# FEDERAL REGULATORY OVERREACH IN THE RAILROAD INDUSTRY: IMPLEMENTING THE RAIL SAFETY IMPROVEMENT ACT

**(112–18)**

# HEARING

BEFORE THE

SUBCOMMITTEE ON
RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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# CONTENTS

ADDITIONS TO THE RECORD

# U.S. House of Representatives
## Committee on Transportation and Infrastructure

John L. Mica
Chairman

James W. Coon II, Chief of Staff

Washington, DC 20515

Nick J. Rahall, II
Ranking Member

James H. Zoia, Democrat Chief of Staff

March 14, 2011

**SUMMARY OF SUBJECT MATTER**

To: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

From: Subcommittee on Railroads, Pipelines, and Hazardous Materials Staff

Subject: Federal Regulatory Overreach in the Railroad Industry: Implementing the Rail Safety Improvement Act

**PURPOSE OF HEARING**

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Thursday, March 17, 2011 at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony on the Rail Safety Improvement Act of 2008 (P.L. 110-432, Division A), with particular focus on the Federal Railroad Administration's final rule implementing requirements for freight and passenger railroads to install positive train control systems by December 31, 2015.

**BACKGROUND**

The Rail Safety Improvement Act (RSIA) comprises Division A of the broad rail authorization bill signed by President Bush in October 2008. Division B of the rail authorization is the Passenger Rail Investment and Improvement Act, or PRIIA; the Subcommittee held an oversight hearing on implementation of this part of the law on March 11, 2011. RSIA included a number of major provisions meant to improve safety of freight and passenger rail operations for the benefit of rail passengers, railroad employees, and communities. Previous to RSIA, the last authorization of rail safety programs had been in the 1994 Swift Rail Development Act.

On September 12, 2008, a Union Pacific freight train and a Metrolink commuter train collided head-on in the Chatsworth district of Los Angeles, California. The scene of the accident was a curved section of single track on the Metrolink Ventura County Line just east of Stoney Point. According to the National Transportation Safety Board (NTSB), which investigated the cause of the collision, the Metrolink train ran through a red signal before entering a section of single track where the opposing freight train had been given the right of way by the train dispatcher. In the resulting collision, the Metrolink locomotive telescoped into the passenger compartment of the first passenger car and caught fire. All three locomotives, the leading Metrolink passenger car and seven freight cars, were derailed, and both lead locomotives and the passenger car fell over.

There were 25 fatalities and 135 other individuals were injured (46 of them critically). The accident was the deadliest passenger rail accident in the United States since the Big Bayou Canot Amtrak disaster in 1993.

**The NTSB faulted the Metrolink train's engineer for the collision, concluding that he was distracted by text messages he was sending while on duty.** This accident spurred the Congress to act quickly on completing the Rail Safety Improvement Act, which was enacted a month later, on October 16, 2008. In May 2010, the Secretary of Transportation announced a proposed rule to explicitly restrict and in some cases prohibit the use of cell phones and other handheld devices such as personal digital assistants (PDAs) by train engineers, conductors, switchmen, and other safety critical rail employees.

**Positive Train Control**

Legislative Mandate: Section 104 of RSIA amends title 49 of the United States Code to add a new section 20157, Implementation of positive train control systems. This section mandates that Class I railroad carriers[1] and intercity passenger rail and commuter rail entities must implement positive train control (PTC) systems by December 31, 2015, on: (1) lines over which intercity passenger rail or commuter rail are operated; (2) main freight lines over which poison- or toxic-by-inhalation hazardous materials are transported; and (3) such other tracks as the Secretary may prescribe by regulation or order. All affected Class I freight railroads and passenger railroads were required to submit to the Federal Railroad Administration (FRA) their implementation plans for positive train control systems 18 months after enactment of RSIA, or by May 16, 2010.

"Positive train control" describes technologies designed to automatically stop or slow a train before certain accidents caused by human error occur — specifically, train-to-train collisions, derailments caused by excessive speed, unauthorized incursions by trains onto sections of track where maintenance activities are taking place, and movement of a train through a track switch left in the wrong position. A fully functional PTC system must be able to precisely determine the location and speed of trains; warn train operators of potential problems; and take action if the operator does not respond to a warning. For example, if a train operator fails to stop a train at a stop signal, the PTC system would apply the brakes automatically. In January 2010, FRA published its final rule to implement the PTC mandate. This rule has raised great concern and strong objections from the rail community, for a number of reasons. Freight railroads, many Members of Congress, and some in the greater rail community believe that the FRA regulation has gone beyond the scope of the RSIA positive train control mandate.

Cost versus Benefits of PTC Installation: FRA's own cost-benefit analysis of its final rule implementing PTC states that, "an immediate regulatory mandate for PGC could not be justified based upon normal cost-benefit principles relying on direct safety benefits .... The safety benefits of PTC systems were relatively small in comparison to the large capital and maintenance costs." The FRA estimated a cost-benefit ratio of 15:1 for required installation of PTC systems when it issued its Notice of Proposed Rulemaking, and an even higher cost-benefit ratio of 22:1

[1] A Class I freight railroad is defined as a railroad with 2009 operating revenue of more than $378.8 million.

in its final rule. The safety benefit associated with installation of PTC over 20 years is estimated by FRA to be $674 million; the 20-year costs are estimated to be $13.21 billion. Due to the very high cost to benefit ratio, the PTC rule has been targeted by the Obama Administration efforts under Executive Order 13563 on Improving Regulations and Regulatory Review, which requires Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness.

Base Year for PTC Route Determination: In its final rule, the FRA orders railroads to install PTC on rail lines that carried toxic-by-inhalation (TIH) materials in 2008. Nothing in section 104 of the RSIA either explicitly or implicitly calls for using 2008 as the base year — only 2015 is mentioned in the statute.

Using 2008 as the base year makes little sense because TIH traffic patterns in 2015 will be vastly different than they were in 2008. Hazardous materials rail traffic patterns are already changing because of marketplace dynamics and because of recent regulatory changes in hazardous materials transportation by rail made through other agencies. Marketplace changes include decisions by some manufacturers to generate chlorine on-site without requiring rail shipment or bulk storage. Two recent regulations, one through the Pipeline and Hazardous Materials Safety Administration and another through the Transportation Security Administration, have had an overall impact of consolidating TIH routing by rail. The PHMSA rule on rail hazmat routing requires that TIH be transported on rail routes posing the least overall safety and security risk. The 2008 TSA "secure chain of custody" rule reduces the amount of time that a rail hazmat shipment can sit in one place ("dwell time"), and requires a secure transfer of hazmat carrying rail cars when making an interchange.

If the 2008 base year is retained for determining which routes will requires PTC installation, the FRA estimates that 65,000 miles of Class I freight rail lines will meet these requirements, though rail industry figures suggest more than 73,000 route-miles (and 17,000 locomotives) will require PTC installation. If left unchanged, the 2008 baseline year will mean railroads may have to spend hundreds of millions of dollars to deploy PTC on thousands of miles of rail lines on which neither passengers nor TIH materials will be moving in 2015.

AAR's court case and settlement: In November 2010, the Association of American Railroads (AAR) filed a petition in the U.S. Court of Appeals challenging FRA's PTC final rule, both on the basis of the 2008 base year and on the basis of exceeding the Congressional mandate by requiring that PTC information be displayed on two monitors in each locomotive (one for the engineer, and a second for the conductor). Last week, the AAR and FRA agreed to petition the court to hold the case in abeyance, pending a new rulemaking or rulemakings to address four issues that remain remaining under discussion in connection with the lawsuit:

(1) 2008 base year issue
(2) limited train operations carrying TIH (a "de minimus" exception)
(3) PTC failures en-route (rule requires a 20 mph limit to destination if PTC fails)
(4) PTC in yard operations

FRA and AAR have reached an agreement on the issue of PTC monitors in the locomotive, agreeing that the second screen would exist but it need not be interactive.

PTC Mandate Impact on Commuter Railroads: Commuter railroads operate over the general railway system and the safety of these railroads is overseen by the FRA. There are currently 23 commuter railroads operating in the United States. Commuter railroads are not challenging the FRA's implementation of the PTC mandate, but have serious concerns about the underlying mandate itself, particularly given the financial straits that many of these public agencies are in during the economic recession. Commuter railroads are managed at the local level by transit agencies and receive federal capital grant funds through the Federal Transit Administration (FTA). The FTA formula grant funds are required for ongoing system maintenance and modernization, and the additional estimated $2 billion price tag for implementation of PTC on commuter rail systems is not within reach for commuter rail agencies. In fact, most transit agencies in the United States have had to cut service or increase fares to make up for declining local and state support over the last two years. Commuter railroads argue that the PTC mandate could have the unintended consequence of degrading system safety by requiring the deferral of needed state of good repair projects in order to fund initial phases of PTC.

Commuter railroads are also concerned about the issues of interoperability and spectrum allocation. Because commuter railroads often run over tracks owned by a Class I freight railroad, their PTC systems must be interoperable with the system installed by the freight railroad. Additionally, radio spectrum is necessary to allow the wireless communications between train locomotives, wayside equipment, dispatch centers, and communications subsystems that make up a PTC network. The freight railroads have been successful in securing enough spectrum bandwidth for the freight PTC installation, but commuter rail systems operate in and near cities, where there is already strong demand for radio spectrum. The commuter railroads are concerned that there will not be sufficient spectrum, or that it will come at too high a cost, for effective PTC implementation.

PTC Mandate Impact on Short Line Railroads: Short line and regional railroads are explicitly not required to install PTC equipment on their lines under section 104 of RSIA. However, the PTC mandate affects short lines because interchanges of freight between a short line railroad and a Class I railroad take place on Class I rail track, and in many cases, such interchanges will occur on sections of track that are PTC-equipped. FRA's final rule will allow some limited interchanges by short lines on Class I PTC-equipped track, up to four times daily and within 20 miles of the short line's entry point, but short line and regional railroads are concerned about the of equipping their older locomotives with PTC technology in order to make interchanges. There has not been a cost analysis of the impact of PTC requirements on short line and regional railroads, though industry representatives estimates that as many as 140 smaller railroads will be required to upgrade their equipment to be PTC-compatible.

**Hours of Service**

In an effort to reduce fatigue-related rail accidents, the RSIA significantly revised Hours of Service (HOS) requirements for rail and signal employees. The law also included a provision that would exempt commuter rail operators from the new HOS regime if the FRA develops a satisfactory alternative within three years.

HOS changes in P.L 110-432 include:

- Limiting the total on-duty and limbo time for rail and signal employees to 276 hours per month;
- Limiting the total allowable shift time for employees to 12 consecutive hours;
- Increasing uninterrupted off-duty hours from 8 to 10 hours in a 24 hour period;
- Requiring 2 consecutive days off after 6 consecutive days worked and 3 consecutive days off after 7 consecutive days worked; and
- Reducing allowable "limbo" time to 40 hours per month, then 30 hours per month after one year.

**INVITED WITNESSES**

Rep. Elton Gallegly (California 24th district)

Ms. Mackenzie Souser
Camarillo, California

Ms. Jo Strang
Associate Administrator, Office of Safety
Federal Railroad Administration

Mr. Mark Manion
Executive Vice President & Chief Operation Officer
Norfolk Southern Corporation
Accompanied by Mr. Ed Hamberger, CEO and President
Association of American Railroads

Mr. Joseph J. Giulietti
Executive Director
South Florida Regional Transportation Authority

Paul Victor
President
Anacostia & Pacific Railroad Company, Inc.

Dennis R. Pierce
National President
Brotherhood of Locomotive Engineers & Trainmen

# FEDERAL REGULATORY OVERREACH IN THE RAILROAD INDUSTRY: IMPLEMENTING THE RAIL SAFETY IMPROVEMENT ACT

**THURSDAY, MARCH 17, 2011**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES
AND HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:00 a.m. in Room 2167, Rayburn House Office Building, Hon. Bill Shuster (Chairman of the subcommittee) presiding.

Mr. SHUSTER. The hearing will come to order. I thank everybody for coming here today. And this is going to—the opening of this committee hearing is going to be a little bit disjointed. There is some razzle-dazzle. We are going to have votes here approximately at 10:15. And we would like our friend from California and his guest to make sure that they get through their testimony before we have to head off to vote.

So, again, good morning. Welcome, everybody, to the Subcommittee on Railroads, Pipelines and Hazardous Materials hearing on regulatory overreach in the railroad industry, and the implementation of the Rail Safety Improvement Act. We are specifically—we will be focusing on the Federal Railroad Administration's final rule implementing the requirements for freight and passenger railroads to install positive train control, or PTC, system by December 31, 2015. And so, I am looking forward to hearing everybody's testimony today.

And with that I will yield to the chairman of the full committee, Mr. Mica.

Mr. MICA. Well, thank you, Mr. Chairman, and thank you for convening this hearing this morning of the rail subcommittee. This is a very important hearing, and people—I think it is very important that we put also a human face on some of the issues that challenge the Congress and the Administration.

I was requested by Mr. Gallegly to have a witness, and he chose this morning's first witness. And I think, again, that it is very important that the Congress try, when we enact laws, when the Administration enacts regulations, that we do so in a responsible fashion to all parties. And we will hear more about that from both his comments and the comments of his witness today.

So, again, I thank you for convening this. I look forward to hearing from them, and yield back.

Mr. SHUSTER. Well, I thank the gentleman, and I yield for the opening statement the ranking member of the full committee, Mr. Rahall, from West Virginia.

Mr. RAHALL. Thank you very much, Chairman Shuster. I appreciate your having these hearings, the first hearing the committee has held to oversee implementation of the Rail Safety Improvement Act of 2008, which reauthorized FRA and mandated several significant rail safety initiatives, including those relating to the positive train control technologies.

I have concerns with how the FRA is implementing the PTC mandate, and whether the mandate can actually be implemented by the deadline provided in the legislation. We all want a safe system, but it has to be done right, and not rushed.

The FRA's final rule, in many ways, appears to go beyond the legislative mandate. For example, the FRA told the freight railroads they would have to implement PTC on rail lines where hazmat was transported in 2008, even though the railroads may not use those lines to transport hazmat in 2015. Nothing in the law mentions 2008; the only date is the deadline.

With respect to the deadline, the law required the railroads to submit their implementation plans for PTC within 18 months of enactment. In these plans, the railroads are required to provide information about the extent to which they will implement PTC, provide a schedule for progressive implementation, and prioritize implementation on the basis of risk. Those plans have been submitted.

But according to GAO, while Amtrak has installed PTC on about 250 miles of track, and 2 freight railroads have piloted PTC systems, other railroads have not yet begun implementation, largely because they are awaiting FRA standards of how the differing PTC systems must be interoperable.

Further, although railroads have worked with suppliers to develop PTC systems, some components are not yet available, and the software needed to test and operate those components remain under development. Once they are developed, then they need to go through the testing in the field to make sure the system operates safely.

On top of that, the financial situation for commuter railroads is tenuous. These railroads depended on funding from the Federal Government and States that are already suffering significant physical restraints which make it difficult for them to cover the $2 billion in PTC costs or, worst case scenario, those railroads could start diverting funding from other critical areas such as maintenance, which could lead to other accidents, something I am sure the authors of the legislation did not envision.

With that, Mr. Chairman, I thank you for holding these hearings, and welcome the witnesses.

Mr. SHUSTER. Thank the gentleman. And with that, again, we are joined by colleague Elton Gallegly from California's 24th District, and Ms. Mackenzie Souser from Camarillo, California. Congressman Gallegly represents the Simi Valley of north Los Angeles, which includes Chatsworth where, on September 12, 2008, the

tragic train accident resulted in 25 fatalities, and 135 other individuals were injured.

My thoughts and prayers certainly went with the victims and their families—in particular, Mackenzie, who is the daughter of Doyle Souser, who was killed in that tragic accident. And we are going to begin with Congressman Gallegly and Mackenzie. And then after that we will see what we—if we have votes or not, and we will come back after the vote.

So Mr. Gallegly, proceed.

**TESTIMONY OF HON. ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; MACKENZIE SOUSER OF CAMARILLO, CALIFORNIA; JO STRANG, ASSOCIATE ADMINISTRATOR FOR RAILROAD SAFETY/CHIEF SAFETY OFFICER, FEDERAL RAILROAD ADMINISTRATION; MARK D. MANION, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER, NORFOLK SOUTHERN RAILWAY; EDWARD R. HAMBERGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS; JOSEPH J. GIULIETTI, EXECUTIVE DIRECTOR, SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY; PAUL VICTOR, PRESIDENT, ANACOSTIA & PACIFIC RAILROAD COMPANY, INC.; AND DENNIS R. PIERCE, NATIONAL PRESIDENT, BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN**

Mr. GALLEGLY. Thank you very much, Chairman Shuster. I want to thank Chairman Mica and my good friend, Ranking Member Nick Rahall, for inviting me to testify this morning at this hearing. I also greatly appreciate the fact that you invited one of my constituents, Mackenzie Souser, who will be here to testify as well today.

Mr. Chairman, on September 12, 2008, a Metrolink commuter train and a Union Pacific freight train collided near Chatsworth, California, resulting in 25 deaths and more than 150 injuries, 135-plus serious-to-critical injuries, many of which were very catastrophic and will be lifelong injuries. This was the worst train accident in California history. I use the word "accident" lightly, because many of us do not believe it was an accident, that it was something that clearly should have been prevented.

Although there is going to be litigation relating to this matter, an extensive investigation conducted by the NTSB, depositions taken as part of the case and interviews with Veolia employees, found that the operator of Metrolink system, Veolia Transportation, a French company, had a culture of ignoring risk and accepting rule-breakings from the locomotive engineer who was driving the train.

Here are some of the relevant facts related to the Chatsworth Metrolink tragedy. Robert Sanchez, the engineer who was driving the train at the time of the accident, had already been cited in 2006 for having his cell phone on while operating in a train. This violation of written rules put Veolia on notice regarding Sanchez's cell phone usage while he was on duty.

And only one month before the collision, the conductor on Mr. Sanchez's train saw Mr. Sanchez using his cell phone, and re-

minded him it was a violation of the rules. The conductor reported his violation to the supervisor. However, no formal or informal action was taken against Mr. Sanchez to stop his cell phone usage.

On the very day of the crash, just before the afternoon train runs began, the same conductor called another conductor, asking his advice about stopping Mr. Sanchez from his dangerous texting conduct since Veolia management had done nothing to stop it. The other conductor advised him to ask a union official the next day to intercede with Veolia's management.

Despite this knowledge of cell phone use by Mr. Sanchez in the weeks leading up to the crash, Mr. Sanchez sent as many as 180 text messages every day he was on duty. Most of these text messages were sent by Mr. Sanchez while he was operating the train. The poster that we have over here illustrates the number of text messages just the week preceding this tragedy. In fact, on the day of the crash, Mr. Sanchez had already sent a total of 43 text messages. And on the afternoon of the shift, 13 were sent prior to the crash. And, if you notice, there were fewer text messages on the day of the crash than there had been earlier in the week, only because the crash stopped the text messages definitely.

Twenty-two seconds later, in a blind curve, without any warning, the Metrolink train hit a freight train traveling 40 miles per hour head on, derailing the lead locomotives and jamming the Metrolink locomotive backwards into most of the first passenger car. In an instant, close to 200 people were killed or severely injured.

Mr. Chairman, I refuse, as I said, to call what happened on September 12, 2008, an accident. It is a tragedy, but it was not an accident. It should have never happened. For the victims and many families, this tragedy on September the 12th has been compounded by a Federal law that limits damages relating to all claims arising from a passenger railroad accident to be capped at $200 million.

The Federal cap on all damages, which was included in the Amtrak Reform and Accountability Act of 1997 states that "the aggregate allowable awards to all passengers against all defendants for all claims" arising from a single accident cannot exceed $200 million. That was 15 years ago, and there was no indexing for the cost of living. And, of course, we all know that health care costs have increased significantly in the past 15 years.

Mr. Chairman, the Chatsworth tragedy was devastating to 180 families in my congressional district. For this reason, I have called on the executives of Veolia to step up and at least cover the real damages—not the punitive damages, but the real damages—caused by this tragedy.

Veolia, a French company, is the largest transportation company in the world. They operate rail systems that are subsidized by the taxpayers of this country, and they operate throughout the United States. Both public transportation entities and the American public at large count on Veolia to operate safe transportation systems and act like responsible corporate citizens. And they have not done that.

