rail, higher speed rail, high performance rail, or other intercity passenger rail, APTA and its members believe that these investments will produce tremendous economic, environmental and mobility benefits.

Expansion and improvement of our current intercity passenger rail system will require a commitment of federal, state, local and private resources – a combination of funding AND financing strategies that will not only pay for projects, but also speed their planning, design and construction. APTA recommends an authorization of $50 billion over six years to facilitate the development of a HSIPR system. There should be a dedicated and indexed federal revenue source for planning, design and construction of these projects, other than the current motor fuels excise taxes that fund the Highway Trust Fund. We also suggest that, to attract greater private capital, deliver projects more quickly, and ensure shared risk, the use of public private partnerships, along with a full breadth of finance, tax, and revenue approaches, should be promoted. Programs such as the Railroad Rehabilitation & Improvement Financing (RRIF) program should be streamlined with application decision time periods reduced and flexibility encouraged through deferred debt payments and subsidized interest rates and/or credit risk premiums. Finally, APTA believes intercity passenger rail projects and other public transportation projects that reduce air pollution emissions in areas designated as air-quality non-attainment areas should be eligible for funding from the Congestion Mitigation and Air Quality (CMAQ) program beyond any limitation of years whenever such benefits can be shown to increase over time as ridership grows.

Corridors and Projects

The national programs for high-speed and intercity passenger rail should be based on defined and agreed-to passenger rail corridors that will meet specified criteria and increase the speed, utilization and efficiency of passenger rail transportation to achieve travel time reductions and increased frequency of service. Projects should be allocated sufficient funds drawn from a dedicated and predictable federal funding source so that they can be completed on a reasonable schedule. The program should also include the Northeast Corridor and recognize the costs of bringing the Northeast Corridor into a state of good repair and to assure capacity for growth. Projects, travel time reduction and frequency improvement objectives should be defined at the state and local level, but should be consistent with national goals and objectives. The planning process should determine the type of project currently most appropriate for the particular region and market while the map should be the result of a consultative process with federal, state and local governments. State rail plans should address state level funding issues, service integration issues, short and long-term sustainability, and shall establish the terms of private sector involvement consistent with the National Rail Plan.

Reduce Barriers, Restrain Costs, And Streamline Project Delivery

While funding and financing options are certainly key, we also urge the committee to ensure that barriers to project planning and development, and to the operation of services are controlled if not reduced. Issues such as liability insurance, operator licensing, project approvals and environmental reviews should be limited to what is necessary and applied in the most flexible and least restrictive manner where they are required.

If we truly want the nation's population centers connected by an efficient and effective passenger rail network, then we must work together to ensure that the planning, environmental, procurement and grant processes are streamlined and manageable. Regulatory requirements that do not have essential operational, environmental and safety purposes should be avoided whenever possible to ensure that projects can advance in the fastest manner and with the lowest cost. A commitment to this approach would provide encouragement to states, transportation authorities and private financing partners.

The federal grants review process should be kept simple, while work in pre-approved corridors should proceed with minimal grant review. Accountability should be enforced through self-certification and post-delivery reviews, rather than through a burdensome process that holds up projects by requiring extensive documentation up-front. However, the U.S. DOT should provide initial reviews and screening as to whether applications or applicants comply with express requirements of grant statutes before grants are released.

Given the significant project acceleration and environmental streamlining provisions for transit and highway projects in MAP-21, corresponding changes to environmental approval processes also may be needed for rail projects, so that they would not be comparatively disadvantaged. We believe DOT should pursue common or standardized rules on NEPA and categorical exclusions across all modes for the efficient administration of provisions of the National Environmental Protection Act (NEPA) and such rules should be consistent with the

streamlining provisions of MAP-21. Permits and review should be expedited, with reviews coordinated in a concurrent manner and not handled sequentially. While FRA has made progress with expanded categorical exclusions, an expanded system of categorical exclusions should be developed and widely applied. Furthermore, efforts similar to the process for waiving non-statutory requirements when needed to expedite projects should be established for HSIPR projects, as it currently exists for Federal Highway Administration (FHWA) projects under the SEP-15 program, should be pursued to accelerate agency decision making and approvals.