I, therefore, call on Veolia to take responsibility for the devastation they have caused, and do the right thing by the people of this country, who have lost so much through no fault of their own, only

counting on public transportation to get them home safely from work.

Again, I thank you very much for allowing me to testify today, and I would yield back the balance of my time.

Mr. SHUSTER. I thank the gentleman. And now we will recognize Miss Souser. Can I call you Mackenzie? OK. I know you have probably got some butterflies in your stomach. That is a good thing. That is a good thing. But first thing, make sure you turn the mic on, pull it up close to you. It is going to be a breeze for you.

I can tell you that there is only one person in the room that has got more nerves going on in their stomach than you, and that is your mother. I have been watching her over there. So just take your time, do not be rushed. You are going to probably hear some bells go off in the middle of your speech, and do not panic.

Ms. SOUSER. OK.

Mr. SHUSTER. It is not going to be a fire alarm.

Ms. SOUSER. OK.

Mr. SHUSTER. There you go.

Ms. SOUSER. Thank you.

Mr. SHUSTER. But again, just take your time, take a deep breath, and go ahead and proceed whenever you are ready.

Ms. SOUSER. My name is Mackenzie Souser, and I am from Camarillo, California. And I just wanted to thank you for inviting me here today.

My dad, Doyle Souser, an executive at a manufacturing company, left work on the afternoon of Friday, September 12th, and boarded the Metrolink 111 train to come home from work. He usually took the later train, but was coming home early to cook a barbeque dinner for a struggling family in our community. I was excited, because my 13th birthday party was scheduled for the next day.

My dad always helped with all the details of our family events. After dinner on Friday, we were going to finish the rest of the preparations for my party. Instead, on that Friday afternoon, my dad's train, which was filled with passengers, collided head-on, at full speed, with a freight train on a bend in Chatsworth in Los Angeles County. The 80-mile-per-hour force caused the Metrolink locomotive to completely enter the first passenger car and ignite into flames. Twenty-four hours later, we learned that my dad was riding in the front of the first car, and was one of the 24 passengers killed.

The Chatsworth Metrolink collision was the worst ever in California's history. In addition to all the people who died, more than 135 others were injured, many seriously and permanently. The survivors of the crash, which not only include those who were injured, but those of us who are trying to make it each day without someone we depended on, do not refer to this event as an "accident." It really was not just an accident.

According to the National Transportation Safety Board, the collision was caused when the engineer of the Metrolink train, Robert Sanchez, ran through a red signal while using his personal cell phone to send text messages. The NTSB also determined that the engineer, an employee of Veolia Transportation and Connex, sent and received 43 text messages and made 3 phone calls while on duty on the day of the crash.

Two days before the collision, the Veolia engineer sent or received 125 text messages during the time he was responsible for operating the train. He would regularly send and receive an average of 180 text messages each day. Many of the texts were sent to teenage boys he was communicating with. The engineer had recently invited a teenager for a ride-along in the cabin with him, and allowed him to have contact with the controls. The engineer had been planning on letting the same teenager actually drive the train on the evening of the collision.

Within a few minutes and a few text messages, my life was changed, my family's life was changed, and over 160 other families' lives were changed drastically by this avoidable disaster. I am telling you this because I would never want anyone to go through the same traumatic losses I have for the past 2½ years. I am simply not a normal teenager any more without my dad. The best part of every day was when my dad came home from work and our family would have dinner together. I struggle every day with the fact that my dad, who was the sole breadwinner for our family, is not coming home ever again.

Mr. SHUSTER. Take your time.

Ms. SOUSER. Sorry.

Mr. SHUSTER. It is all right. Take your time. Want some water?

Ms. SOUSER. Sorry. My dad was my best friend, and a strong Christian influence, who helped me become a responsible young adult. I miss spending time with him and talking about cars and watching cooking TV shows, going to movies, playing in our backyard, and discussing many other things. I miss joining him at work for father-daughter day, which he would let me do when I wanted to spend the day with him.

I remember observing the great relationship my mom and dad shared. It was a wonderful example of a beautiful marriage. I hope some day to find a husband that will treat me like my dad treated my mom.

My loss is not only physical, but it is also emotional. My dad was also my brother Zach's best friend. It is so hard to watch my brother trying to grow up without his best buddy and male role model. Others my age get to worry about normal teenage concerns while I worry about my mom, our family finances, and our future, and how my brother and I will go to college. I worry about what we would do if someone broke into our home during the night, or if there was ever a fire. And it is hard knowing that my dad will not be there to walk my older sister, Kelsey, or me down the aisle when we get married, or be here for us ever again.

As a teenager, I am very familiar with the popularity of text messaging. Every teenager I meet should know that driving and texting do not mix. My mom and I relied on the pilot of the plane that brought us here today to do his job very carefully. In the same way, my dad and all the other passengers relied on the Veolia engineer to pay attention to the signals, and drive the train according to all the important safety rules. Those rules said no cell phones and no unauthorized people in the driver's seat.

The engineer's supervisors knew that he was using his cell phone while on duty. It is so hard for me to understand why they did not immediately investigate and put a stop to this. We learned that the

engineer had been reprimanded recently before the collision. But then we learned that what he got in trouble for had nothing to do with text messaging or allowing kids to ride with him. It had to do with not bringing a train into one of the stations on time. This means that the company was concerned about profits, and not about major safety issues and the hundreds and hundreds of safety violations that were going on.

The truth is that the engineer's company took such a big gamble with my dad's and all the other passengers' lives. This was wrong. It is also wrong that in these unbelievable circumstances Veolia is relying on the Federal law that limits how much it has to reimburse all of the survivors for their injuries.

My dad always taught me to accept full responsibility under any circumstances where I ever hurt someone. He never said, "Well, Mackenzie, just try to make things 30 percent or 50 percent better." My dad knew that being 100 percent responsible was not only fair to the person I hurt, he also knew that if I had to be fully responsible for any harm I caused, I would be more careful about my actions in the future.

My family is so grateful to Congressman Gallegly for trying to fix this problem with legislation that would increase the damages cap. Congressman Gallegly has provided several opportunities for the survivors to meet one another, share our stories and suffering, and honor our loved ones.

My family will appear before the judge soon, and tell him about all of our losses. We have been trying to make it for 2½ years without my dad's support. And we have a long road ahead. If there is no change in the law, or Veolia does not offer additional funds, the judge will have to determine some fair way to reduce each award so everyone's case fits inside the limit. I can only imagine how difficult this will be.

Thank you for doing anything in the meantime to hold those who refuse to follow or enforce important safety rules 100 percent responsible for the harm they may cause. And also, thank you for helping honor my dad, Doyle Souser, and all of the others whose lives were taken or forever damaged by this tragedy. [Applause.]

Mr. SHUSTER. Thank you very much, Mackenzie. You did a great job, and your dad would be very, very proud of you today.

Ms. SOUSER. Thank you.

Mr. SHUSTER. I understand there might be a couple of questions from Members. The gentlelady from California.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. And it is certainly—young lady, that took a lot of courage. And thank you for being so honest and so forthright.

There is a couple of things that I have. One of them is indicating in the chart—and this is to Mr. Gallegly—is on the chart. And can you specifically say what it said about the engineer's phone usage while he was actually driving the train?

By the way, what time was the accident, what time of day?

Ms. SOUSER. 4:42.

Mrs. NAPOLITANO. 4:42? Any idea what time this individual started his shift?

Mr. GALLEGLY. I'm sorry?

Mrs. NAPOLITANO. Well, because if it only went to that portion, then the rest of it would have been more messages.

[Chart.]

Mr. GALLEGLY. The shift started about 3:30, when Mr. Sanchez boarded the train, and the train was on its way from the western San Fernando Valley into Ventura County, with the first stop in Simi Valley. But if you look at this chart, these are the days that Mr. Sanchez was on duty. And by the way, we can go back and show charts like this for weeks before that Veolia was aware of.

But just on the week preceding the tragedy, you can see—this was the day that he worked. Seventy percent of the time that he was texting was when he was operating the train. These were 2 days that he was not working. These were the only text messages he made. Blue indicates the number of text messages, which were, like, 10 and 10. But the day he was on the train on the previous Friday, 43 text messages. On Monday about 55. On Tuesday——

Mrs. NAPOLITANO. So what does it say, Mr. Gallegly, about the man's usage of the cell phone? What are you indicating? What does that say?

Mr. GALLEGLY. I am sorry?

Mrs. NAPOLITANO. What does it say? What is it really—where you are pointing out to, what is the bottom line?

Mr. GALLEGLY. What I am pointing out to is the bottom line is the number of text messages that were made on these days. This line here is both the morning and afternoon shift, when he was driving the train. So you can tell that, clearly, two-thirds to 75 percent of all the text messages that he was making was during the process of time while he was operating the train, not when he was at home or away on a day off.

And on Wednesday of the week 2 days preceding the crash, there were 184 text messages made, and about 130 of those text messages were made while he was actually operating the train. And we move to Friday, prior to 4:42, the time of the collision. He had made almost 100 text messages that day, with over 45 during the course of the time that he was driving the train. His shift would have lasted, I believe, until 8:35 that night, or at least another 4 hours, which would have probably indicated why there were fewer text messages on the day of the crash. It is because he only operated the train up until the collision time.

Mrs. NAPOLITANO. Thank you. And if the actual damages, such as those medical expenses we have heard about, we saw from the tragedy, exceed the $200 million cap, who will pay for the medical bills? What options do the victims have?

Mr. GALLEGLY. Obviously, some of the victims have certain insurance. But all of the insurances have limitations or caps. But obviously, when those caps run out, it is going to be the taxpayers and public hospitals and so on that are going to be paying this.

And I might mention that of those 135 people that were seriously and critically injured, we have several that already have doctor bills over $1 million, have not received anything to date. And, in addition to that, many of these folks are going to require health care the rest of their natural life, many of whom are in their twenties and thirties, and will never be able to work another day.

We did have one person that had just graduated from medical school and was ready to start being a doctor. She had half of her brain removed and was scarred permanently for life.

Mrs. NAPOLITANO. Thank you. I have always believed that the States should be allowed to regulate railroads in their areas where the Federal Government has not acted. We have tried that before. As long as it does not hurt interstate commerce. And we are still battling on that issue.

But as you discuss in your statement, the cap is $200 million. However, Veolia could go beyond the cap and fully compensate all victims of the disaster. Do you know whether they have insurance coverage that could compensate the victims, and what amount the insurance is?

Mr. GALLEGLY. My understanding is that they have, at the time of the crash, approximately $700 million in insurance for an accident like this. When I asked them about the issue of $200 million, they felt that $200 million would more than adequately cover any potential tragedy. And I asked them if that was the case, why did they have $700 million worth of insurance. And I still am waiting for the answer to that.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

Mr. SHUSTER. I recognize Mr. Mica for a question.

Mr. MICA. Well, just a couple of things. While, first of all, someone was not paying attention to the performance of the engineer in this case, and that is a shortcoming of our safety program, that needs to be corrected. We did put some provisions after this crash in for positive train control. I am concerned now that we may be spreading some of that money too thin. It needs to be where we have the greatest risk, and trying to make certain that we get in place that control as soon as possible, that technology as soon as possible where, again, there is a risk.

What concerns me is—and I think you alluded to it—is the—one, the adequacy of the level of liability responsibility. And then, did you tell me that a foreign entity—there was some questions as to their responsibility in making payments? And does that need to be corrected under current law, Mr. Gallegly?

Mr. GALLEGLY. I clearly believe that it does. I think that this was a—probably an unintended consequence of the 1997 bill. You know, sometimes we do not understand problems that are created—not intentionally, but they are.

And clearly, the fact that when you have the number of people that were critically injured and the number of people that perished, the numbers—seems like—$200 million seems like a lot of money. But when you start adding it up, when you have to start, as Mackenzie alluded to, the judge's task in deciding who is going to get what, knowing clearly, clearly, there will not be the money to take care of the victims——

Mr. MICA. But did the foreign entity——

Mr. GALLEGLY. Well, the foreign entity here, of course, was——

Mr. MICA. Not—they were not required to be liable? And did they have coverage?

Mr. GALLEGLY. Well, the issue is that I believe that was an unintended consequence. They are, since they were operating a public transit system that was covered, they are arguing that, as a result

of that legislation, their liability is capped at $200 million, even though they had multiples of that type of coverage because, obviously, you do not go out and buy $600 million or $700 million worth of insurance, unless you think potentially you may have a need for it.

Mr. MICA. So there is a question, again, in clarifying the loss of—when you have an instance like this, that if you do have a set cap, and then, say, a responsibility above that, that we need to better define, again, those terms.

Mr. GALLEGLY. And, clearly, I do not know how that is going to affect retroactively to the previous tragedy, but clearly we need to fix this in the future.

We do not have to look too far to see what happened down in the Gulf with the BP tragedy. And there were limits of liability there. But—and I am not here to defend BP under any set of circumstances, but they did step up to the plate and offer and have paid many multiples of what their actual legal limits were. And I would hope that Veolia, in this case, for the victims that we have—not only for the victims, but for the American taxpayers as well, because that is where, ultimately, the burden is going to lie, at the feet of the American taxpayers, for an incident that clearly, clearly was the responsibility of the company that is foreign-based.

Mr. MICA. Thank you.

Mr. SHUSTER. There is under 3 minutes to vote. The gentleman from New Jersey has a brief question, I believe, and then we are going to recess.

Mr. SIRES. I just wonder if, after this accident, have you noticed that the company has taken any steps to make sure this does not happen, to monitor these engineers to make sure that they—that nobody else is doing anything similar to this?

Mr. GALLEGLY. Well, you know, of course they lost the contract with Metrolink and it was not renewed.

As it relates—we have changed some of the regulations and so on and so forth. But the thing that I think is most disturbing is that the leaders of Veolia have said that their hearts and prayers are with the victims. However, their pocketbooks so far have not been.

Mr. SIRES. Thank you.

Mr. SHUSTER. I thank the gentleman. And I thank the gentleman from California for being here today, and thank the Sousers. Thank you for being here.

We are going to stand in recess for approximately 15 minutes.

Mr. GALLEGLY. I thank the chairman.

[Recess.]

Mr. SHUSTER. Come to order. I do not think we are going to be interrupted by votes again. We are going to be good to go. So, smooth sailing.

Again, thank everybody for coming today to our hearing on positive train control. I appreciate all of the witnesses for being here today, and look forward to hearing your testimony. That certainly was powerful testimony that we heard from Miss Mackenzie and, of course, what happened in California, which, I believe, is right—it was avoidable, and we have got to do more to make sure those types of things do not happen.

And of course I think we have already taken some action in personal responsibility by people who are operating trains, planes, automobiles, whatever, heavy equipment. That is where safety starts, first and foremost, with the individual. So we got to make sure we keep that in mind.

Throughout our government, I am deeply concerned with the regulatory overreach that we have seen. I believe it cripples the economy. It stifles job creation, and ties our Nation up with red tape. I applaud President Obama for his recent comments on reducing the regulatory burden—for calling for a government-wide review of burdensome regulations.

However, it seems like, at every turn, another agency is moving forward with new cumbersome expensive rulemakings. There is a significant disconnect between what—the President's words and the actions of his administration.

Positive train control is an example of regulatory overreach that I would like to focus on here today. PTC describes technology designed to automatically stop or slow a train before certain accidents caused by human error. Section 104 of the Rail Safety Improvement Act mandated that Class I railroad carriers and inner-city passenger rail and commuter rail entities must implement PTC systems by December 31, 2015.

In January 2010, the FRA published its final rule to implement the PTC mandate. The rule has raised great concern and strong objections, specifically because the FRA regulations appear to have gone beyond the scope of the Rail Safety Improvement Act and the PTC mandate.

FRA's own cost benefit analysis of the final rule implementing PTC states that an immediate regulatory mandate for PTC could not be justified, based upon the normal cost benefit principles, relying on direct safety benefits. The safety benefits of PTC systems were relatively small, in comparison to the large capital maintenance costs. The FRA estimated a cost benefit ratio of 15:1 for installation of PTC system when it issued its notice of proposed rulemaking, and an even higher cost benefit ratio of 22:1 in its final rule.

The 20-year costs are estimated to be a whopping $13.2 billion. Notably, the PTC rule has been targeted by the Obama administration's regulatory review task force. Earlier this year at an Energy and Commerce Committee hearing, Cass Sunstein the administrator of the Office of Information and Regulatory Affairs, made note of this same point.

When asked to identify an example of a regulation that benefits had not justified the cost, Sunstein highlighted positive train control. And I quote, "The only big one that comes to mind is positive train control. The monetarizable benefits were lower than the monetarized costs. There are not a lot like that." So it is the poster child of a regulation that has been mandated that does not have a benefit, or does have a very, very small benefit to cost—cost benefit ratio.

Another issue is the base year used for PTC route determination. In its final rule, the FRA orders railroads to install PTC on rail lines that carry toxic inhalation, or TIH materials, in 2008. Yet

nothing in the Rail Safety Improvement Act calls for using 2008 as the base year. Only 2015 is mentioned in the statute.

Using 2008 as the base year makes little sense, because the TIH traffic patterns in 2015 will be vastly different than they were in 2008. If left unchanged, the 2008 baseline year will mean railroads will have to spend hundreds of millions of dollars to deploy PTC on thousands of miles of rail lines on which neither passengers nor TIH materials will be moved in 2015.

Commuter rails also have serious concern regarding the PTC mandate, particularly given the dire financial straits that many of these public agencies face during our current economic recession. The additional $2 billion price tag for implementation of PTC on commuter rail systems is out of reach for almost all commuter rail agencies. Commuter rails argue that PTC mandate would have the unintended consequences of degrading safety by requiring the deferral of needed state-of-good repair projects in order to fund initial phases of PTC.

Finally, although short line and regional railroads are not explicitly required to install PTC equipment on their lines, under the Rail Safety Improvement Act the PTC mandate affects them in the case of interchanges of freight between short lines and Class I's that take place on Class I track. In many cases, such interchanges will occur on sections of track that are PTC-equipped. There has not been a cost analysis of the impact of PTC requirements in the short line and regional railroads. But industry representatives estimate as many as 140 smaller railroads will be required to upgrade their equipment to be PTC-compatible.

Again, I look forward to hearing from all our witnesses today. And with that, I would like to yield to the ranking member for her opening statement.

Ms. BROWN. Thank you, Mr. Chairman. And I am pleased to be at this subcommittee meeting to see how the Federal Railroad Administration is implementing the Rail Safety Improvement Act of 2008. Rail safety is an extremely important issue that affects the lives of many.

When I was chair of the subcommittee in 2007, rail safety was my top priority, and we tackled that issue first. We started out with 2 days of hearing, and then followed up with additional hearings, including one field hearing, over the course of several months before developing legislation. We invited all of the interested parties to participate in the discussion: the FRA, the railroad labor, safety groups, and families involved in rail accidents, and the National Transportation Safety Board.

I asked that the National Transportation Safety Board be invited to this hearing, but the request was denied. However, I discussed that with Mr. Mica, and he indicated to me that at the end of this month we are going to have a series of hearings, and we will have an opportunity to invite participants that was not able to participate in this hearing and other hearings that we have had throughout the country.

So, I am looking forward to getting some of the other stakeholders to the table so we can have these in-depth discussions. And those hearings—I do not know whether we have scheduled those dates, but I understand, Mr. Shuster, it is going to be at the end

of the month we are going to have 2 days of hearings here in Washington.

Mr. SHUSTER. Yes. The last week of March? Yes, the last week.

Ms. BROWN. The last week in March we are going to have 2 days of hearings. So we will get an opportunity to invite some of our other stakeholders who we have not been able to get before the committee. Because I think it is very important that we get all of the stakeholders in the room, and be able to discuss how we move forward.

Prior to the Rail Safety Improvement Act, our Nation's rail safety program had not been authorized in over a decade. As a result, we did a lot of good things to help improve rail safety. We reformed hours of service standard for rail workers to allow them to rest between work shifts. We required that one railroad that still had camp cars to retrofit them or replace them, and we are still waiting on an update on that. We required more training for workers and ensured that injured workers have access to prompt medical attention. We improved track and crossing, and we required installation of positive train control on main lines where passengers and certain hazardous materials was transported.

I support the PTC requirements in law. But I do have some major concerns with how FRA is implementing it. With that said, I think that the committee needs to be careful about weakening rail safety. Serious accidents, injuries, and fatalities continue to occur. In fact, human error remains one of the leading causes of rail incidents. And, according to the Government Accounting Office, the number of fatalities have spiked over the years as a result of specific incidents, including one in South Carolina, another in North Dakota, several in Texas, and, of course, the tragic accident that occurred in California. I would hate for another tragedy to occur like this one in California.

As the economy grows in high-speed, and intercity passenger rails are developed in this country, we have to stay focused on improving safety, and we all really have to work together.

Before I close, I have a question for—I think I have already asked the question about when we was going to have the hearing. And I want to thank again the chairman for having this hearing.

Mr. SHUSTER. I thank the gentlelady from Florida. And your question, to be very specific, surface transportation reauthorization stakeholders hearings on March 30th and 31st, and Member hearings will be the first week of April.

Ms. BROWN. Thank you very much.

Mr. SHUSTER. Thank you. I ask unanimous consent for testimony to be placed in the record from the American Chemistry Council, from Metrolink, and from Veolia.

[No response.]

Mr. SHUSTER. Without objection, so ordered.

[The information follows:]


CAL DOOLEY
PRESIDENT AND CEO

March 16, 2011

The Honorable Bill Shuster
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Shuster,

The American Chemistry Council and its members respectfully submit this letter for the record regarding the forthcoming hearing, "Federal Regulatory Overreach in the Railroad Industry: Implementing the Rail Safety Improvement Act," to be held by the Subcommittee on Railroads, Pipelines & Hazardous Materials.

The topic of the hearing is of great importance to our members since the nation depends on chemical producers every day to form the building blocks and processes that are necessary for safe drinking water, life-saving medications and medical devices, a safe and plentiful food supply, energy-saving solar panels and more. To meet this constant demand across the country, our members count on the railroads to deliver chemicals wherever they are needed to get the job done.

A small but important percentage of these rail shipments are classified as "Toxic Inhalation Hazards" (TIH). Rail is a vital mode of transportation for our members and their customers since it has proven to be one of the safest modes for transporting TIH chemicals.

Because of the sensitive but critical nature of these shipments, we are constantly working with our transportation partners to find ways to build upon an already impressive safety record. Together, we have invested billions of dollars in training, technology innovation and tank car safety.

Most recently, our members have supported the development of a new safety standard that they will use when purchasing new chemical tank cars that carry TIH. We are also strong supporters of regulations to enhance rail safety and testified before Congress in support of the deployment of new technologies like Positive Train Control (PTC).

While the goal of safety must be paramount, we believe these regulations must also be implemented in a way that supports the President's Executive Order 13563, which calls for agencies to "identify and use the best, most innovative and least burdensome tools for achieving regulatory ends." It is critical that any new regulations effectively enhance safety, and remain consistent with the common-carrier obligation that allows our members to ship their products where they are needed by downstream customers now and in the future. These goals must not be mutually exclusive.

We look forward to working with you and the other members of the House Transportation and Infrastructure Committee, as well as all other stakeholders, to explore risk-based approaches to achieve the objective of the Rail Safety Improvement Act in the most innovative and least burdensome way possible.

Sincerely,

Cal Dooley

**TESTIMONY OF MR. JOHN E. FENTON**
**CHIEF EXECUTIVE OFFICER**
**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY**
**(METROLINK)**

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

HEARING ON "FEDERAL REGULATORY OVERREACH IN THE RAILROAD INDUSTRY: IMPLEMENTING THE RAIL SAFETY IMPROVEMENT ACT"

March 17, 2011

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This statement is submitted on behalf of the Southern California Regional Rail Authority, known as Metrolink.

Although not part of today's hearing, we want to offer our written sentiments about PTC and why we are committed to move forward to meet or exceed the PTC implementation federal deadline on Metrolink territories.

Metrolink—A Brief Background

Metrolink is governed by a Joint Powers Authority comprised of an 11-member board representing the transportation commissions of Los Angeles, Orange, Riverside, San Bernardino and Ventura counties. At 19-years of age, Metrolink is the second largest commuter rail system by size and the fifth largest by ridership in the USA, serving close to 20 million people working and living in Southern California.

To give a brief sense of the scope of our daily operations, our trains traverse 512-route miles in six Southern California counties. We transport approximately 40,000 passengers a day throughout the network. In addition to operating 144 daily trains with nearly one million passenger trips each month, Metrolink provides dispatching services to two freight companies (Burlington Northern Santa Fe and the Union Pacific Railroad) and three passenger rail services (Amtrak, Coaster, Metrolink) over one of the most complex multi-modal rail systems in the United States; this includes select freight traffic coming out of the ports of Long Beach and Los Angeles, two of the busiest ports in the nation. To give you a sense of how much traffic that is, almost 50% of the containers that come into those adjacent ports is distributed across the United States.

More than Physical Assets

Beyond our high-density/highly congested operating environment, Metrolink is more than just equipment, buildings, and right-of-way.

Metrolink is people; people who have devoted their lives to provide safe, reliable, and consistent transportation options to Southern Californians dealing with near grid-lock as about 15-million cars and trucks vie every day for limited space on our congested streets, highways and railroad tracks.

Unfortunately, these efforts were not enough to prevent the horrific collision between a Metrolink passenger train operated by a contract engineer from Connex, and a Union Pacific freight train near Chatsworth Station on September 12, 2008.

The Chatsworth Legacy

That day is seared into the souls of all the people at Metrolink and those we serve. Even some 30-months after we still walk in the shadow of that pain in mourning for all those touched by the tragedy.

That is why we are fully dedicated to meet or beat the PTC implementation deadline of 2015. We don't think there is any time to waste given the unforgiving nature of the environment within which we operate.

There were close to 1000 federal de-certifiable events in 2010 on the major railroads, and approximately 800 of these were trains that passed signals requiring a stop or restricted movement. Any one of those could have been a collision.

Our sense of urgency, like that of NTSB and FRA, is founded in the belief that PTC has potential to save lives. It adds a dimension to safety that will make our daily operations even safer than they are today.

A Sense of Resolve

A firm sense of resolve is clear. PTC can be the technological edge that helps Metrolink and other rail operators achieve the safest operations possible when combined with a culture of positive safety, management leadership by example, sound operating rules and practices, a collaborative approach to stakeholder involvement, and our crash-energy-management car fleet.

We recognize that there are gaps beyond our control that must be addressed if we are to meet the current deadline. The specifics are well documented, but we offer in the below a summary of areas where we need help to remain on-time:

- PTC is a communication intensive system, which requires large amounts of specific (220 MHz) radio spectrum. Metrolink has been attempting to exercise an option to acquire radio spectrum in the private market for over a year but the Federal Communications Commission (FCC) process for approving the use of the spectrum and license has been very slow and is jeopardizing the schedule.
- The technology for the custom PTC radios has not been fully developed and placed into production further jeopardizing Metrolink's 2012 implementation goal.

- There still remain technical and operational details to allow trains from different railroads to be inter-operable and, while we want to help, this issue must be resolved by collaborative efforts beyond Metrolink alone.
- The Federal Railroad Administration must have the right skills and adequate staff to review and approve the safety plans and support field testing and approve the PTC Systems.

We know that others have expressed similar concerns and we urge Congress to assist in the right places to make it possible for us to be successful.

Metrolink supports being the first interoperable PTC system in- service and that serves as the basis to inform the entire commuter rail industry on PTC. Further, we believe that federal resources must be dedicated, including those from the Federal Communications Commission and the Federal Railroad Administration to fully support the early implementation of Metrolink's commuter rail PTC system by 2012.

PTC at Metrolink – Commitment and Momentum

We have been diligent in securing financing for PTC implementation. We have moved quickly and deliberately to establish a dedicated staff and execution doctrine to fulfill our commitment to on-time implementation.

We know these are tough decisions for any board, especially in today's climate. But our Board felt that nothing was more important than doing whatever we had to do to implement PTC as soon as possible.

We must move forward with the implementation of PTC. Our passengers, our employees, our communities are too important to us.

We belief first in self-help. For example--

1. With unanimous SCRRA Board support Metrolink established a focused PTC Development Team within two-months of passage of Rail Safety Act of (October) 2008 and focused on the journey ahead.

2. The PTC Team defined and progressively improved scope, schedule, budget, risks, contract procurement, and placed the PTC program on a glide path for implementation by the end of 2012.

3. Metrolink developed largely a turnkey Federal compliant procurement document and then advertised and awarded the contract in October 2010. The contract was awarded to Parsons Transportation Group.

4. Metrolink staff, with support from its member agencies, the State of California, and the Federal government, has fully funded the estimated costs of the $201 million program. The cost split is approximately 85% State & Local dollars and 15% Federal dollars.

5. In order to achieve PTC interoperability Metrolink adopted the same PTC technology and PTC system as the major Class 1 freight railroads (Interoperable–Train Management System or I-TMS).

Metrolink's Bottom Line

We believe that PTC is perhaps the most important safety innovation in our lifetime.

Our families, co-workers, friends, and neighbors ride our trains every day. Their safety is our responsibility. It is our core value. PTC is too important in our mission of zero safety incidents.

In Closing

The Metrolink team will not rest until we do everything in our power to prevent any casualties in Metrolink operations.

Our SCRRA Board members, our employees, and our contractor co-workers have all been impacted by the tragedy of the Chatsworth collision. Each day we commit to take all steps within our power to ensure a tragedy like this can never happen again. We ask for your help in supporting the development and implementation of this life-saving technology.

I want to thank Chairman Bill Shuster, Ranking Member Corrine Brown and members of the Subcommittee for the opportunity to provide this written testimony. I am happy to provide additional information or answer any questions on the Metrolink plan.

JOHN E. FENTON
Chief Executive Officer
Southern California Regional Rail Authority/Metrolink
700 South Flower Street, 26th Floor
Los Angeles, CA 90017
213.452.0245

VEOLIA
TRANSPORTATION

March 16, 2011

The Honorable John L. Mica
Chairman
House Transportation and Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Bill Shuster
Subcommittee Chairman
Railroads, Pipelines and Hazardous Materials Subcommittee
House Transportation and Infrastructure Committee
204 Cannon House Office Building
Washington, DC 20515

Dear Chairman Mica and Subcommittee Chairman Shuster:

Veolia Transportation is the largest private sector operator of multiple modes of transit in North America, providing bus, rail, paratransit, shuttle, sedan and taxi services. We employ almost 20,000 men and women in North America who transport 400 million passengers annually through our contracts with cities, regional transit authorities, private entities and large transportation centers such as airports.

Veolia Transportation, through its subsidiary Connex Railroad, operated Metrolink trains under a contract with the Southern California Regional Railroad Authority at the time of the 2008 Chatsworth accident. We grieve every day for the innocent victims of this accident and their families. Among those who died in the accident was Doyle Souser, a friend to Congressman Elton Gallegly and father of the young girl who will appear with Congressman Gallegly before you tomorrow to bravely speak of her loss. Thanks to the Congressman's efforts, on February 7, representatives of Veolia Transportation were able to meet with some of the victims and their families in Simi Valley, California, including Miss Souser, to hear the stories of their personal losses and injuries.

No amount of money can undo the tragedy of Chatsworth. However, since the day of the accident, Veolia Transportation has worked nonstop to create as prompt a financial recovery fund for victims and their families as possible. On January 3, 2011, the U.S. District Court in Los Angeles, California, approved the creation of a $200 million recovery fund for the victims and their families. Established through the joint efforts of Veolia Transportation and the Southern California Regional Rail Authority (the "SCRRA" or "Metrolink"), this $200 million fund

**Veolia Transportation, Inc.**
720 E. Butterfield Road, Suite 300
Lombard, Illinois 60148
www.veoliatransportation.com

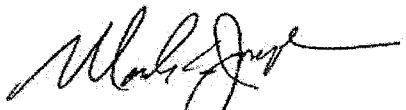
constitutes the largest financial recovery in the history of passenger rail, exceeding the amounts paid on a per claim basis to victims of the 9/11 disaster and every other passenger rail accident in the U.S., including the 2005 Metrolink collision in Glendale, California that only was recently settled after years of protracted litigation.

Despite the findings of the NTSB that a cause of the accident was engineer distraction, this finding was never judicially determined and would have been seriously contested. Strong evidence existed that the signal passed by Metrolink 111 seconds before the accident, seen that day by all of the five (5) eyewitnesses, was green not red, and that the engineer operating the train north of the Chatsworth station was fully engaged in operating the controls of the train, not using a cell phone, when the signal was passed. In addition, under existing indemnity agreements, the SCRRA, not Veolia Transportation, was the financially responsible party for accidents on its system. The only alternative to the $200 million recovery fund was protracted litigation that would have delayed recovery for the victims and their families for years to come. It was only because of the existence of the federal cap on damages and jointly held insurance that we were able to put aside protracted litigation over causation and financial responsibility to bring the maximum allowed by law to the victims and their families. And, it must be noted that, because of the historic size and timing of the $200 million fund, the fund's creation and the discharge of all defendants from further liability were approved by of all the claimants in the Chatsworth litigation. Only a small number of claimants and their trial lawyers have publicly expressed the view that the $200 million is inadequate financial recovery.

The focus of your hearing tomorrow, as we understand it, is not on the adequacy of the $200 million recovery fund or the federal damages cap but on one of the major conclusions reached by the National Transportation Safety Board in the investigation of Chatsworth—the lack of a Positive Train Control that would have prevented the collision regardless of whether it was the result of a faulty signal or a distracted engineer. Long before there were cell phones, human distraction and mechanical error have resulted in train accidents, and governments around the world have known for decades that Positive Train Control is the only known means to prevent them. This lesson was learned again a little more than a month ago in eastern Germany where PTC would have prevented the loss of at least 11 lives in a head on collision there between a passenger and freight train. The NTSB has been calling for the implementation of Positive Train Control for more than 20 years in the U.S. and, in particular, in the Metrolink system since Metrolink's fatal rail accident in Placentia, California in 2002. It was only after Chatsworth that Congress finally responded by enacting the Railroad Safety Improvement Act requiring implementation of Positive Train Control by all freight and passenger railroads by the end of 2015, a measure we strongly support.

More important than damages caps to the future of passenger rail in the U.S. is the safety and security of passenger rail systems. We believe there is no better way for government and the industry to work together for the future of passenger rail than to increase the investment in safety systems and safer railroads.

Respectfully submitted,



Mark L. Joseph
*Vice Chairman and CEO*

cc:
Congressman Nick Joe Rahall
Ranking Member, House Transportation and Infrastructure Committee

Congresswoman Corrine Brown
Ranking Member, House Railroads, Pipelines and Hazardous Materials Subcommittee

Congressman Elton Gallegly

Mr. SHUSTER. Now we will turn to our witnesses. I will introduce all of you across the board, and then I will let you go one at a time, obviously.

First, Jo Strang, who is the associate administrator, office of safety, Federal Highway Administration; Mark Manion, who is the executive vice president and chief operating officer of Norfolk Southern, accompanied by Ed Hamberger from the Association of American Railroads; Joseph Giulietti, the executive director of the South Florida Regional Transportation Authority; Paul Victor, the president of the Anacostia and Pacific Railroad Company; and Dennis Pierce, the national president of the Brotherhood of Locomotive Engineers and Trainmen. Again, thank all of you for being here. And before I recognize our first witness, Mr. Meehan would like to make a comment.

Mr. MEEHAN. Yes. Mr. Chairman, for the record, may I ask as well—you asked for unanimous consent to submit statements, and I would like to ask if I could have a statement submitted by the Southeastern Pennsylvania Transportation Authority on the same issue of PTC.

Mr. SHUSTER. Without objection, so ordered.

[The information follows:]

STATEMENT OF

JOSEPH M. CASEY, GENERAL MANAGER

**SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY**

PHILADELPHIA, PENNSYLVANIA

SUBMITTED TO

SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

OF THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

"FEDERAL REGULATORY OVERREACH IN THE RAILROAD INDUSTRY:
IMPLEMENTING THE RAIL SAFETY IMPROVEMENT ACT"

MARCH17, 2011


**Southeastern Pennsylvania Transportation Authority**
**1234 Market Street, 10th Floor**
**Philadelphia, PA 19107**
WWW.SEPTA.ORG

Submitted: March 30, 2011

Chairman Shuster, Ranking Member Brown and Members of the Subcommittee on Railroads, Pipelines and Hazardous Materials, thank you for the opportunity to submit written testimony on the Rail Safety Improvement Act and the Southeastern Pennsylvania Transportation Authority's[1] (SEPTA) experience thus far implementing Positive Train Control.

Since the October 2008 passage of the Rail Safety Improvement Act (P.L. 110-432), SEPTA has been working with the Federal Railroad Administration's Railroad Safety Advisory Committee (RSAC) and in coordination with our commuter rail partners to meet the Positive Train Control (PTC) mandate by the December 31, 2015 statutory deadline. At the time of the RSIA's passage, the industry supported the goal of PTC implementation and the enhanced safety this new technology provides, but was uncertain as to how to achieve Congress's timeline. Nearly two and a half years into the PTC mandate, SEPTA remains committed to installing a viable and reliable PTC system; however, matters relating to the availability of PTC technology, interoperability, funding, and the impact of accelerated PTC implementation on other system-wide safety and state of good repair efforts are still unresolved. In submitting our implementation plan as required by the RSIA and established in the FRA's January 2010 PTC final rule, we suspected then what has become clear now, that significant challenges exist both in terms of technological issues and possible escalation of costs.

In order to meet the legislatively mandated 2015 deadline and the timeline established in our own PTC implementation Plan, SEPTA will need to commit to its PTC third party contract no later than late summer 2011 to secure the technical expertise and manufacturers'

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[1]The Southeastern Pennsylvania Transportation Authority (SEPTA) is the nation's sixth-largest public transportation system. The Authority is an instrumentality of the Commonwealth of Pennsylvania, created by the State Legislature, and is a vital regional asset. SEPTA's service area includes the heavily populated southeastern Pennsylvania counties of Bucks, Chester, Delaware, Montgomery, and Philadelphia. This area encompasses approximately 2,202 square miles. The SEPTA system serves over one-half million customers daily and provided approximately 330 million (unlinked) passenger trips in Fiscal Year 2009. SEPTA's service also extends to Trenton and West Trenton, New Jersey and Newark, Delaware.

SEPTA is a multi-modal transit system as it provides a vast network of fixed-route services including bus, subway, subway elevated, regional rail, trolley, and trackless trolley, as well as customized community service. In Philadelphia, City Transit Operations serves a network of 84 subway-elevated, trolley, trackless trolley and bus routes. In Fiscal Year 2009, approximately 928,000 (unlinked) passenger trips were generated per weekday.

SEPTA's Railroad Operations serves all five counties with a network of thirteen regional rail lines, serving approximately 124,000 (unlinked) passenger trips per day in Fiscal Year 2009. This service also operates to Newark, Delaware and to Trenton and West Trenton, New Jersey.

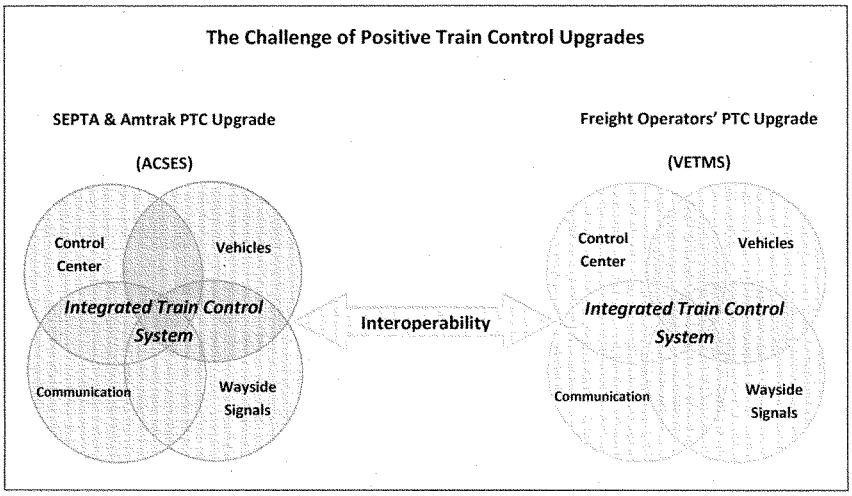
commitments to take delivery of all materials and services that will be required to meet the mandate. SEPTA, therefore, joins the American Public Transportation Association (APTA) and the majority of the nation's commuter railroads in requesting that Congress extends the PTC implementation deadline to December 31, 2018. Extending the PTC implementation deadline would allow SEPTA and other commuter rail agencies to efficiently implement PTC without major service interruptions while gaining the flexibility to simultaneously address other safety-critical infrastructure needs.