Competition, Insurance and Licensing

APTA also supports federal policies that facilitate competition among operators. The federal and state supported HSIPR program should be designed to encourage open, strong and fair competition among competing pre-qualified operating and rail service companies. To ensure fair competition, all competing companies must comply with all federal railroad laws. APTA membership is incredibly diverse and the roster of those interested in high-speed and intercity rail ranges from Amtrak to AIPRO to Labor to small, mid-size and large cities, states, transit authorities and private sector organizations. This diversity of interest makes a case for policies that ensure options for project and service sponsors.

For commuter rail operations, as well as potential new passenger rail services, APTA continues to recommend against unnecessarily costly minimum levels of liability insurance for all passenger rail operators, or any requirement that those operators be specially certified by the Surface Transportation Board (STB) before providing passenger rail transportation. Risk profiles of individual passenger railroads are unique and based on a combination of factors and should not be subject to a uniform liability for every agency and operator, large and small. Congress dealt with this issue in the Amtrak Reform and Accountability Act of 1997 (ARAA, P.L. 105-134) by setting a liability cap of $200 million per accident.

The existing $200 million cap on liability should apply to all claims against high-speed and intercity rail operators, sponsoring agencies, host railroads, and commuter railroads and should apply consistently regardless of the operating entity or its contractor. Without such statutory limits, the cost of obtaining insurance and the cost of rail passenger operations will become prohibitively costly. Currently, state and regional passenger railroad service sponsors enter into agreements with passenger rail operators through detailed contracts which take into account qualifications and legal requirements, and additional requirements will unnecessarily increase costs for public passenger railroads.

Further, granting broad new authority to the STB to set up licensing requirements as deemed appropriate would create unneeded regulatory hurdles to entry into the passenger rail market. The safety of passenger railroad operations is already well regulated by the Federal Railroad Administration (FRA), which requires operators to comply with specific safety standards.

RAIL SAFETY

First and foremost, APTA is unequivocally committed to safety: passenger and employee safety is the number one priority on our nation's commuter railroads. Since its inception, APTA has been a vocal advocate and active instigator for safety improvements. In the mid-1990's, APTA developed the Passenger Rail Equipment Safety Standards (PRESS) program to develop safety standards for commuter rail cars. More recently, our commitment to safety was heralded by the rail industry regulator, Federal Railroad Administrator (FRA) Joe Szabo, who announced safety statistics citing that 2012 was the safest year in railroad industry history. With that said, we are always working to make our industry safer.

APTA consistently supported the concept of positive train control (PTC) long before the Rail Safety Improvement Act (RSIA) of 2008, provided that proven technology, resources and radio spectrum necessary were available to put PTC into practice. We are working with our member railroads to meet the law's requirements that all of the nation's commuter railroads have federally approved systems that help protect against accidents. We urge the committee to focus on how to best install these still developing systems on an enormous and complicated network of interconnected railroads in a way that maximizes all of an operator's safety considerations while efficiently moving toward implementation. Commuter systems provide important transportation in and around many of our metropolitan regions, and demand for service and ridership continues to grow.

Commuter rail safety has improved in recent years, but we continue to strive for improved safety. Commuter rail ridership has grown by 42 percent since 1990, going from just under 328 million trips then to more than 466 million trips in 2012, and safety on the nation's commuter systems has improved. Over the past 10 years, fatalities have declined from just above 0.9 per 100 million passenger miles to 0.5 per 100 million miles in 2011. While commuter rail operators will always seek to improve and enhance safety, it is clear that travel by commuter railroad is among the safest modes of travel in the U.S.

Culture of Safety

While we address in this testimony a very significant element of the RSIA in the requirement to implement PTC, it is important that we make clear that PTC is but one element of an overall integrated approach to system safety. An effective safety culture is more important than any one specific procedure or technology. It begins with the commitment of the organization and senior leadership, working in collaboration with employees and labor in adopting common safety goals and expectations. It involves recognition that responsibility for safety lies at all levels and with all staff. One way our commuter rail agencies demonstrate their commitment is by having a comprehensive safety plan in place. It includes having sound policies and procedures, training, maintenance practices that include asset management and state of good repair considerations, data tracking for monitoring trends in operational, equipment, and infrastructure performance, and systems in place for auditing and assessing that performance. The transit and commuter rail industries have been leading on safety improvements over a 20 plus year evolution during which a great deal of attention and effort has been directed toward

development of standardized systems and approaches to the delivery of safe service and work environments.