While SEPTA continues to lay the financial, engineering, and technical groundwork necessary to meet the ambitious PTC deadline, the Authority is also maintaining its commitment to an already-extensive program to install Automatic Train Control (ATC) system-wide by 2015. ATC, which uses continuous cab signaling and locomotive-based electronics to execute speed controls based on operator behavior and track conditions, is a quantum leap forward in train control safety, replacing track-side Automatic Block Signaling systems. SEPTA's ATC initiative, undertaken without federal prompting, and accelerated in response to the passage of the RSIA, will provide the platform for SEPTA to implement its own FRA approved PTC system. From 2000 through 2015, SEPTA will have invested $215 million in track signal technology and interlocking upgrades throughout its commuter rail network, including $120 million to convert 210 miles to ATC.

Like other commuter systems operating on or connecting to the Northeast Corridor, it is necessary that SEPTA build its PTC system off of the FRA-approved PTC system Amtrak is installing – Automatic Train Control with a Positive Train Control overlay. ATC is a substantial safety improvement in its own right and by effectively completing its ATC rollout, SEPTA is making a very prudent investment in future PTC success.

Available technology and Interoperability, however, remain the biggest impediments to PTC scheduling and budgeting. SEPTA commuter trains and freight carriers share trackage throughout the SEPTA commuter network, and while the Northeast Corridor transit authorities such as SEPTA must follow Amtrak's FRA-approved PTC system, freight carriers are all working

towards developing PTC systems that are based on entirely different technology and design principles that accommodate the unique freight operating environment. Significant changes are already coming to the four major elements – control center, communications networks, vehicles, and wayside signal controls – routinely used to provide safe and reliable rail operations at SEPTA and other commuter properties. These changes will require extensive hardware and software overhauls to achieve internal integration. And that is the easy part. Implementing PTC technology that is interoperable with other rail systems operating over shared trackage presents problems on multiple levels.




The United States Government Accountability Office's December 2010 report, *Federal Railroad Administration Should Report on the Risks to the Successful Implementation of Mandated Safety Technology*, highlights a number of the persistent concerns related to interoperability and the industry's uncertainty that PTC, and specifically the interoperability mandate, can be achieved by the deadline, given the well-documented and overwhelming challenges. SEPTA is legitimately concerned that despite what would be an exhaustive effort on our part to implement PTC by the December 31, 2015 deadline, we could still be found non-compliant due to other systems' delays and technical issues beyond our control. In setting a date certain

without determining whether the elements for successful implementation would be available or that thoroughly vetted technology would exist, Congress is asking the railroad industry to take a considerable financial leap of faith at a time when commuter railroad budgets simply cannot afford the risk.

As a multi-modal public transportation agency continually facing the challenge of maintaining aging operational infrastructure, SEPTA is uniquely impacted by the financial implications of regulations, where requirements of one mode can have unintended, negative consequences for other system safety priorities and efforts to bring assets of another mode to a state of good repair. The costs and timing of Positive Train Control present such a circumstance. SEPTA conservatively estimates that the financial burden imposed by Positive Train Control will be in excess of $100 million, not including the Authority's $120 million Automatic Train Control commitment. SEPTA's commuter rail and rail transit power facilities date back to the 1920's and 1930's while our 300-plus bridges have an average age exceeding 80 years. Despite the age of this infrastructure, current capital funding will not allow for a single bridge or substation to move into construction during FY 2011 or FY 2012.

In its 2009 *Rail Modernization Study*, the Federal Transit Administration (FTA) estimated that the nation's seven oldest and largest transit systems, which includes SEPTA, face a $50 billion state of good repair backlog. The FTA's follow-up study, the *National State of Good Repair Assessment* (2010), found the backlog for all transit systems across all modes is $77.8 billion. SEPTA will have roughly $310 million for capital projects in FY 2012, funding levels that stand in stark contrast to documented capital needs of several billion dollars ($4.2 billion using FTA collected data) throughout the system. Meanwhile, SEPTA engineers estimate that a three year extension to implement PTC would free up approximately $40-50 million over the next four years, allowing for critical safety improvements at a time when the Authority has limited budgetary flexibility.

APTA's preliminary assessment of the costs associated with commuter rail PTC compliance is more than $2 billion. Though not a comprehensive solution for commuter railroads struggling

to fund their PTC implementation programs, SEPTA encourages Congress to fund the Rail Safety Technology Grant Program at least at authorized levels ($250 million over five years). This grant program is vital for the significant, remaining PTC research and development still required and to support the efforts of commuter railroads moving forward with accelerated implementation schedules. However, the PTC implementation grant has only received funding during one appropriations cycle (FY2010) and the House-passed FY2011 full-year continuing appropriations bill provides no funding for the current fiscal year while rescinding grants awarded in 2010.

SEPTA remains committed to adding Positive Train Control to augment our existing system safety technology and operating procedures. It is imperative, however, that this integration occur in an efficient and organized way that capitalizes on proven technology and industry best practices while not risking operations. The hurried pursuit of the Rail Safety Improvement Act's PTC deadline in the face of finite technical, material, and radio spectrum resources holds the potential for significant cost overruns and the erosion of public confidence in overall rail reliability and safety.

SEPTA urges Congress to immediately pass an extension of the December 31, 2015 PTC deadline or provide the Secretary of Transportation the flexibility to approve extensions based on systems' progress and efforts to achieve PTC. The current data and anecdotal evidence provided by many railroads indicates that the prospects for industry-wide PTC compliance are still uncertain. By extending the deadline through 2018, now, Congress will reaffirm its unwavering support of commuter rail safety and service while affording agencies the opportunity to successfully advance Positive Train Control but not at the exclusion of other critical safety improvements.

Thank you, again, for the opportunity to submit these comments for the record. I look forward to working with you to promote long term commuter rail safety and efficiency.

Mr. MEEHAN. Thank you.

Mr. SHUSTER. Thank you. And with that, Ms. Strang, you may proceed. And I ask you to all adhere to the 5-minute timeframe. I have been enforcing it. I know there has been a special request by Mr. Manion and Mr. Hamberger to show a 1-minute tape. As long as it is just 1 minute—got it.

So, adhere to 5 minutes, please.

Ms. STRANG. OK, thank you very much. Good morning, Chairman Shuster, Ranking Member Brown, and members of the subcommittee. I am honored to appear before you today on behalf of Secretary LaHood and Administrator Szabo to discuss the implementation of the Rail Safety Improvement Act of 2008, commonly referred to as RSIA.

RSIA is the most sweeping piece of safety legislation ever passed by Congress, requiring more than 40 final rules, guidance documents, model laws, reports, and studies. By requiring the installation of positive train control (PTC) systems, it addresses the risks of carrying certain toxic chemicals and also prevents collisions involving passenger trains, such as the one that was one of the worst passenger train collisions in recent history in California.

FRA has been working hard to implement RSIA, and I am pleased to report that FRA has issued final rules for PTC, bridge inspection, State-specific action plans, and updates to hours of service recordkeeping and reporting regulations. We have issued five notices of proposed rulemaking and one advance notice of proposed rulemaking. We have also completed seven reports to Congress, as well as the model State law for sight distance at passive crossings.

The most complex requirement, in terms of technical complexity and breadth of undertaking, is PTC. PTC is designed to prevent four types of catastrophic events: train-to-train collisions; overspeed derailments; movement over misaligned switches; and incursions into roadway work zones.

RSIA requires the installation of PTC on intercity passenger and commuter routes and on routes over which certain toxic materials are carried. The deadline for installation, as set by the statute, is December 31, 2015. By early 2010, FRA had published the final regulations necessary to provide guidance to railroads required to install PTC.

We undertook a number of efforts to reduce the cost through the Railroad Safety Advisory Committee process, and provided in the final rules several exceptions and exclusions, such as passenger yard and terminal exceptions, limited passenger operations, some exclusions for Class II and III railroads—both for locomotives operating on the host railroad's PTC territory and for Class II and III railroad lines carrying limited amounts of passenger and freight traffic.

Total PTC route miles, without any exceptions, would have been 82,000, and the total actually being implemented by approval of those allowances that we have received by request so far will be around 73,000 route miles, thus providing significant cost savings to the industry.

FRA and the AAR have reached a settlement agreement to hold AAR's lawsuit challenging portions of the PTC rule in abeyance while FRA issues two notices of proposed rulemaking. The first

would propose eliminating the two tests that would potentially require PTC to be installed on track segments not specifically required to be equipped by Congress. The other will address other PTC concerns that are not involved in the litigation.

The two NPRMs will allow FRA to solicit the input of stakeholders and the general public in making decisions on whether safety can be better served by amendments to the rule. This approach is consistent with the President's recently issued Executive Order 13563, requiring agencies to review their significant regulations and ensure that the safety benefits justify the costs imposed by the rules.

FRA has worked tirelessly to implement the requirements of the Act, and will diligently complete the remainder of the rulemakings, reports, and guidance documents required by the Rail Safety Improvement Act of 2008. I thank you for your time.

Mr. SHUSTER. Thank you very much. You came in way under the 1 minute. Mr. Hamberger can utilize that time.

[Laughter.]

Mr. SHUSTER. With that, Mr. Manion, please proceed.

Mr. MANION. Thank you, Chairman Shuster, Ranking Member Brown, and other Members of the Committee, for the opportunity to discuss the Rail Safety Improvement Act of 2008 on behalf of Norfolk Southern and other members of the Association of American Railroads.

For Norfolk Southern and America's other freight and passenger railroads, safe operations are an imperative. From 1980 to 2010, the U.S. train accident rate has improved 77 percent, and the grade crossing collision rate has improved 81 percent. 2010 was the American railroad industry's safest year ever. Our employees are remarkably safe, too. In that time period, the employee injury rate has been reduced 82 percent. It is safer to work for us than it is to work in a grocery story. We demonstrate that safety is the right thing to do, and safety is good business.

The Rail Safety Improvement Act of 2008 addresses a range of provisions. One of those involves positive train control, or PTC, technologies designed to automatically slow or stop a train before certain accidents caused by human error. While PTC is the most expensive and far-reaching mandate in railroad history, let me make it clear we are not seeking changes in the PTC mandate for passenger trains.

However, there are problematic issues with regard to PTC deployment. One such problematic requirement centers on the complexity of PTC systems required to comply with a 2015 deadline. As the GAO has indicated, implementing PTC without the full benefit of solid sound engineering principles and practices commonly used in development of technology of similar complexity and scope has the potential of significantly slowing the rail network, and may not produce expected safety benefits due to reliability issues.

A second issue centers on costs. According to FRA's own estimates, PTC will cost railroads up to $13.2 billion to install and maintain over 20 years. But it will return only $1 in safety benefits for every $20 spent. Yes, you heard correctly. This is money that could otherwise be invested in the economic recovery and in safe, environmentally friendly and fuel-efficient railroad infrastructure.

A third concern relates to PTC effectiveness. Only 4 percent of mainline accidents over the last 7 years might have been prevented by PTC. By contrast, track and equipment-caused accidents accounted for 60 percent. It would be more effective to focus our resources on reducing those track and equipment-caused accidents.

Railroads are aware that some of the accidents that PTC systems are designed to prevent can be serious, with significant injuries and loss of life. However, there are less costly and less complicated technologies and operating practices that can provide greater overall safety improvements for railroad operations.

A fourth issue is that FRA is requiring PTC installation based on 2008 traffic levels, even though 2015 is the deadline that is cited in the statute. This is not logical. Freight movement patterns are dynamic. They change, based on customer demand and other factors. By our calculation, we will have to spend more than $500 million to deploy PTC on more than 10,000 miles of track where it will not even be required by the time 2015 arrives.

While we have agreed to hold the litigation over the 2008 baseline issue and second display in abeyance, the industry awaits final action over the issues to be addressed in the new rulemaking proceedings.

My last perspective involves the so-called business benefits, supposedly totaling billions of dollars, to be achieved through PTC. Those benefits simply will not happen. PTC will not allow us to run more trains, reduce delays, save fuel, or improve fleet utilization. And it should not be touted as being able to do so. Fortunately, we already have systems that do those things.

To conclude, the railroad industry is safe and getting safer. We are fully dedicated and engaged in meeting the requirements and deadlines placed upon us, and in working with FRA, Congress, and all safety stakeholders to ensure the best outcomes. We are, however, concerned that the final rules implementing the Rail Safety Improvement Act of 2008 do not support continuation of the beneficial long-term safety trend. Thank you, sir.

Mr. SHUSTER. Thank you.

And, without objection, AAR has a 1-minute?

Mr. HAMBERGER. Thank you, Mr. Chairman. We talk in our written testimony about alternative risk reduction strategies for TIH-only lines, not for passenger lines. And I have, literally, a 1-minute clip of some of those technologies to give the subcommittee an idea of what we are working on, in partnership with the FRA, at the Transportation Technology Center in Pueblo, Colorado. And if I have any luck, it will work right now.

[Video shown.]

Mr. SHUSTER. Thank you for that. And with that, Mr. Giulietti, you may proceed. I pronounced it correctly?

Mr. GIULIETTI. Yes, you did. Thank you, Chairman.

Good morning, Chairman Shuster, Ranking Member Brown, and members of the Railroads, Pipelines and Hazardous Materials Subcommittee. My name is Joe Giulietti, and I am appearing before you today on behalf of the American Public Transportation Association, APTA, and more than 1,500 organizations, as well as the South Florida Regional Transportation Authority, where I serve as the executive director and oversee the Tri-Rail commuter railroad.

I thank you for the opportunity to testify today to discuss the Rail Safety Improvement Act, and offer insights to the very important matters related to the implementation of positive train control, or PTC. A copy of my full testimony has been submitted to the subcommittee. I will summarize my testimony, and will be pleased to answer any questions you may have.

First, let me take a moment to tell you about my background and why I was asked by my colleagues to speak with you this morning on behalf of our industry on this very important subject. I am in my 40th year in this industry, and I have had a wide range of experience in both passenger and freight railroad operations.

I started as a brakeman, worked in both passenger and freight railroad operations. I have worked as a locomotive engineer, a railroad foreman or a transportation manager. I have worked for Penn Central, Amtrak, Conrail, Metro North Commuter Railroad in New York, and now Tri-Rail. I have worked in New Haven, Boston, New York, New Jersey, Philadelphia, and Florida. And I have worked closely during my career with the Federal Railroad Administration, the Federal Transit Administration, as well as the National Transportation Safety Board.

Additionally, I taught the engineers school, trained engineers and conductors, and worked as a manager of operating rules, where I co-authored at least two operating rulebooks, qualified train dispatchers, and served as a superintendent of the New Haven and Harlem lines into New York.

Currently, I am the co-chair on the commuter and intercity rail legislative subcommittee. I am the immediate past chair of all commuter rail CEOs at APTA and the vice chair for commuter and intercity rail.

The main message I want to leave with you today is that the commuter rail CEOs across the country are committed to the goal of installing positive train control, PTC, for our systems as soon as possible. We all believe that PTC will add an additional layer of safety to our systems that will greatly enhance the level of safety. We are committed to PTC being operational at all systems as quickly as possible.

But I am here to report to you we have encountered obstacles that will have to be addressed to ensure the success in this endeavor. And if we are to have success, it has become apparent that we will need more time than has been allowed under the law.

Ensuring that the system will work, currently there is no system market-ready that meets this mandate for commuter rail. There are indeed PTC systems that have been developed and will likely be deployed on freight lines, but none have been fully vetted in a commuter rail environment. And because the lead time necessary to purchase and install and test even well-known existing signal systems can be a multi-year process, we are concerned that the PTC technology we know of is untested in the commuter rail environment.

As you may have heard, our colleagues with Metrolink Commuter Rail system in Los Angeles are committed to having their PTC operational as early as 2012. We applaud their efforts in Los Angeles. As an industry, we all have a stake in their success. We are closely monitoring their progress and experience, because their

success will determine whether a system can be manufactured that will meet our industry needs.

We need your help with spectrum, the new technology that requires that radio frequency be utilized to ensure the safety of operations. To date, no spectrum has been set aside by the FCC for this safety-critical operation.

Some of our systems have utilized—or have unfulfilled applications to the FCC, while others are desperately trying to negotiate bandwidth, when we do not know for sure we can achieve the spectrum necessary to ensure the integration of this system. Please have the FCC make bandwidth available to this industry for this system.

And, three, we need additional Federal funding assistance. We need additional targeted funding arrangements from the Department of Transportation that provides sufficient resources to afford this safety-critical system, and allocate our resources to it. We also fully support sending immediate available funding to Los Angeles to ensure Metrolink and North County Transit District's success, so that we can learn and hopefully model our systems around what they learn.

Research funding from the Federal Government has already provided $20 million to a software company that is developing the radio system to make this technology work. That company has been purchased by four of the Class I railroads in their efforts to ensure that they can get the system implemented.

We support their efforts at compliance. We ask you to ensure that they make this technology available to our systems for public purpose. Not only are we striving with the freight railroads to jointly meet this standard, but we also operate over each other's trackage. And therefore, we are together in this. And all technological advances must be fully available.

We are in tough financial times, and we recognize that commuter railroads, like so many other public transportation agencies, have tough choices and challenges to keep them viable.

Again, let me reiterate that we begin first with ensuring safety to the best of our collective abilities, and the introduction of PTC will significantly increase our industry's safety and operations. Thank you.

Mr. SHUSTER. Thank you, Mr. Giulietti.

And with that, Mr. Paul Victor, please proceed.

Mr. VICTOR. Good morning. I am Paul Victor, president of the New York and Atlantic Railway, a 250-mile short line that operates freight service over the Long Island Railroad. We carry approximately 22,000 carloads annually, including 350 cars a year of hazmat LPG gas. This means we take approximately 180,000 one-way truck trips off the highways of New York City and Long Island, annually.

New York and Atlantic is one of five short lines owned by Anacostia Rail Holdings. And of these, four railroads would be required to install PTC. Because the New York and Atlantic Railway operates over one of the busiest passenger corridors in the country, I have been heavily involved in the positive train control issue, and our railroad is heavily impacted by this mandate.

I am also appearing here on behalf of the American Short Line and Regional Rail Association, which represents the Nation's 550 Class II and Class III railroads. As you know, short line railroads are not, in practice, required to install PTC. However, the PTC mandate, due to the integrated network of North American rail operations, joint facility matters including track rights interchange and reciprocal switching, blur the line of the short line exemption.

In addition, short line operations and routes that are shared with passenger and/or commuter services will also require short lines to come on stream with PTC-equipped locomotives.

PTC will be costly. Looking just at Anacostia Rail Holdings, the company I work for, we own or lease 36 locomotives on the 4 railroads that will require PTC. Twenty-seven will need to be equipped. The estimated cost is currently estimated at $2.2 million. This cost includes both equipping eight units with an Amtrak-compatible system, as well as 19 units to be equipped with a GPS-based nationwide system.

This cost equals about 92 percent of the combined annual capital expenditure budget, literally. We must reallocate our dollars for installation of PTC in lieu of almost all other infrastructure and equipment improvements. Ultimately, we would end up with PTC-equipped locomotives, but a less safe railroad network to run them on.

I have worked in the railroad industry my entire adult life, and understand that even a single injury or fatality is something to be avoided. But surely it is reasonable for public policymakers to balance the need for action and the cost of that action. PTC will be an enormous financial burden on our small businesses with very little impact on the safety of our railroad operations. Indeed, it is likely to have an adverse impact on our short line safety. Implementing the PTC mandate will take millions of dollars away from short line track and bridge rehabilitation that does more to improve railroad safety than any other expenditure we can make.

Short line railroads tend to serve light-density customers with a cost benefit ratio of adding new services, often a very close call. One of the key factors in making that call is the cost of installing and/or maintaining the so-called switch into the customer's facility. This is the equivalent of connecting a house to the electrical grid. In this case, the electrical meter has become the controversial and needed switch to connect the potential shipper to the network.

Future switch installation costs will be much higher in PTC territory. This added cost could drive potential customers away from rail by changing their tipping point. Where will the traffic go then? It will end up on our already overcrowded highway system.

PTC will impact all new shippers and receivers, large and small, to the extent that it will drive traffic from rail to truck, it will increase the truck traffic and the highway congestion associated with that traffic.

I know that the PTC mandate will remain. I am not here to suggest that New York and Atlantic be exempt from that mandate. We operate in a highly dense passenger corridor, and we want to do so safely, and want to utilize every available tool to do so. We understand the valuable of PTC. One, it is prudently developed and installed. I am suggesting that the Federal Government has im-

posed an enormously expensive mandate that cannot be afforded by most short lines, and will dramatically reduce the short line's ability to invest in other more directly beneficial safety improvements.

Presumably, the government believes this mandate is in the public interest. And, if that is the case, I would hope that the government will provide public monies to help pay for the cost.

I appreciate the opportunity to present these thoughts, and will welcome any questions. Thank you.

Mr. SHUSTER. Thank you, Mr. Victor.

And now, Mr. Dennis Pierce.

Mr. PIERCE. Good morning, Chairman Shuster, Ranking Member Brown, and other committee members. My name is Dennis Pierce, I am national president of the Brotherhood of Locomotive Engineers and Trainmen organization. I am also president of the Teamsters Rail Conference. I appreciate the opportunity to address the subcommittee today on behalf of the BLET and the Teamster Rail Conference, and with the endorsements of the Brotherhood of Railroad Signalmen and the United Transportation Union.

The Rail Safety Improvement Act of 2008 was a comprehensive, wide-ranging, far-reaching piece of legislation, and it was the first rail safety act in 14 years. When Congress felt compelled to act in the aftermath of the Chatsworth tragedy, stakeholders were still fine-tuning the bill. BLET, UTU, and AAR were still discussing adjustments to the hours of service, but none of those adjustments were adopted. Thus, the bill that Congress passed contains some flaws that have since come to light.

FRA was given a massive but imperfect bill that included an extraordinary number of statutory mandates with short deadlines. The agency's resources and personnel were not increased sufficiently to fulfill the tasks that were assigned. The Railroad Safety Advisory Committee, which has shepherded nearly every significant safety rulemaking for the past 15 years has been working nonstop for almost 2½ years handling RSI mandates. So we do disagree with the criticism of how FRA has handled PTC implementation.

I understand the industry and FRA appear to have settled their dispute over the 2008 baseline and in-cab display screen aspects of the PTC final rule. So there is no need for me to address those issues at this time, except to remind the subcommittee that the NTSB supported the baseline language.

I do also want to address the industry's complaints about PTC cost. We have repeatedly appeared before Congress concerning the dangers of non-signaled dark territory and inexpensive technologies like switch position detectors that are readily available to address the risk. Because Congress didn't order it, the railroads chose not to widely install it. And that choice is one factor that led us to PTC.

Over the past 19 years, some 70 BLET members were killed in the line of duty. And PTC could have prevented nearly 50 of those deaths. To me there is no such thing as Federal regulatory overreach when it comes to returning our members safely to their families. It is appalling to me that profits would be placed ahead of our members' lives.

While I am here I also want to talk about the hot-button issue for operating crews, and that is hours of service. Tremendous work has been done building a scientific foundation for the passenger and commuter rail hours of service regulations. But this service, because it is scheduled, the studies showed there is significantly less risk of fatigue and the regulations will be less strict, less costly, and more effective than the laws governing freight operations. Similar studies have shown a much lower risk of fatigue on scheduled freight service as well, and a number of waivers have been granted by FRA for relief from the 6-days-worked/48-hours-off provision of the law, so long as no overnight hours are worked. We are drafting technical corrections for you to consider, and one will be to make scheduled freight assignments subject to the passenger/commuter rail regulations.

Most importantly, the law is not combating fatigue to the degree Congress intended in unscheduled freight service. Train line-ups are as unreliable as ever, and we believe it is time to move to a 10-hour call.

Further, the AAR agreed with us and the UTU 2½ years ago, that 8 hours off duty was sufficient at the away-from-home terminal, and it is time to put that understanding in the law.

Finally, because it is not based on science, the 6-days-worked/48-hours-off provision is not mitigating fatigue in unscheduled railroad service. The law allows the railroads to create a situation where employees who are truly fatigued do not qualify for 48 hours off. Conversely, the application of the law requires others who are not fatigued to take 48 hours off.

All of these subjects will be addressed in our technical corrections that we will be submitting soon. Thank you, Chairman. Thank you, Ms. Brown. I will be happy to answer any questions the subcommittee may have.

Mr. SHUSTER. Thank you, Mr. Pierce. I appreciate that. Now we will go to our questions. I am going to start. I am going to probably do two rounds, because I have got a number of questions. So I will take 5 minutes and then yield to the ranking member and the other members.

The first question I have to the FRA is, what is plan B? I mean if we cannot meet this—if the cost is a tremendous burden—and I am going to ask you a question about the abeyance that—the court challenge. But are you going through a process to figure out what plan B is?

Ms. STRANG. Yes. While we cannot get into the specifics, because the court case is only in abeyance and it has not been dismissed, we plan on issuing two notices of proposed rulemaking.

The first notice would revisit the issue of the two tests that were not required by Congress. So it would essentially take out the residual risk analysis and the other analysis so that those burdens would not necessarily be placed on the industry. But we would want to get the advice and comments of the public, and make sure that the public agrees that those are, you know, wise choices to make.

Mr. SHUSTER. And it would be—the court challenge, the abeyance, my understanding—I think there is four issues. I just want to read off the four issues. My understanding of what the abeyance

says—and tell me if I understand it correctly—that it addresses the new proposed rules during the abeyance, and the 2008 to the 2015 PTC baseline map issue, de minimis or limited train operations, switch movements on main lines in rail yards and on non-PTC-equipped locomotives, and failures of the PTC-equipped locomotives en route. Those four things that——

Ms. STRANG. Right. Essentially, there are two notices. The first notice would look at the routing issue, and the second notice would deal with the other items that are not part of the litigation. But we expect that we will receive a petition for rulemaking from the AAR that will outline all of their issues that they would like us to reconsider.

Mr. SHUSTER. When you say the "routing," is that the map?

Ms. STRANG. That would essentially be the route map issue, yes.

Mr. SHUSTER. OK. And again, the President stands up almost weekly now and says that we are going to reduce regulations. I talked with Mr. Szabo a couple weeks ago. And the question I have to across the Administration is, do you guys get that message?

I mean, do you hear what he is saying? Because, again, it is all across the Administration that the President stands up one day, and then you get the Secretary of Transportation, FRA, you got other agencies, EPA, coming with new rules and regulations that are, you know, a tremendous burden on business and, in this case, do not have the cost benefit analysis and, I might add—and I am going to go through a line of questioning later—that is going to take away from and possibly make it less safe out there, because we are not spending the money on various things.

So, again, has it been clear, the message coming from the President, to Secretary LaHood and Mr. Szabo?

Ms. STRANG. Yes. In fact, we had a public meeting March 14th, where the AAR and other organizations presented us with views on how we should do a retrospective look-back into all of the regulations, and they presented a list of regulations that they would like us to revisit.

Mr. SHUSTER. OK. Thank you. They did not start the clock, so I do not know if I violated the 5-minute rule. So with that I will yield to the ranking member, and I am going to come around for a second round of questions.

Ms. BROWN. Thank you, thank you. Before I get started with my questions, I have a little housekeeping that I need to get in order.

Norfolk Southern, I have a question to you. It is pertaining to Carolina, the intercity passenger rail. There are some problems, or some rumors, which—I do not like rumors—that you all are holding up the agreement for North Carolina because of Illinois. And I want to know—I want a win with this intercity passenger rail, and I want to know when you all are going to sign it. But the FRA administrator agreed to have a meeting yesterday in Illinois. It was canceled. I was told that by the end of yesterday that I would get a call, letting me know when it is going to be rescheduled.

I know most of you all do not know what I am talking about, but those two do know. And can you all answer my questions?

Mr. MANION. Congresswoman Brown, I would be pleased to. First of all, as far as the canceling of that meeting, I do not believe we had anything to do with that. We are ready, willing, and able to

discuss the project in North Carolina. It has got a lot of good public benefit to it. The project in Illinois, specifically at Englewood, outside of Chicago, has got a lot of benefit to it, from a public standpoint and from a rail standpoint——

Ms. BROWN. And I toured it. I know exactly what you are talking about.

Mr. MANION. Absolutely. And so we are ready to negotiate, and we would like to conclude both of those deals, both of those projects, and we will be present at the next meeting, as scheduled.

Ms. BROWN. Thank you. I need a win. Yes, ma'am?

Ms. STRANG. I am sorry, I am not authorized to——

Ms. BROWN. Can you take a message back?

Ms. STRANG. I absolutely will.

Ms. BROWN. All right, all right. I want an answer today. I was told that I would get the answer by yesterday when the meeting was going to be rescheduled. I need that answer today. And my flight leaves at 8:00, so that gives you all day long. From FRA—you all are the ones that are supposedly scheduling the meeting. You understand what I am saying.

Ms. STRANG. Yes, I do.

Ms. BROWN. And no one is confused. Let me go on to the questioning.

Ms. STRANG. Sure.

[Following are supplementary remarks submitted by Ms. Strang after the hearing:]

> FRA worked collaboratively with the North Carolina Department of Transportation, the North Carolina Railroad, and Amtrak to develop an agreement with the Norfolk Southern Railway (NS) facilitating the construction of improvements on the Piedmont corridor between Raleigh and Charlotte, supported by $520 million in funds from the American Reinvestment and Recovery Act of 2009. This process concluded on March 21, 2011, after months of negotiation to reach an agreement that protected both the passenger rail investments and preserved the capacity for freight operations on the corridor. FRA continues to work with NS and the State of Illinois to develop a similar agreement to facilitate a $133 million project in Chicago to construct a railroad-to-railroad overpass between Metra commuter tracks and the shared NS and Amtrak corridor.

Ms. BROWN. I guess I am going to start with—I am concerned about the loan program, and why is it that we authorize it, we funded it, you have awarded funds—this is FRA—but no one has received any of those funds, and there are programs that need the funds so they can implement the safety controls on those particular lines.

Ms. STRANG. For the RRIF loan program?

Ms. BROWN. No, ma'am, not the RRIF loan.

Ms. STRANG. Oh, the technology——

Ms. BROWN. The grants.

Ms. STRANG. OK.

Ms. BROWN. Yes.

Ms. STRANG. We have awarded the $50 million in technology grants that we had for 2010. We do not have a future grant program envisioned for 2011. It was rescinded in the House version of the appropriations. We do have a request for it in our 2012 budget request.

Ms. BROWN. I understand. But no one has received any of the funds.

Ms. STRANG. The money has all been obligated.

Ms. BROWN. It has been obligated?

Ms. STRANG. Yes, it has. And, in fact, several of the grant recipients are here.

Ms. BROWN. Right, but they have not gotten the money. It is just like the money is in the bank, but it——

Ms. STRANG. It has been obligated. So I can try to find out where the hold-up is.

Ms. BROWN. Yes.

Ms. STRANG. I do know that some of the grant recipients have received their funds. But I will check and make sure that I get back to you.

Ms. BROWN. And let us be clear. Because the House passed something does not mean that the Senate is going to take it up, or the President. But it does not mean that the President is going to sign it.

Ms. STRANG. I understand.

[Following are supplementary remarks submitted by Ms. Strang after the hearing:]

> Of the $50 million that FRA received in fiscal year 2010 for railroad safety technology grants, FRA has obligated approximately $49.3 million to date. Approximately $87,000 was not awarded. All FRA grants are awarded on a reimbursable basis. This means that once FRA has obligated funds for the grantee, the grantee has the ability to spend against those funds immediately. It is the responsibility of the grantee to submit evidence to FRA of its spending (i.e., invoices) for review. Once FRA determines that the costs are appropriate and in line with the grant agreement, FRA will approve the funding, and the accounting system will issue an electronic payment directly into the grantee's specified account.

Ms. BROWN. All right. And I want another round, because I did not get a chance to ask my questions. Thank you.

Mr. SHUSTER. We will definitely give you another round.

Ms. BROWN. All right.

Mr. SHUSTER. And I will tack on that 30 seconds you saved.

[Laughter.]

Mr. SHUSTER. No one on my side. So, Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman, and thank you both for your tireless efforts on the Rail Safety Improvement Act.

Critical in my district. We have 160 trains a day going through my district now, and 14,000 containers going through my—many of them carrying hazardous material. And they transport $400 billion of trade through the rest of the Nation. So, to me, it is critical, because it is going to increase. And I will have 1 train every 10 min-

utes going through my whole district. So you understand why I have great interest in the safety aspect of this.

The Rail Safety Act did not solve my State regulatory issues, but that is another issue for another time. But the views and estimates drafted by the Majority, as has been pointed out, were approved by this committee yesterday, but opposed the proposed increase in funding and staffing for FRA included in the President's budget. What impact would this have on the safety program?

And then the second question to the Administration is, can FRA shift personnel to accomplish if the cuts remain?

Ms. STRANG. I am sorry, ma'am, I am not sure I understand your question. Is the question about our 2012 budget request?

Mrs. NAPOLITANO. No, this is about——

Ms. STRANG. 2011?

Mrs. NAPOLITANO [continuing]. Estimates drafted. We approved, this committee approved cuts to the specific area of assistance that we have been talking about, the——

Ms. STRANG. Right.

Mrs. NAPOLITANO. And also the 2010 leftover will also be removed.

Ms. STRANG. OK. The 2010 grant program has been fully obligated, so there is no leftover to be removed.

On the 2011 request for the grant program, FRA will not have a negative consequence of the grant program being removed, in terms of our personnel. If our funding level remains adequate so that we can continue to support the development of positive train control, which is a resource-intensive effort—it requires a lot of technical expertise and the ability to test and certify the positive train control systems, so that we know that they are safe.

Mrs. NAPOLITANO. Well, we can go to that later. But there is another question that I have for some of the railroad folks. And I looked at the charts that Mr. Gallegly earlier, in regard to the use of texting, et cetera.

But in California, if I remember correctly, several years ago I got into the issue with the California Public Utilities Commission that they were not being given the report on accidents in the yard. So, in other words, it was only accidents that were outside of the yard, the locomotive yards. And to me, that would skew the number of accidents, because those accidents are also reportable, or should be reportable, to be able to have a better feeling as to where we can begin to work with the Administration and the railroads in addressing those issues.

Mr. MANION. Congresswoman Napolitano, I presume you are referring to accidents that are caused by some kind of electronic cell phone usage, or something like that?

Mrs. NAPOLITANO. No, no, no. I am talking about any accidents, any accidents within the rail yard. The California Public Utilities Commission, up to a couple years ago, had no idea how many of them were in the yard, whether it is human error, infrastructure, whatever.

Mr. MANION. Yes. We report according to the dollar threshold of the accident.

Now, the fact of the matter is that, just by the nature of it, accidents within yards are frequently less expensive than accidents out

on the main line. But we report equally, whether it is a yard accident or whether it is a main line accident. We report those to the FRA, according to the threshold.

Mrs. NAPOLITANO. Do you report those to the State entities, also?

Mr. MANION. That is correct. Where we are required to do so, we would——

Mrs. NAPOLITANO. As of when, sir?

Mr. MANION. Pardon me?

Mrs. NAPOLITANO. As of when? Has it been a standing order, regulation?

Mr. MANION. This is—there has been—as far as our reporting procedures go, I am not familiar with any change.

Mrs. NAPOLITANO. I would like to ask Mr. Pierce if he has any comment on this.

Mr. PIERCE. On the reporting itself, or——

Mrs. NAPOLITANO. Yes, sir.

Mr. PIERCE. As far as we know, the reporting are dollar threshold-based, and they are equal on the main line and in the yard——

Mrs. NAPOLITANO. Mr. Hamberger?

Mr. HAMBERGER. I would just offer that whatever is reported to the FRA is public. So there is no hiding the ball here. I do not know what the requirement is in California. And Mr. Manion here operates out of Norfolk, Virginia. So—but whatever is reported to the FRA is public, and I am sure is——

Mrs. NAPOLITANO. Thank you, Mr. Chair. I would go a second round, please.

Mr. SHUSTER. Thank you. The gentleman from New Jersey, Mr. Sires.

Mr. SIRES. Thank you, Mr. Chairman, and welcome. You know, I represent a district that has a lot of lines and a lot of everything, trucks—so I am a big proponent of putting a lot of the merchandise on rail, so we can get the trucks off the road. And I have been a proponent for many years.

And I am very interested in the safety, especially when it comes to commuter rail. You know, we have had a number of accidents in my district. And I was just wondering, Mr. Manion, and you made a statement before that this has been the safest year on record, in terms of rail. Can you give me a—what do you give that credit to? What do you attribute it to?

Mr. MANION. You know, I credit it to a number of things. One is we have—the rail industry in general has a relentless pursuit of reducing injuries and reducing accidents. And it is something that is ingrained in the culture of the industry. So, from the standpoint of training and education with our employees, that is where we spend a tremendous amount of time.

And then, in addition to that, there is a lot of emphasis placed on improved technology, which also helps with regard to reducing accidents and injuries.

Mr. SIRES. Has that suffered because of the downturn in the economy? You know, have you made any cutbacks or anything on that, you know——

Mr. MANION. With respect to 2010, we thankfully saw some very nice improved volumes. And 2010's performance was the result of just continued emphasis on reducing accidents and injuries.

Mr. SIRES. Can somebody tell me if PTC is used in other countries? You know, how effective is it in other countries?

Mr. VICTOR. Yes, I can. It has been in effect in Panama since about 2005. And in 2007, representatives of the FRA went to Panama to take a look at that system. That is the only one that is PTC-based.

Mr. SIRES. I rode the AVE Train in Spain from Madrid to Barcelona. And they told me they had these monitors on—they actually took us to the cockpit, and they actually had these monitors on the rail, in the middle, which works with the computer, I guess, in the cockpit. And if a train is coming toward the train, it automatically slows this train down. Is that what—you know, the technology, is that something similar?

Mr. VICTOR. It would be similar. That is a transponder-based technology. The one in Panama is GPS-based.

Mr. SIRES. There are sensors in the track.

Mr. VICTOR. Yes. The transponder one is track-based. The one in Panama is GPS-based. Together with track sensors, a critical—parts.

Mr. SIRES. OK. Mr. Manion?

Mr. MANION. Congressman Sires, if I might add to that, in Europe, as you say, they do use technology that involves transponders. Specifically it is something that they refer to as close-gap wireless communications. And in their environment, where the shorter, lighter, faster, shorter distance trains—that is the technology that works for them.

When we are looking at employing PTC on thousands of miles, perhaps as much as 75,000 miles of tracks, that is not feasible to use that same type of technology. It is not going to work in the U.S. environment. One of the primary reasons it is not going to work is because you have got all of these individual little components scattered through your railroad track. And anything that goes through there, including our maintenance gangs, our production work, are going to damage those components, those transponders, and all those pieces of equipment that are scattered out along the railroad track.

So, in our case, what we are having to do—and this is one of the big challenges for employing PTC throughout the U.S.—we have to use wireless communication instead of transponders. Employing wireless communication over the size network we have got, and doing it in an interoperable way, where railroads have to be able to communicate with other railroads, where we have to be able to communicate with not only our own dispatching centers, but other railroads' dispatching centers, that type of widespread wireless communication has never been accomplished in this country or successfully in Europe. So this is one of the big challenges we have.

Mr. SIRES. Thank you very much. I also want to thank you—without a question, without a complaint, you respond pretty good. Thank you.

Mr. SHUSTER. Sorry about that. I am having a rough day. I got a cold, if nobody has noticed, so—but I bumped the gavel, I did not gavel you down.

My question is—we will go to the second round of questions, it sounds like everybody wants a second crack.

Ms. BROWN. A third——

Mr. SHUSTER. We may get that, too, Ms. Brown.

To the extent that the mandate to implement PTC—how has that diverted—and this is to Mr. Manion, Mr. Giulietti, and Mr. Victor—has it diverted you away from other safety technologies that could be implemented that we could see a cost benefit that is going to save—because the focus here is we certainly want to be as safe as possible. But if we are mandating $13 billion, what is it going to take away from? And can you be specific about that in—start with you Mr. Manion.

Mr. MANION. Well, when we are looking at $13-give-or-take billion, we feel like we could spend less money more wisely in other ways. And the fact is there are a—there is a myriad of technologies out there that we would like to continue to pursue, or further develop. You saw evidence of some of this on the video that we looked at with TTCI.

There are things we can do on the rail car side, for example, as far as improving design of rail equipment, specifically tank cars. There is all sorts of detector technologies, detectors, for example, that find problems with rail wheels, problems with the axels, problems with the trucks that are centered under the cars. There is all kinds of track-related issues that we have to work on. And we have testing equipment, we have geometry cars. We do all those things. But we can intensify those efforts with more spending.