As an example, all commuter rail agencies have developed Safety Management Program Plans, the framework of which was based upon APTA's Safety Audit Program. The APTA Safety Audit program is a voluntary, comprehensive program developed over a decade ago when a number of North American rail transit systems requested APTA to develop and implement a standardized format for rail system safety and to provide an auditing service that would enable a transit system to determine the degree to which the standardized elements for rail transit system safety were being addressed. By way of the adaptation of existing industry best practices and system safety standards from the aerospace industry, the APTA Rail Safety Audit Program was inaugurated in 1989. This program was subsequently adopted in 1996 by the U.S. Department of Transportation Federal Transit Administration as the base guideline for its federal state safety oversight requirements.

Currently there are dozens of rail transit systems and bus transit systems participating in APTA safety audit programs. These systems include mass transit/subway systems, light rail systems, automated guide-ways, heavy rail commuter systems, and bus transit operations across North America and Asia. Modal programs have been developed that are specific to urban rail, commuter rail, and bus safety management processes. The benefits derived from participation in the APTA Safety Management Program include:

- Adoption of safety management practices that have been established as an industry standard;
- Building and enhancing safety management processes for service delivery and workplace safety;
- Providing a tool for demonstrating transit system diligence for safety; and
- Providing a mechanism for continual improvement of system safety

An effective safety program implementation includes policies and procedures on: Facilities Maintenance and Inspection; Vehicle Maintenance, Inspection and Repair; Rules and Procedures Review; Training and Certification; Emergency Planning and Response; Workplace Safety Program; Passenger and Public Safety; Rail Corridor Operational Study; and Environmental Management Programs. These are just a portion of the lengthy list of considerations with which our agencies are involved in ensuring a safe system.

Additionally, industry developed standards (such as PRESS and others) are contributing greatly to ongoing safety improvement. APTA has written over 270 standards and recommended practices, 71 of which address particular safety needs for mainline rail equipment, and over 111 for rail transit alone. Standards help improve the safety of public transportation systems by addressing vehicle crashworthiness, passenger door systems, emergency lighting and evacuation, and new standards to improve the safety of vehicle interiors including seat attachment strength and safer workstation tables. APTA has initiated new efforts within its standards body to improve current standards on vehicle design affecting derailments and has initiation new studies to better understand the potential for derailments at slow operating speed. Standards also define safe operating practices, inspection and maintenance of equipment, train control maintenance

requirements, electrical propulsion system design, catenary electrical distribution wire maintenance, and wheel and axle assembly procedures among many other areas of a general nature including cyber and physical security, railcar procurement, tunnel ventilation, and sustainability.

Finally, APTA partners with the FRA, AAR and labor in developing rules to help design, build and operate safe transportation systems. In this regard, APTA is very active as an industry representative within the Rail Safety Advisory Committee (RSAC). Recently FRA and industry have collaborated on the development of language for new safety rules particular to high speed rail equipment. The public transportation industry and especially our commuter rail agencies will continue to maintain a strong emphasis on safety.

Positive Train Control

As the members of this committee know, the Rail Safety Improvement Act (RSIA) of 2008 mandated that PTC technology be implemented on passenger railroad and certain freight railroads by December 31, 2015, and it authorized funding of $250 million over five years to assist with implementation. As defined in the statute, a positive control system is a "system designed to prevent train-to-train collisions, over speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position." When the RSIA was drafted in 2008, there was no off the shelf technology capable of achieving these safety objectives for all railroads – as is still the case today. Yet many commuter railroads have long made use of collision avoidance systems that would have protected against accidents that have occurred in recent years. Since the enactment of RSIA, APTA and its commuter rail members across the country have aggressively pursued the funding and technology necessary to implement this safety mandate by the current statutory deadline. However, challenges beyond our control have presented obstacles to implementation.