One of the really significant areas that the railroad industry has is finding flaws in rail before they become accidents or incidents. Rail, broken rails, are a significant thing, and have been for years. And we do all sorts of testing in order to find problems before they occur. But we need more development. We need to put more into rail testing, in order to get further ahead of that.

And the fact of the matter is, Congressman Shuster, if you take these issues that involve track-related accidents, and issues that involve car, rail car-related accidents, all that comprises 60 percent of the accidents we have; 60 percent are related to those 2 things. That is where we would like to focus the dollars we spend. As troublesome and problematic as the PTC-related accidents can be, they only represent 4 percent of the accidents that take place.

Mr. SHUSTER. So you can save lives and damage to——

Mr. MANION. That is correct. The fact is those 60 percent of accidents, they result in a lot of damage and injury and worse.

Mr. SHUSTER. Mr. Giulietti?

Mr. GIULIETTI. Thank you, Chairman. I would like to answer it in two ways. One, because of the fact of the funding and the situation that we are in, waiting for an extension, several of our properties have had to lock down their capital budgets and change what was already in capital programs to go forward.

Some quick examples, Northern Indiana, who was supposed to go into changing out their base rail to 100-pound rail, they have got 25 miles they cannot go ahead with. Metro North cannot do a change shed, they are looking at renovations of their electrical substations that cannot be done if they have to go and dedicate the funds now. Long Island Railroad has tracks and bridge upgrades that were supposed to be done that are being deferred. We have the same thing going on with APTA, and their state of good repair.

And for some of us, the situation and the request for the 2018 extension is because they already have cab signals in place, and they have a safety network that is in place, where others of us are not in that same situation, and that is why we are all behind the PTC, but you can understand, in order to accomplish this, what has to be done or deferred in order to meet that.

Mr. SHUSTER. Thank you. Mr. Victor?

Mr. VICTOR. Within the short line world we have and stand together with our friends at APTA, where we operate over commuter lines. And, really, we are absolutely in a parallel universe. And our ability to pay, considering the size of our operations is equally difficult for us to contemplate, as I stated before, with 92 percent of our capital budget for PTC for a year.

More broadly speaking, for the short line industry as a whole, it becomes equally burdensome, considering the density levels and sizes of our operations, typically, across the U.S. rail network. So we certainly have the same concerns and issues that the commuter agencies will have, as well as companies of our size trying to cope with this in lieu of more critical investments in equipment and infrastructure.

Mr. SHUSTER. Thank you. My 5 minutes have expired, so I will yield to the——

Ms. BROWN. Thank you.

Mr. SHUSTER. We are probably going to go a third round. I am pretty sure of——

Ms. BROWN. OK. I am going to start with Mr. Manion, but then I will go to Mr. Pierce. But this question is for the entire panel.

There are hundreds of FRA-reported incidents on the major railroad lines since 2010, many of which were trains that passed stop signals. Any one of them could result in serious accidents. Now, when we had the accident in California and South Carolina, the House and the Senate both dealt with PTC. We pulled together a bill. All of you all came together and supported it. Now it seems like you have a change in heart.

What would you do differently, or what would you do equally, that would protect the passengers, workers, and the public from human failures? What would you do? Because you all had the opportunity to come to the table prior to us passing the bill. We passed this bill with your support, and now, you know just like everything else, you know, we want to change.

Mr. MANION. Well, Congresswoman Brown, you know, we equally are concerned about the devastating accidents that can happen as a result of passing red signals. And as I stated in my opening comments, our position is that we are not opposed to PTC with respect to our lines that have got passenger train——

Ms. BROWN. You are talking about the technology, though. You said that the technology is not there, and there are other things that you could do, other technology——

Mr. MANION. That is right, that is right. And a couple of those——

Ms. BROWN. That would be equal to?

Mr. MANION. Yes. A couple of those things are this. We can operate in a manner where we provide what we will call temporal separation, where we keep a safety buffer zone ahead of and behind the

passenger trains being operated. And, in fact, on Norfolk Southern we employ some of that now, where we have what we call—separated by signals, we keep a full block ahead and a full block behind passenger trains on some of our lines, not all of our lines.

In addition to that, the other technologies that I was speaking to earlier with regard to approving technology, as far as the railroad track itself and the rail, and the technologies that detect problems with the equipment, those are some of the most significant things we can do to prevent accidents.

So, the reality of it is those accidents caused by going by red signals are a smaller portion of the accidents taking place. And while we want to work on those also, we want to work on the 60 percent piece that are the bigger part of the accidents taking place. And if I may, just very quickly, we work very hard on reducing the number of incidents that take place where trains go by a red signal. That is through education. That is training. That is getting our people to focus and be alert.

And I can say—and I say this with some pride—speaking for Norfolk Southern, because I am obviously most familiar with our statistics, we have dramatically reduced those number of incidents. Over the last 4 years we reduced our incidents by about one-half. And we were the industry leader at that point. So we take it extremely seriously. Thank you for your question.

Ms. BROWN. Mr. Pierce?

Mr. PIERCE. [No response.]

Ms. BROWN. Did you get the question?

Mr. PIERCE. I am not sure which part of it you are pointing at me.

Ms. BROWN. Do you think that other things, other than the—that can be implemented, other than the PTC, that would have safety equivalent?

Mr. PIERCE. OK. There are open switchpoint technologies available in non-signaled dark territory that we have been advocating for years. The accident at Graniteville would have been avoided with such technology.

When it comes to the actual violations, we are equally concerned whenever a violation occurs. As you said, any time an authority or red signal violation occurs, it is that close to an accident. Remedial training, when it gets into operator error or involvement of the employees, we advocate for that. But many times the employee is just terminated, and a new employee is hired. So there is no learning experience from the event.

So there are steps that we would like to take to try to make improvements in those safety numbers. But PTC is the one that would prevent people from leaving their authority and having these accidents, in our opinion.

Ms. BROWN. So, when you try to negotiate or discuss some of those things that the workers would recommend, what happens?

Mr. PIERCE. It varies, railroad by railroad, as to how those are greeted. Each railroad handles that side of it differently.

Ms. BROWN. Mr. Hamberger, aren't you the center of the railroad?

[Laughter.]

Mr. HAMBERGER. I happen to be sitting at the center of the desk here, but I would not call myself the center of the railroad. I am not quite sure what you are——

Ms. BROWN. Well, I am trying to say what can we do, working together, all stakeholders, we all—I hope all of the goals are the same.

Mr. HAMBERGER. Yes, ma'am. Yes. I would like to correct a misimpression that I think you may have. We are not here asking for changes in the regulation—in the statute. We are here talking about the lawsuit that we filed, and that has now been held in abeyance because of the agreement for new regulations with the FRA. We believe that the FRA went beyond the statute, and that was our concern.

We are also drawing attention here today, as you take a look at new legislation, that you might want to take a look at not just PTC-preventable accidents, but when you look at the entire risk profile, using an accidental release of a TIH tank car, for example, there are other ways that you can reduce that risk profile in a much more predictable way, and a much safer way, and reduce that profile more than you can with PTC.

And that is what we are just drawing to your attention today. It is something you might want to take a look at, as you take a look at this new bill. Should we take a look at not just PTC, but instead of that, take a look at how we can reduce the risk of an accidental release from a TIH tank car, and take a look at the whole panoply of technologies that are out there, and not mandate just—say it has to be PTC.

Mr. SHUSTER. Go ahead.

Ms. BROWN. Just 30 more seconds. What I am saying—I hear what you are saying, but are you hearing what I am saying? Because when you all discuss it, then all of the players should be in the room. Because I think the workers can give you some recommendations that it would be equivalent, it would be safety across the board. And I think it makes sense.

I want the railroads to make money. But, most important, I want it to be safe for our communities.

Mr. SHUSTER. Mr. Manion, go ahead——

Mr. MANION. Congresswoman Brown, I would just add that one of the great things about this is that we work closely with our employees in the BLE and the UTU, our conductors and our locomotive engineers.

One case in point, not to drag it out, we have what is called stop signal committees. And they are all over the railroad. And this is management and the labor organizations working together in order to find ways to reduce the number of accidents that result from violating those stop signals. It is very much a team effort.

Mr. SHUSTER. Thank you, Mr. Manion.

Ms. BROWN. Thank you.

Mr. SHUSTER. We are going to do a third round, I think——

Ms. BROWN. OK, thank you.

Mr. SHUSTER [continuing]. I have a couple more questions. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chairman. And I am glad to hear that, because I know a few years ago in the hearing with state

senators and the assembly and myself, it was indicated to us that the training given employees was a CD and a booklet. And hopefully things have changed since then. And I am hoping that this is—translates to a better safety process within the industry.

Chairman Young was in the office recently, and I need to thank them, because they have invested in a lot of infrastructure in the Alameda Corridor east, which was long overdue, since it is going to have an increase in traffic to bring those goods to the rest of the Nation. The new rails, the long, long, long, long rail and the new cross ties apparently made quite a bit of difference. However, there is not enough being invested by railroads in the great separation cost.

And that, to me, is a great issue, because this would help the ontime delivery to the rest of the Nation. I am hoping that we begin to look at how do we increase that participation, not just 3 percent, but hopefully more than that, and the other 2 percent in kind. That would be helpful, especially since the Class I railroads had been able to garner $12.1 billion in revenues, and they are doing well. Hopefully they can invest some of that into the new system that we are talking about.

There is a lot of issues that come to mind. The cracked wheel on your video was reminding me of the hairline crack in the joints with the epoxy that caused a derailment in my city of Whittier a few years back. And that, I believe, went to a safer process of welding those rails, rather than just providing the epoxy.

And to our young lady, Ms. Strang, yesterday the Administration's proposal of $223 million—this is on page 19 of the cost estimates provided to this committee—$223 million for the FRA safety and operations, representing an increase of personnel to do all of the above of regional safety inspectors, headquarters, and regulatory safety staff, et cetera, et cetera. Committee strongly opposed out-of-control growth in government and bureaucracies and rejected the proposal. So you need to acquaint yourself that this is now part of what is being proposed for this current bill.

So, to any of you, what can help us translate to our constituency—because that is who we need to protect—that the railroads are not just interested in making money, but are interested in providing safety processes, including worker safety of the employees? How do we translate that to telling our constituency? Go for it.

Mr. HAMBERGER. Well, I am going to defer to Mr. Manion to go into a little bit more detail about the culture of this industry, and of his company. But you mentioned $12 billion, and let me correct you. That is not the revenue of the industry. That is the capital expenditure this industry is putting back into its infrastructure.

Mrs. NAPOLITANO. Oh, good.

Mr. HAMBERGER. And that is almost—about 20 percent of every revenue dollar goes back into capital expenditures, another 20 percent back into maintenance. And I did not have a chance to answer Mr. Sires's question about why is the accident rate going down. The accident rate is going down in no small part because the rail is better, the engine—locomotives are better, the signaling systems are better. And that is because we have not been sitting on the sideline, but we have, in fact, been doing what the President has

asked corporate America to do, get back in the game, creating American jobs, and that is what we have been doing.

Mrs. NAPOLITANO. Thank you for the correction. You are right. It was my fault, I misquoted it.

And so, how—when was the last time you invested in such an amount?

Mr. HAMBERGER. That is a record amount, as far as percentages. For the past decade it has been about 17 percent of all revenue back into CAPEX.

Mrs. NAPOLITANO. Good.

Mr. HAMBERGER. About 20 percent back into maintenance. Last year, and in 2009, in the depths of the recession, the top 3 years on record prior to 2011 were 2008, 2009, and 2010, in the middle of a recession.

Mrs. NAPOLITANO. And is there any estimate on how some of the investment of the $12.1 billion might be into the area of the—this process we are talking about?

Mr. HAMBERGER. I have indeed had a chance to go through the announcements by the individual railroads. And the number that springs to mind is that $960 million of the 2011 capital expenditures would be for positive train control.

Mrs. NAPOLITANO. Thank you, sir. Thank you, Mr. Chairman.

Mr. SHUSTER. Thank you. And just to clarify, is 17 percent—what you have been averaging, you are almost 20 percent this year—is that the highest of any industry? In the utilities we invest quite a bit of the revenue, but I do not think it is as high as yours. Is that accurate?

Mr. HAMBERGER. That is our read, yes, sir.

Mr. SHUSTER. The highest——

Mr. HAMBERGER. It is five times higher than the average manufacturing industry——

Mr. SHUSTER. Right.

Mr. HAMBERGER [continuing]. In the country. Yes, sir.

Mr. SHUSTER. Thank you. Other problems that I think we have talked a little bit about here today with PTC, one is the spectrum issue. It is my understanding that the Class I's have purchased a big chunk of spectrum already. Is that—you can answer that in just a second.

But the spectrum—Mr. Giulietti, you can talk a little bit about that, but I want to also point out to you that this committee does not determine what is going to happen with the spectrum, it is the Energy and Commerce Committee. We would be happy to take that away from them, but I think Fred Upton might have something to say about that.

But could you talk a little bit about the spectrum issue?

And then the next thing I want to follow up with is the interoperability. What is happening there? What are the problems with—would you talk—I guess spectrum and interoperability probably go sort of hand in hand.

But, Mr. Giulietti, why don't you start with the spectrum?

Mr. GIULIETTI. The spectrum issue actually comes down to—there is two concerns with it. One is that it is not readily available. There is many of our systems, particularly in the dense populated areas, that cannot get this spectrum. There is—some of our sys-

tems have had applications for over a year with the FCC, waiting for some spectrum.

And we are also in a terrible position because—and that is why the request for the FCC—had they made available some of the spectrum that might be in the safety network, we would be able to go and move forward, particularly from a public purpose, because this, even though not put in from another committee, this is a safety mandate. And we truly wanted to push that message forward, that as a safety mandate, we would hope there would be support with the FCC to make access to the safety network and spectrum, so that we could all be there.

In terms of the interoperability, a system like mine is going to be totally dependent on a freight railroad like CSX, and what they are able to procure, and to be able to make it work together. So that is why, when I say to you that we are hand in hand with this, though the freight railroads have had success in some areas, they also are dealing with the same issues of trying to get that spectrum, particularly in areas where the spectrum is already grabbed.

Mr. SHUSTER. And are you working—is APTA working with the Energy and Commerce Committee? I do not know what your——

Mr. GIULIETTI. The answer would be yes, we have our petitions in, and there is a letter that is already in.

Mr. SHUSTER. Thank you. Mr. Manion, can you talk about that spectrum issue? And is it accurate, that Class I's have purchased a chunk and they have what they need?

Mr. MANION. Congressman Shuster, yes, I would be glad to. The four Class I's, the four major Class I's, originally purchased spectrum, 220 megahertz spectrum, and it remains to be seen how much additional spectrum needs to be purchased. We are more than willing to share what we have. And we all recognize that, in the end, we all need—we need to have enough for everyone to operate, obviously those, in addition to the four Class I's.

So, as we move along—and this is one of the things that makes it necessary that we really be guarded about the timeline it takes to get all this done. How much spectrum is really going to be needed? And then, from an interoperable standpoint, how do we develop all that is necessary? How do we make sure that we have got all our technology in order to ensure that the interoperability actually works?

Mr. SHUSTER. Right.

Mr. MANION. We have got some great plans and ideas, but this is something that has not been done. So it puts this very much in question, as far as the timeline goes.

Mr. SHUSTER. So we were wrong in the cost, we do not know how much spectrum we need, and the interoperability, we are not sure if it is even going to work when we put it together?

Mr. MANION. I could not state it better.

Mr. SHUSTER. Mr. Victor, question for you on the cost. Has anybody done a study on what it would cost the short lines to implement this? And I know not all of them necessarily have to do it. But has there ever been a study who would have to do it, what kind of cost?

You made a remark that was 92 percent of your capital investment would have to go toward PTC.

Mr. VICTOR. Yes, 92 percent relates to the 4 roads in our group.

Mr. SHUSTER. I am sorry, the what?

Mr. VICTOR. Relates to the four railroads owned by Anacostia Rail Holdings in order to be PTC-compliant. And that estimate is based on two component parts: one, kind of the broader, freight-based system, which is GPS-based; and the other, to be compatible with the northeast corridor, since New York and Atlantic operates adjacent to what is northeast corridor territory. And we have a cost, really, for just arming locomotives. So in our cost is not the fixed network, it is just arming locomotives.

Generally speaking, the figure outside of the northeast corridor is somewhere around $40,000 to $60,000 per unit. And, in addition, if you are going to install it on physical segments of short lines on top of that, you will have the cost associated with each physical point you would have to wire in. And by the time you get through, right now the CAPEX history of PTC expenditures for all short lines is roughly zero. I mean, in terms of cash out.

But yet, the short lines, as an industry, across the board, excluding PTC, I just received a note that, industry wide, our CAPEX is running about 30 percent of gross revenue. So, we are heavily reinvesting in our properties, to make sure—and, again, getting back on focus, we have all the physical issues that have been discussed.

But at the end of the day, going forward, in, really, in step with a lot of concerns is we need to go forward, but ultimately there has to be a source of funding to pay for it.

Mr. SHUSTER. All right. Thank you. Ms. Brown?

Ms. BROWN. Thank you. Ms. Strang, you indicated earlier that we obligated all of the grant money program. Perhaps you need to go back and visit with the agency, because my understanding that only a half of it has been awarded, and no one has received the funds. And so we need an update.

And I want to put it in the record, because I think this is very important. I mean we are talking—people are talking about calling money back, and we really need the money out in the fields, doing what we intended—for it to happen.

Ms. STRANG. Yes, ma'am. I will get back to you for the record.

[The information follows:]

> De-obligation of the grant funds would have a significant adverse impact on the resolution of known technical issues that have already been identified. As I indicated earlier, since the grant funds are only actually paid out as reimbursements in response to submitted invoices for grant work accomplished, there will be funds that were awarded, but not actually provided to the grantee. Loss of these funds would automatically preclude completion of the grant tasks, leaving critical technical issues unresolved. Since the grant projects were specifically chosen to address PTC technical issues shared by multiple railroads, the failure to complete the grant projects will affect the ability of multiple railroads to implement PTC in a timely manner, as well as further increase the overall PTC system implementation costs as individual railroads undertake independent and duplicative efforts to resolve the technical issues.

Ms. BROWN. OK. Let me move on. The RRIF loan program. Commuter railroads claim that—and this is probably with the RRIF loan program, I know that we had a hearing recently on it—and has any commuter or short line railroads approached FRA about applying for the loan program for the purpose of the PTC?

Ms. STRANG. Yes. We have had pre-application discussions with four railroads, with Canadian Pacific, with Denton County, and we had some discussions with New York Metropolitan Transit Authority. However, they have recently decided that they did not want to pursue a loan for PTC. They were going to pursue it for the East Side Access project.

Ms. BROWN. Can you give us a status of the retrofit of replacement camp cars?

Ms. STRANG. Yes. We have issued a notice of proposed rulemaking that covers all of the retrofit issues on camp cars, so—including addressing issues such as drinking water, showers, toilets, sleeping rooms, placement of the cars so that they are not in noisy environments or dangerous environments, where people could be exposed to hazardous materials releases or other such things.

The comment period closed on March 4th, and we will be issuing a final rule as quickly as we can.

Ms. BROWN. Mr. Manion, do you want to respond to that? Because I think your railroad is the only one that still has camp cars.

Mr. MANION. Congresswoman Brown, we still do have camp cars. In fact——

Ms. BROWN. And I understand the staff visited the very nice ones.

[Laughter.]

Mr. MANION. Well, and we appreciate you recognizing that. We have gone to a lot of expense to retrofit our camp cars. They have essentially all been rebuilt, with the exception of a handful. We have got almost 300 active units now, and where they were 8-person occupancy cars, they are now 4-person.

And what we find is that our employees, for the most part—and we even take surveys on this type of thing—our employees prefer to stay in the cars, because it takes—it cuts down on a lot of what they would otherwise be traveling long distances to get to hotels when they are out on the road, and out in the middle of nowhere in many cases. So they work very successfully for us. We do not use them exclusively, but we do use them to a large degree.

Ms. BROWN. OK. Mr. Pierce, do you want to respond to that?

Mr. PIERCE. I would probably have to defer to my maintenance brothers, but the version that I get from them would vary from Mr. Manion's comments slightly. And I am not sure they are that wild about the camp cars.

Ms. BROWN. OK. Mr. Giulietti, I heard yesterday from Metrolink and Metro about your testimony here. They are concerned that you are taking the position of delaying the PTC. You want to respond to that?

Mr. GIULIETTI. Yes, I would. We have 27 commuter rail properties, and they are all in various stages of trying to implement as many of the safety networks available. What has happened is we sat down, as a commuter rail industry, and we have been talking this. And that is why I think you heard in my testimony that we

are extremely supportive of the Metrolink, and would like to see any available Federal funds move there, because they are trying to not only meet the mandate, but to be more aggressive than that and get it in by 2012.

We need them to be successful. Their success—because what we are afraid of is we do not want to be caught in a position of investing in unproved technology. We want them to prove that the technology will work. And that is why we are asking for a little bit of relief in time. We truly appreciate the position they are in. They are afraid that asking, as an industry, is going to take us out of the PTC request. As you have heard here, there is not a freight railroad or, for that matter, a public railroad that is asking for any relief from going forward with the PTC. It is a matter of trying to rationalize it and wait for the technology to get there.

So, I would like to say that I understand their concern. We have listened to their concern. We are on the phone with them. We have tried to craft it out so that we are extremely supportive of them. But understand that we also have an industry issue, in that we cannot afford right now to make investments that might not go the right way.

Ms. BROWN. My understanding they have received a grant but just have not gotten it yet for safety, to implement the program.

Mr. GIULIETTI. I am being advised that that was State money, it was not Federal money that they had gotten to go forward.

Ms. BROWN. OK.

Mr. GIULIETTI. I do not know the answer, beyond that.

Ms. BROWN. OK. Well, thank you very much. I think this has been a great hearing.

Mr. SHUSTER. I have a couple more questions. Mr. Pierce, I wanted to get your opinion on PTC, and what is BLET's position on PTC, and should we go forward, should we delay it? What are your thoughts?

Mr. PIERCE. Thank you, Chairman. We have been advocating some form of positive train control for decades. Technology that would save a life—we heard a very compelling testimony from the child of one of the decedents in the Chatsworth accident, and it kind of puts this whole thing into context for me, that any time you can save a life—and technology could do that—we have to advocate that we get the technology. So, sooner than later is what we have been asking for.

I have actually ridden the ETMS technology on BNSF. I think it is a very good product. I think it will prevent what we have discussed earlier with the exceeding the authority red signal violations. And in doing so, I think it will dramatically make it almost avoidable, would be the good word, as far as collisions that we are out here actually trying to stop.

So, we are in favor of it. I know that there are discussions with FRA and the carriers on the when and the how—the how fast and who pays for it. We have been advocating it for years, and we are going to continue to.

Mr. SHUSTER. Well, and I think everybody that sat here is not saying do not do it, they are saying let's do it in a reasonable way that we do not take away from other safety issues.

Because, I mean, do you agree with what they had said about some of the safety in the rail—making sure that we are replacing rail, so it is not broken and cracked, and things like that? I mean, doesn't that have an impact on—a significant impact on safety, where you are concerned?

Mr. PIERCE. There are many aspects of the safety program, and it is obvious that it is all a finance issue. And I understand the prioritization of where they put the money. But at the same time, the dramatic outcome of the catastrophic event of a collision like Chatsworth I think kind of drives it toward having a higher priority, in our opinion.

Mr. SHUSTER. Thank you. Question on a different subject—well, I guess the same subject, but—the de minimis exception for TIH traffic. What does AAR believe is a meaningful exception on that? Ed—or Mr. Hamberger or Mr. Manion?

Mr. MANION. Well, the de minimis exception is something that we would like to see put in place, and we have had conversations with FRA about that. And, you know, it will be good if we can get to the point where allowance is made so that the various portions of the railroad that have much lighter density of TIH traffic will be accepted from the PTC requirement.

But the larger issue is that that still represents, even if we get those kind of exceptions, even if we get the change on the map to a more extended period of time, that still only reduces the amount of PTC and the amount of cost by a relatively small amount, 20 percent perhaps. So, in our estimation, there is a lot that needs to be done beyond that to take a more rational look at the scope of PTC that is put out.

Mr. HAMBERGER. And to be fair, Mr. Chairman, the FRA did have a de minimis provision, both for passenger and for TIH—they did not call it de minimis for passenger—limited operations. And there were some restrictions in the rule with respect to TIH that we have been talking with the FRA about, and we will be addressing that in our petition, which I am told will be ready in about 3 weeks.

Mr. SHUSTER. Three weeks. Mr. Giulietti, I see you shaking your head. You want to comment on that exception? I know it is not——

Mr. GIULIETTI. Several of the passenger systems met with the AAR and the freight railroads. We understand their position on this. We have been very supportive of it. We understand that there needed to be an upgrading of that map, so that it indeed took that into consideration.

The focus has been on where the passenger systems are, and that is why I wanted to say that, yes, I can say that we are very supportive on that issue, because it does require—or it does put it in a position that they can focus on those areas where the passenger side of it is much more the pressing need.

Mr. SHUSTER. All right. Thank you very much. And I would ask that Mr. Manion and Mr. Giulietti and Mr. Victor—that is a good Irish name, isn't it, Giulietti, it is fitting on Saint Patrick's Day——

Mr. GIULIETTI. My mother's name is Moran. I would have worn a green tie, but you know——

Mr. SHUSTER. I would ask that the three representing—Mr. Manion, Mr. Giulietti, and Mr. Victor, if you could, supply to the

committee a detailed safety implementation—things that you are—that you believe would add safety to the railroad, to your operations. As we talked a little bit about before, the more detail I get, the more specifics—I prefer to have specifics, because you know, talking about broad safety issues does not usually cut it around here.

The other thing is safety projects that are being delayed because of PTC. You know, not something that 5 years ago you delayed, but something that you specifically said, "Look, we are not going forward with this, because we have got to put money in the bank to make sure we are prepared, as we move forward," I would appreciate if you could, in the next week or so, provide that to the committee.

And, Ms. Strang, I would urge you to listen to what the President is saying. We are going to reduce regulation, regulation that is—does not have a cost benefit, that is stopping companies—railroads, in this case—from spending money on things that would have an impact on safety and moving forward. I would encourage you to heed the President's word. Every time he says it, I perk up and listen to him. And then I wait for another regulatory agency to come forward with some type of regulation that is going to cost money and jobs and stop this economy from moving forward.

And, Ms. Strang, I will give you the final word if you want to respond to me.

Ms. STRANG. I would be delighted to. We are very committed to reviewing our regulations and being consistent with the President's Executive order. We have had very good discussions with the AAR, and believe that we can find a way forward that is acceptable, both to the public and to the railroads, and is consistent with safety.

So, we will be working hard on our notices of proposed rulemaking and awaiting a petition.

Mr. SHUSTER. I would just like you remind you that Mr. Sunstein made this the poster child——

Ms. STRANG. We are very well aware.

[Laughter.]

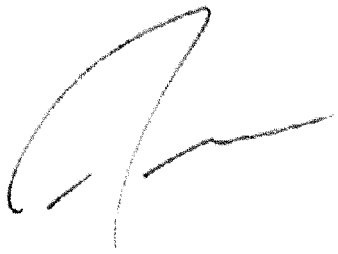
Mr. SHUSTER. OK. Just wanted to remind you. All right. Again, I thank everybody for coming today and participating. I thought I lost my gavel again, but thank you very much.

[Whereupon, at 12:25 p.m., the subcommittee was adjourned.]

Rep. Tom Reed Opening Statement
Subcommittee on Railroads, Pipelines and Hazardous Materials
Federal Regulatory Overreach in the Railroad Industry: Implementing the Rail Safety Improvement Act (March 17, 2011)

Rail safety is an issue that all interested parties care deeply about. As a member of Congress, it is my goal to improve rail safety so that rail passengers and goods that are transported via rail are moved as safely as possible. We need to do what we can to remove costly human errors and reduce the risk in carrying hazardous materials. When dealing with hazardous materials, we need to be especially careful to ensure that our citizens are not endangered or put in harm's way.

I have concerns, however, with federal overreach and the routing of hazardous materials. In particular, the Federal Railroad Administration chose 2008 as the base year for determining which freight lines need to install positive train control. It is my understanding that major changes in the routing of hazardous materials, due to market changes, have occurred since the legislation was enacted in 2008. I feel that it may be onerous and costly to mandate that freight railroads install positive train control systems by the December 31, 2015 deadline on lines that no longer carry hazardous materials. I look forward to your thoughts on this matter.



Statement of Rep. Elton Gallegly
House Transportation and Infrastructure Committee
Subcommittee on Rail, Pipelines and Hazardous Materials
March 17, 2011

I would first like to extend my thanks to full Committee Chairman Mica and Subcommittee Chairman Shuster, as well as Ranking Member Brown for inviting me to testify at this hearing this morning. I also greatly appreciate all of you inviting one of my constituents, Mackenzie Souser, to testify with me here today.

Mr. Chairman, on September 12, 2008, a Metrolink commuter train and a Union Pacific freight train collided near Chatsworth, California, resulting in 25 deaths and more than 150 injuries, many of which were catastrophic. This was the worst train accident in California history. Since the Metrolink train was heading in the direction of Ventura County, which I represent, most of those killed or injured were my constituents.

Although there is ongoing litigation related to this matter, an extensive investigation conducted by the NTSB, depositions taken as part of the court case, and interviews with Veolia employees, found that the operator of the Metrolink system, Veolia Transportation, had a culture of ignoring risk and accepting rule-breaking from the locomotive engineer who was driving the train.

Here are some of the relevant facts related to the Chatsworth-Metrolink tragedy:

- Robert Sanchez, the engineer who was driving the train at the time of the crash, had already been cited in 2006 for having his cell phone on while operating a train. This violation of written rules put Veolia on notice regarding Sanchez's cell phone usage while he was on duty.

- And only about one month before the collision, the conductor on Mr. Sanchez's train saw Mr. Sanchez using his cell phone and reminded him that he was in violation of the rules. The conductor reported this violation to a supervisor. However, no

formal or informal action was taken against Mr. Sanchez to stop his cell phone usage.

- On the very day of the crash, just before the afternoon train runs began, the same conductor called another conductor, asking his advice about stopping Mr. Sanchez from this dangerous texting conduct since Veolia management had done nothing to stop it. The other conductor advised him to ask a union officer the next day to intercede with Veolia's management.

- Despite this knowledge of cell phone use by Mr. Sanchez, in the weeks leading up to the crash Mr. Sanchez sent between 25 and 180 text messages per day while on duty. Many of these text messages were sent by Sanchez while he was driving the train. This poster shows the text messages sent or received by Mr. Sanchez on the day of the collision and the 8 prior days. Please note that on the very day of the crash, Sanchez sent or received a total of 43 text messages while operating the train, including 13 during his shift on the afternoon of the crash.

- On the afternoon of the tragedy, Mr. Sanchez failed to call out signals or control the speed of the train as required by written rules. Mr. Sanchez also ran, over the speed limit, past a red signal a mile after leaving the Chatsworth train station at the same time as he was sending a text message.

- Twenty-two seconds later, in a blind curve and without any warning, the Metrolink train hit a freight train traveling over 40 MPH head-on, derailing the lead locomotives and jamming the Metrolink locomotive backwards inside most of the first passenger car. In an instant, close to 200 people were killed or injured.

Mr. Chairman, I refuse to call what happened on September 12, 2008 an accident. This was a tragedy, but it was not an accident and it could have been prevented.

For the victims and family members, the tragedy of September 12, 2008, has been compounded by a federal law which limits all

damages related to all claims arising from a passenger railroad accident to be capped at $200 million.

This federal cap on all damages, which was included in the Amtrak Reform and Accountability Act of 1997, states that "the aggregate allowable awards to all rail passengers against all defendants for all claims" arising from a single accident cannot exceed $200 million.

In fact, in the Chatsworth tragedy, a respected, retired California Supreme Court Judge evaluated the damages caused to the victims and concluded that a fair settlement for the victims would be two to three times the amount of the liability cap.

Mr. Chairman, the Chatsworth tragedy has devastated 180 families in my Congressional district. For this reason, I have called upon the executives of Veolia to step up and at least cover the real damages – not punitive damages – but the real damages caused by this tragedy.

Veolia is the largest transportation company in the world. They operate rail systems that are subsidized by taxpayers throughout the United States. Both public transportation entities and the American public at large count on Veolia to operate safe transportation systems and act like responsible corporate citizens.

I therefore call on Veolia to take responsibility for the devastation they have caused and do the right thing by these people who have lost so much through no fault of their own.

Again, thank you for allowing me to testify here this morning.

**TESTIMONY OF**

**JOSEPH J. GIULIETTI, EXECUTIVE DIRECTOR**

**SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**

**BEFORE THE**

**SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS**

**OF THE**

**HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**ON "FEDERAL REGULATORY OVERREACH IN THE RAILROAD INDUSTRY: IMPLEMENTING THE RAIL SAFETY IMPROVEMENT ACT"**

*******

**MARCH 17, 2011**

**SUBMITTED BY**

**American Public Transportation Association**
**1666 K Street, N.W.**
**Washington, DC 20006**
**Tel: (202) 496-4800**
**Fax: (202) 496-4324**


**The American Public Transportation Association (APTA) is a nonprofit international association of 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter 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 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.**

## INTRODUCTION

Chairman Shuster, Ranking Member Brown and members of the Railroads, Pipelines and Hazardous Material Subcommittee, on behalf of the American Public Transportation Association (APTA) and its more than 1,500 member organizations and the South Florida Regional Transportation Authority, where I serve as the Executive Director and oversee the Tri-Rail commuter railroad, I thank you for the opportunity to testify today to discuss the Rail Safety Improvement Act and to offer insight on matters related to the implementation of Positive Train Control (PTC).

Passenger safety is the number one priority on our nation's commuter railroads. As a commuter rail operator, I welcome the installation of PTC on my railroad and speak for the industry when I say that we are 100 per cent committed to implementing positive train control technologies. Working with the American Public Transportation Association, representatives of commuter rail properties across the country have aggressively pursued the funding and technology necessary to meet this safety mandate. There are, however, major obstacles to implementing PTC, related to both funding and technology. These challenges pose significant potential for delays in completing the interim steps required for PTC implementation by the 2015 deadline. In order to assist publicly funded commuter railroads in meeting the federal mandate, Congress must enact more flexible timelines, significantly increase the federal investment, and direct the FCC to set aside at no cost adequate radio frequency spectrum. In making these recommendations we do not intend to inhibit efforts to implement PTC on some commuter railroads prior to the deadline, and we in fact urge Congress to prioritize funding for those efforts.

## ABOUT APTA

The American Public Transportation Association is a nonprofit international association of 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter 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 transit services and products. More than 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.

## COMMUTER RAILROADS

Commuter rail is one of the most commonly used methods of public transportation for those traveling from outlying suburban areas into commercial centers of metropolitan areas, often to and from places of employment, education, commerce and medical care. The National Transit Database (NTD) lists 27 publicly funded commuter railroads covering more than 4,000 total track miles in the United States. The most recently published APTA public transportation ridership report, which provides data on transit passenger ridership for U.S. transit agencies, indicates there is continued strong demand for public transportation despite the economic downturn, with nearly 10.2 billion trips taken on public transportation nationally in 2010. The demand for commuter rail service has also remained strong, with 13 out of 26 commuter rail systems in operation for all of 2010 reporting ridership increases. As the current situation of political unrest in many oil producing nations continues, more and more commuters are turning to public transportation to escape rising gas prices and many transit operators are reporting double digit ridership increases in February 2011.

## TECHNOLOGY OVERVIEW

Positive Train Control is a sophisticated predictive enforcement technology that is capable of preventing accidents caused by human error, such as collisions between trains and derailments that result from trains traveling too fast for conditions or improperly aligned switches. A PTC system is also designed to

intervene against unsafe operations, acting as a backup if a train crew operates a train improperly or fails to comply with signals. PTC is dependent upon precise train position in near real time which may be achieved by a number of methods, including global positioning satellites (GPS). This technology is also heavily dependent upon the transmission of enormous amounts of digital data communications as a means of delivering movement authority information to trains and achieving interoperability between carriers. As explained by the Federal Railroad Administration (FRA), PTC "systems issue movement authorities to train and maintenance-of-way crews, track the location of the trains and maintenance-of-way vehicles, have the ability to automatically enforce movement authorities, and continually update operating data systems with information on the location of trains, locomotives, cars, and crews."

A communications intensive technology, PTC requires continuous availability of radio frequency spectrum throughout the operating environment to support the data being transferred between different components located on board the train, along the track and at centrally located servers. Supporting this immense transfer of data communications throughout the entire network of a commuter railroad will require a large amount of radio spectrum, especially on lines such as the Northeast Illinois Regional Commuter Railroad Corporation, or METRA, which spans more than 1,200 miles of track mileage through six counties. Furthermore, in addition to basic operational requirements, as mandated in the Rail Safety Improvement Act (RSIA)-, spectrum is also necessary to achieve interoperable communications between commuter and freight railroads which often operate on the same tracks. This poses a significant challenge as railroads must be able to communicate and operate seamlessly across one another's boundaries. Significant development work required to define the parameters of interoperability is nearing completion, including the data radio which is a critical design element of the required equipment. Much work remains to be done, however, in terms of the software and messaging platforms over which the radios are expected to operate in order to effectively implement PTC safety systems. Regrettably, many commuter rail agencies have encountered significant difficulty acquiring the spectrum over which these radios must operate. The inability to acquire spectrum may lead to further delays in technological development.

## RAIL SAFETY IMPROVEMENT ACT AND 49 CFR PART 236

The Rail Safety Improvement Act (P.L. 110-432) was signed into law on October 16, 2008. This legislation was the culmination of longstanding safety efforts, providing for the reauthorization of the Federal Railroad Administration and the National Passenger Railroad Corporation (Amtrak), the revision of Hours of Service requirements for rail and signal employees, as well other major safety initiatives. Most importantly for the purpose of today's hearing, the RSIA mandated by December 31, 2015, the deployment of Positive Train Control technology on all railroad track which carries passengers, accommodates hazardous materials or experiences heavy levels of service. To assist operators with the implementation of PTC, the bill authorized $250 million over 5 years for Railroad Safety Technology Grants. The original intent of the authorization was to provide $50 million per year in grant funding, with priority given to projects that advance technology and benefit both freight and passenger rail operations. The bill also requires the Secretary of Transportation submit an interim progress report to Congress in 2012 on the status of PTC implementation.

In 2010, the FRA issued its final rule on PTC, putting forth statutory reporting requirements which outlined the process by which railroads are expected to comply with the mandate and established a timeline for plan review and certification. Pursuant to the rule, commuter railroads were required to submit PTC Implementation Plans (PTCIP) by April 16, 2010. Plans were required to include information detailing how an agency intends to meet the functional requirements of PTC, including data regarding matters related to rolling stock, risk analysis and interoperability between host and tenant railroads. I

am pleased to report that all APTA commuter rail agency members submitted their plans on time and that those plans are in various stages of approval.

## FUNDING CHALLENGES

In an attempt to quantify the costs associated with implementing Positive Train Control, APTA surveyed its public commuter rail members in 2009 to ask for initial cost estimates. The results were staggering. Not including costs associated with acquiring spectrum or the subsequent software and operating expenses, the preliminary assessment was more than $2 billion. According to the Association of American Railroads (AAR), the cost to freight railroads would be significantly greater, with early estimates upwards of $10 billion. These estimates are now considered to be conservative and industry experts believe costs may in fact be far greater.

When the Rail Safety Improvement Act was enacted in 2008, the commuter rail industry was aware that achieving the PTC goal within the mandated timeframes posed significant financial challenges. Nonetheless, the commuter railroads worked together in good faith to comply with the Act's requirements. The industry operated under the premise that a new surface transportation authorization bill would be in place to dramatically increase -- if not double – the federal capital support for the type of maintenance and state of good repair investments necessary for operating public commuter rails systems, freeing up other capital for PTC implementation projects. Additional federal funding was fundamental to the industry's ability to achieve the 2015 deadline. As we move into the latest authorization extension period, it has become clear that a new bill providing increased funding will not materialize in time to affect PTC implementation. Agencies are faced with flat federal funding levels that are expected to not only support current operations, but to also fund this capital-intensive federal mandate. Commuter railroads that have begun the process of funding PTC are facing very difficult choices -- some agencies are already planning to defer critical safety sensitive infrastructure maintenance on bridges and electrical substations to pay for PTC, while others have concluded they will have to reduce existing passenger service to pay for costs associated with meeting the federally imposed mandate. Delaying critical safety projects and cutting service are not acceptable methods of funding PTC. A multi-year approach to funding PTC projects is critically important to sound investment and the commuter rail industry strongly supports the passage of a well funded six-year multimodal surface transportation bill.