The initial conservative estimate for PTC implementation on commuter railroads was more than $2 billion, with more than 4,000 locomotives and passenger cars with control cabs and 8,500 track miles to be equipped. Since this initial estimate, as commuter railroads have begun their contracting and technology acquisitions, the estimated costs of implementation have risen well beyond the initial $2 billion estimate. These estimates do not include costs related to the acquisition and operation of the radio spectrum necessary to meet the interoperability requirements set forth under RSIA and they do not include costs associated with operating PTC systems.

To date, Congress has only appropriated $50 million of the total authorized amount. At a time when critical State of Good Repair backlogs are creeping above nearly $80 BILLION on our nation's public transportation systems, commuter railroads are being forced to choose between performing critical system safety maintenance projects and implementing PTC by 2015. Insufficient funding is a significant impediment to implementation for publicly funded railroads.

Key components of PTC systems are still in the developmental phase, such as software upgrades and revisions, and roadway worker protection. Absent these essential elements, full implementation by 2015 will be impeded, even for those railroads that have secured the

necessary funding. Moreover, the inability of most commuter railroads to acquire necessary radio spectrum is also impeding full implementation by 2015. The FCC has not responded to APTA's requests to make available spectrum available as a public safety imperative and insisted that the necessary bandwidth can be purchased on the open market. One railroad purchased spectrum only to have it now held up while the courts decide who owns the rights to sell the spectrum.

In 2011, after several years of working towards implementation and complying in good faith with FRA reporting requirements on PTC implementation plans, the APTA Commuter Rail CEOs committee concluded that the industry would not be able to fully implement interoperable PTC systems on all commuter railroads by the current deadline. Thus, APTA approved a policy position recommending that the deadline for PTC implementation be extended to December 31, 2018. APTA's position also states that extending the deadline shall not inhibit efforts to implement PTC on some commuter railroads prior to the existing deadline and in fact urges Congress to prioritize funding for those efforts. The hope was that lessons learned from early implementers would serve to facilitate and expedite implementation for other commuter railroads. Other APTA positions adopted in 2011 included recommendations that Congress appropriate federal funding to cover 80 percent of PTC implementation costs for commuter railroads and direct the Federal Communications Commission (FCC) to provide radio spectrum, without cost, required for PTC implementation by publicly funded commuter railroads.

I should note that representatives from commuter rail systems across the nation and APTA staff have conducted numerous meetings with Members of Congress and staff from congressional committees of jurisdiction to explain APTA's views and the challenges faced trying to implement PTC. While we have always expressed a commitment to implement PTC technologies, industry experience indicated that it would be difficult, if not impossible, to implement PTC on all of the nation's commuter railroads by the 2015 deadline. We believe we acted responsibly by coming to Congress well before the deadline, rather than waiting for the deadline to become imminent.

Further, in January 2012, APTA shared a report with Congress which documented the technical challenges of implementing PTC. This report, which was written jointly with the Association of American Railroads (AAR), also outlined the technical challenges that freight railroads are experiencing in their effort to implement PTC and reached the shared conclusion that implementing a fully interoperable PTC network was not achievable by December 31, 2015.

CONCLUSION

Thank you again for the opportunity to testify today on national rail policy, including passenger rail and rail safety.

We look forward to working with the committee as it drafts legislation to succeed the Passenger Rail Investment and Improvement Act. We hope to work with this committee to develop a federal program that works with state and local governments, and the private sector to develop a national system of intercity passenger rail corridors, including high-speed rail, that

connect the nation's growing population centers. We firmly believe that such a system would enhance the effectiveness and efficiency of all of the modal elements of our existing transportation system and better prepare the country to compete in the international economy as our population soars.

We also want to reiterate the industry's commitment to advancing the safety of our riders, employees and communities. We urge this subcommittee to continue its work to assist commuter railroads as they work to implement PTC by extending the implementation deadline to 2018, authorizing at least 80 percent of the more than $2 billion in implementation costs, and working with the FCC to establish a set aside for PTC spectrum purposes.

On behalf of APTA and its members we look forward to continuing to work with this Committee on this and many other common issues that face public transportation agencies.