In addition to concerns about levels of long-term federal support, the downturn in the national economy over the course of the last several years has drastically reduced state and local capital revenue streams, the only other source of funding for large capital projects. As such, many commuter railroad operators have been forced not only to slash capital spending, but in many instances, have been under tremendous pressure to tap capital funding to pay for operating costs. As you know, that pressure led Congress to allow up to 10 percent of 2009's American Recovery and Reinvestment Act (ARRA) dollars to be used for such operating purposes. As expected, this allowance, was helpful but a 2010 survey of APTA transit system members found that over 80 percent of public transit providers were forced to reduce service, increase passenger fares, lay off staff, or some combination of the three.

The Rail Safety Technology Grant program in the RSIA authorized $250 million over 5 years to assist in the deployment of PTC related technologies on commuter and freight railroads. Under this program, applicants can request funding for technology related projects, with preference given to those projects that are the collaborative effort of multiple railroads. Unfortunately, the $50 million for this program was not was not provided in the Administration's budget requests for Fiscal Year (FY) 2009, 2010, or

2011 and is absent in the 2012 budget as well. Furthermore, even if fully appropriated, this authorization was never enough to make a significant dent in the more than $2 billion estimated cost faced by commuter rail agencies. To help implement PTC, we strongly urge Congress to immediately substantially increase the authorization level for publicly funded commuter railroads to a level that adequately reflects industry needs and ensure that those funds are appropriated quickly.

To ensure positive train control systems go online by 2015, agencies must begin their procurement processes now, committing extremely limited capital funding for PTC uses. The nation's publicly funded commuter railroads are committed to implementing PTC on their railroads and ask the federal government to demonstrate the same level of commitment by increasing the authorization to cover 80 percent of the cost to implement PTC on publicly funded commuter railroads, as is consistent with other federal Department of Transportation programs. Providing an 80/20 cost share to publicly funded commuter railroads allows operators to install PTC on their systems while also continuing critically needed state-of-good-repair projects – a level of flexibility that is vital to operators. Redirecting an agency's entire capital budget to install PTC is not an effective use of funding if deferred critical safety maintenance projects result in inoperable electrical substations or bridges or other safety critical systems.

It should be noted that the option of using low interest loans from the Railroad Rehabilitation and Improvement Financing (RRIF) program has been mentioned as a potential source of funding for PTC implementation. For publicly funded commuter railroads to assume additional debt in a time of deep economic crisis in order to finance a severely underfunded federal safety mandate is not the answer. For example, at the New York Metropolitan Transportation Authority (NYMTA), early estimates to install PTC on its two commuter railroads, Long Island Railroad (LIRR) and Metro North Railroad (MNRR), are in the hundreds of millions of dollars. Unfortunately, with an annual debt service of $1 billion dollars, NYMTA is at its practical indebted limit and adding hundreds of millions of dollars in new debt may impact creditworthiness. Similarly, the North County Transit District (NCTD) in San Diego estimates its PTC costs to be in the $60-90 million range, despite an annual capital budget of only $10-$15 million. Significant federal investment must be part of the equation to fund the astounding cost of PTC implementation on our nation's publicly funded commuter railroads.

## TECHNOLOGY CHALLENGES

The technological obstacles associated with implementing PTC by 2015 are proving to be equally as challenging. Positive Train Control technologies are largely untested in the commuter rail environment, with no successful testing achievements to date. In comparison to freight and intercity rail operations, the commuter rail environment poses unique challenges given the high traffic volumes, close headways and reliability demands that have a low tolerance for service delays. For example, MTA Metro North commuter railroad operates approximately 700 revenue trains daily. During the peak morning rush hour, as many as 200 trains are required to meet the demand. Ensuring successful and cost efficient operations to passengers depends on providing daily, on-time, reliable service, therefore, PTC systems must be carefully integrated to allow for these high volumes of service and must be calibrated to meet the needs of the precise operating environment of a commuter railroad.

The complexities associated with track and infrastructure configurations which support high volumes of traffic, precision stop enforcements and multiple-unit vehicles pose especially unique challenges in implementing PTC in the commuter rail environment. In order to support the high volume of trains

operated in a short period of time, PTC on commuter railroads must be designed and installed in a way that provides greater flexibility of train movements. Junctions and interlocking, the points at which trains move from one track to another, must be designed and located at more frequent intervals to allow for maximum throughput and to enforce the safe stoppage of a train. Adding to the complexity, certain commuter railroads must interoperate with Amtrak's Advanced Civil Speed Enforcement System (ACSES) which operates on the Northeast Corridor, and Vital Electronic Train Management System (VETMS), which is operated by certain freight railroads. Consequently, these unique needs introduce a higher level of complexity than is found on intercity and freight operations. To date, a high capacity and efficient PTC system has yet to be proven reliable on a commuter railroad. Until proper testing in the commuter rail environment is conducted, there can be no definitive resolution as to whether or not PTC will increase travel time or result in service disruptions. Extensive development, testing and validation are necessary to ensure operational success in this unique environment.

Further complicating matters is the realization that few vendors have the expertise necessary to install PTC technologies on freight and passenger railroads. There are currently no "turn-key" vendors who can install all components of a PTC system. Instead, to implement PTC it will be necessary to contract with multiple vendors who provide differing services. Competition to secure these vendors will likely result in services being sold to the highest bidder, pushing privately held companies to the top of the list and publicly funded commuter railroads to the bottom.

Vendor concerns aside, the fact remains that most of the technology associated with PTC simply does not exist at present. There is no off-the-shelf technology available to freight or commuter railroads, as nearly all components are still in the research and development phase. For example, it is our understanding based on information provided at a meeting of the Interoperable Train Communication Committee (ITC), that the radios to be used for interoperable communications, a critical piece of the PTC puzzle, will not be available until the first quarter of 2012. These radios are necessary in order to complete work on the software and messaging platform over which the radios are expected to operate. Furthermore, these radios must be complete in order for commuter railroads to begin the procurement process and any delays in development will result in delays in procurement.

The recent December 2010 report by the U.S. Government Accountability Office (GAO) entitled *"Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology"* also found that while all railroads impacted by PTC requirements have been putting forth good faith efforts to meet the mandate, there is strong potential for delays if certain problematic components of the process are not rectified in a timely manner. The most striking information to come out of the report is the GAO's likening of the PTC technology rollout to that of the development of a military weapons system, noting that "demonstrating a high level of maturity before allowing new technologies into product development programs increases the chance for successful implementation, and that, conversely, technologies that were included in a product development program before they were mature later contributed to cost increases and schedule delays." We therefore urge Congress to extend the PTC implementation deadline for commuter railroads to December 31, 2018.

Notwithstanding, we do not believe that this extension should preclude commuter railroads who have committed to implement PTC prior to the 2015 deadline, such as the Southern California Regional Rail Authority (SCRRA), from moving forward with their advanced implementation schedule. We fully understand, appreciate and support SCRRA's concerted effort to implement PTC on its rail network by 2012.

APTA strongly supports the early implementation of PTC in Southern California and endorses the SCRRA service area to be the first interoperable PTC system in service, allowing it to serve as the basis to inform all commuter railroads on PTC. Further, we believe that federal resources should be provided, including expeditious action by the Federal Communications Commission (FCC) on the pending 220 spectrum acquisition application by SCRRA, and on the allocation of a no cost radio spectrum set aside for PTC on commuter railroads nationwide. We urge the Federal Railroad Administration to devote the necessary resources to fully support SCRRA's early implementation of PTC on its commuter rail system by 2012.

All commuter railroads can learn from early implementation efforts and prevent costly mistakes from being repeated across the nation. These early implementation efforts will likely result in a more cost-efficient and technologically sound blueprint for implementing PTC on other commuter railroads.

Extending the date would also give Congress the opportunity to review both the FRA's 2012 mid-term Report to Congress on the Status of PTC Implementation as well as the Federal Transit Administration's report on PTC, which is expected to be completed in 2013.

## SPECTRUM

The implementation of Positive Train Control will require an extensive communications infrastructure to support the transmission of train control based data communications. Unfortunately, the RSIA contained no provision for allocating spectrum for PTC purposes, therefore commuter railroads are actively seeking to acquire radio spectrum on the open market to support wireless and interoperable radio communications. While some agencies have been successful in acquiring spectrum, most have run into significant difficulties, as spectrum is a finite and highly competitive commodity that some qualified license holders are offering for sale at exorbitant rates. Two agencies currently have applications pending before the FCC to settle acquisition disputes involving qualified spectrum license holders and third party claimants. To date, the FCC has not acted on these applications and has taken no action to ensure that spectrum is available to support implementation of PTC in time to satisfy the 2015 deadline.

Sensing the urgency of the matter, the Federal Railroad Administration weighed in on the matter with a July 2010 letter from Administrator Joseph C. Szabo to the FCC requesting a set aside of spectrum for publicly funded commuter railroads. In his request, Administrator Szabo astutely identified that since publicly funded commuter railroads "are specifically operated to provide a public service, as opposed to private gain, they rely heavily on public funding to meet operating and capital requirements...the financial ability of such railroads to obtain the necessary spectrum to meet the statutory deadline is questionable at best."

A nationwide PTC spectrum needs analysis is being conducted in conjunction with the Transportation Research Board (TRB), but it is our understanding that report will not be available for at least another six months. To ensure that PTC is operational by the federally mandated timeline, spectrum acquisition must take place immediately. Therefore, pending completion of the nationwide spectrum needs analysis, we urge the FCC to act now to reserve and reallocate spectrum in the following urban areas with major commuter rail systems, which, because of the current density of all railroad traffic, already experience significant communications congestion: New York, Chicago, Boston, Philadelphia, Los Angeles, San Francisco, Baltimore, Miami, Washington, D.C., Seattle, San Diego, Dallas/Fort Worth, and Salt Lake City. It is anticipated that the PTC spectrum needs analysis may identify other systems that will also experience difficulty in acquiring spectrum for PTC, and this interim request for a PTC spectrum set aside may need to be supplemented to cover additional systems after the needs analysis is completed.

Granting this set aside will remove a costly and burdensome roadblock for publicly funded railroads on their path to meeting the PTC deadline.

## HOURS OF SERVICE

In addition to addressing technology-based safety issues, the RSIA also revised the Hours of Service (HOS) requirements, limiting on-duty and limbo time for freight rail and signal employees. Through participation in the FRA's Rail Safety Advisory Committee (RSAC) Passenger Hours of Service Working Group, APTA has partnered with the FRA and key industry stakeholders to develop consensus based recommendations on how to move forward with a final Passenger Hours of Service reform. The Notice of Proposed Rulemaking for Passenger HOS is expected to be published sometime in the spring of 2011, with a final rule expected to be handed down several months later.

APTA appreciates the opportunity it was given to work with the FRA and industry partners during the collaborative process to develop these rules and looks forward to analyzing the impacts of the final rule on the commuter rail industry. While it is not our intent to prejudge a rule that has yet to be released, it should be noted, that the industry has concerns regarding the costs associated with implementing HOS reforms. Although there is no way to determine the magnitude of the final rule, it is anticipated to likely result in the need for commuter railroads to acquire and use a biomathematical model of human performance and fatigue, and necessitate supplementary employee training programs. This poses a significant financial implication at a time when commuter rail agencies across the country are struggling to maintain current service and staffing levels. We strongly encourage Congress to fund, and the FRA to make available to publicly funded railroads, a scientifically valid model for this purpose, as well as federal training assistance for agencies to properly train employees to ensure compliance with the new mandate.

## CONCLUSION

To carry out its congressionally chartered mission of providing safety oversight to the nation's railroads, the Federal Railroad Administration was vested with enforcement authority to ensure compliance. These powers include imposing civil penalties and/or equitable remedies, including injunctive relief. Though not expressly stated in the statute or final rule, the implication remains that an existing commuter railroad's failure to comply with full PTC implementation within the federally imposed timeline may result in the FRA ordering the discontinuation or reduction of operations until requirements of the mandate have been fulfilled. This worst case scenario would have far reaching impacts, paralyzing transportation networks and preventing passengers from reaching destinations such as work, school, medical appointments and retail centers. We urge Congress to extend the implementation deadline to December 31, 2018, provide adequate federal funding equal to 80 percent of the estimated $2 billion implementation costs on commuter railroads, and to direct the FCC to set aside at no cost enough radio frequency spectrum to ensure commuter railroads are successful in meeting this federal mandate.

**QUESTIONS FOR THE RECORD ON THE TESTIMONY OF**

**JOSEPH GIULIETTI, EXECUTVE DIRECTOR**

**SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**

**GIVEN ON MARCH 17, 2011, BEFORE THE**

**SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS**

**OF THE**

**HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**ON "RAILROADS AND HAZARDOUS MATERIALS TRANSPORATION PROGRAMS: REFORMS AND IMPROVEMENTS TO REDUCE REGULATORY BURDENS"**

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**APRIL 21, 2011**

**SUBMITTED BY**

**American Public Transportation Association**
**1666 K Street, N.W.**
**Washington, DC 20006**
**Tel: (202) 496-4800**
**Fax: (202) 496-4324**

**The American Public Transportation Association (APTA) is a nonprofit international association of 1,500 public and private member organizations, including transit systems and high-speed, intercity and commuter 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 90 percent of the people using public transportation in the United States and Canada are served by APTA member systems.**

**The Honorable Corrine Brown**
**Ranking Democrat, Subcommittee on Railroads, Pipelines, and Hazardous Materials**
**Questions for the Record to Mr. Joe Giulietti (SFRTA)**
**Hearing on**
**"Federal Regulatory Overreach in the Railroad Industry: Implementing the Rail Safety Improvement Act"**
**March 17, 2011**

**Mr. Joe Giulietti, Executive Director, South Florida Regional Transportation Authority**

1. There were hundreds of FRA reportable incidents on the major railroads in 2010, many of which were trains that passed stop signals. Any one of those could have resulted in a collision. I do not want another accident like those that occurred in California or South Carolina. The House and Senate both dealt with PTC in their bills before that accident ever occurred; once the accident happened all the railroads came together and agreed to PTC and worked with us to craft the legislation. Now there seems to be a change of heart. What specific changes or additions to that mandate are you proposing now? And if we did any of those what will you do differently to provide an equivalent level of protection that would protect your passengers, workers, and the public from a human failure?

APTA Response

Thank you, Ranking Member Brown, for the opportunity to provide additional information on the March 17th hearing before the House Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines and Hazardous Materials, regarding Positive Train Control (PTC) technologies as mandated in the Rail Safety Improvement Act of 2008 (P.L. 110-432) As noted in my original written and oral testimonies, the industry is committed to ensuring safety and to implementing positive train control technologies on commuter railroads. In fact, commuter railroads have aggressively pursued the funding and technology necessary to implement PTC.

The follow up question notes that the House and Senate both dealt with PTC in their bills prior to the accident, that all railroads came together to agree on PTC and that now there seems to be a "change of heart." I would like to reiterate that there has been no "change of heart" on the part of the commuter railroads as we are, and have always been, 100 percent committed to installing PTC technologies on our railroads. Additionally, while both the original House and Senate versions of the bills did address PTC prior to the accident, the Senate bill originally included an implementation deadline of December 31, 2018, and the House bill only required PTC implementation by Class I railroads.

In working to implement PTC, commuter railroads have encountered three major obstacles that have the potential to delay implementation beyond the federally mandated 2015 deadline. As such, we have requested federal assistance to commuter railroads in the form of an implementation extension to 2018, funding equivalent to 80 percent of the cost to implement,

and a no-cost set aside of radio spectrum. This federal assistance will help ensure that commuter railroads are successful in their efforts to implement PTC.

To summarize what I have already offered in my written and oral testimonies, the cost to implement PTC on commuter railroads is at least $2 billion, not including costs related to spectrum. In light of the continued global economic crisis which has resulted in reduced and or flat federal, state and local funding, commuter railroads simply do not have the capital to procure the necessary equipment. Agencies are being forced to decide between deferring critical system safety state of good repair projects and/or reducing service. Deferring safety projects or cutting service should not be the price of funding PTC. Furthermore, PTC technology is not readily available and has never been tested in the unique commuter railroad operating environment. Additionally, commuter railroads have encountered significant difficulty in acquiring the radio spectrum necessary for interoperable radio communications.

As a result of these challenges, we ask Congress to act expeditiously to grant additional implementation time, to authorize and appropriate the necessary funding, and to direct the FCC to set aside regional allocations of radio spectrum as required by the 27 commuter railroads. In requesting this extension, however, the industry does not intend to delay or deter the progress of any property which seeks to implement ahead of schedule, such as those in Southern California. In fact, we applaud those early implementers and intend to draw upon their experiences to serve as a model for the rest of the commuter railroads across the country.

Were Congress to act on these requests, several outcomes would likely result. First, granting an extended implementation period would provide the time to properly test and evaluate the technology being proposed. Legacy systems in New York and Pennsylvania that currently employ cab signaling (which many industry experts have noted provide safety benefits similar to PTC) will have the opportunity to review the process to determine if the technology being installed in California is the appropriate technology for their system. Currently, if these legacy systems were to implement by the 2015 deadline, they will likely have to rely on outdated technology that is expensive and could result in service and reliability issues. Second, the southern California experience will serve as a pilot project, allowing for the broader implementation of PTC to occur on the national level only after the technology has had time to mature and receive proper testing. In granting an extended implementation period, Congress works to provide good stewardship of taxpayer dollars that allows for continued safe operations and state of good repair maintenance work while ensuring only the most technologically sound and efficient PTC systems are installed on commuter railroads.

In closing, the commuter railroads are committed to providing safe operations for passengers and employees alike. We are also committed to implementing positive train control. Please be assured that in the event Congress was to provide additional time to implement PTC, the industry would not rest on its laurels pending the outcome of the early implementers. Installing PTC is a significant undertaking consisting of incalculable components which require daily decision making and planning. Extending the timeline merely allows commuter railroads to make sure they invest in proven technology that is cost efficient and operationally effective.

Thank you for your support on this critical issue. We look forward to continuing our work with you and your staff so that we can successfully implement Positive Train Control on our nation's commuter railroads.

**ANSWERS TO FOLLOW-UP QUESTIONS SUBMITTED TO THE RECORD ON THE TESTIMONY OF**

**JOSEPH J. GIULIETTI, EXECUTIVE DIRECTOR**

**SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**

**BEFORE THE**

**SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS**

**OF THE**

**HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**

**ON "FEDERAL REGULATORY OVERREACH IN THE RAILROAD INDUSTRY: IMPLEMENTING THE RAIL SAFETY IMPROVEMENT ACT"**

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**APRIL 1, 2011**

**SUBMITTED BY**
**American Public Transportation Association**
**1666 K Street, N.W.**
**Washington, DC 20006**
**Tel: (202) 496-4800**
**Fax: (202) 496-4324**

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# Answers to Follow Up Question of Chairman Bill Shuster of the House Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials Hearing of March 17, 2011:

**"Federal Regulatory Overreach in the Railroad Industry: Implementing the Rail Safety Improvement Act"**

**Submitted by the**
**American Public Transportation Association**
**On behalf of Joseph J. Giulietti, South Florida Regional Transportation Authority**
**On April 1, 2011**

Commuter railroads are committed to implementing Positive Train Control (PTC) and have aggressively pursued the steps necessary to meet this safety mandate. Unfortunately, there are still major impediments to achieving this goal related to technology, funding, and radio spectrum acquisition.

During the hearing, Chairman Shuster asked if APTA could identify specific examples of safety projects that might have to be deferred to implement positive train control. To answer Chairman Shuster's question, APTA conducted a survey of its commuter railroad members to determine which critical safety sensitive infrastructure construction and maintenance state of good repair (SOGR) projects would likely have to be deferred in order to fund PTC implementation. The potential deferral of these projects exemplifies the significant challenges commuter railroads face in implementing PTC. For example, legacy systems such as New York's Long Island Railroad and the Metro North Railroad, have extensive lists of costly SOGR projects that would have to be deferred to fund PTC implementation projects. Not surprisingly, the data also indicates that backlogs of potentially deferred projects are not limited to legacy systems. The Music City Star Commuter Railroad in Nashville identified nearly $5 million in potentially deferred projects. Potentially deferred projects range from delays in installing fences to prevent trespassers and vandals to the complete shutdown of a commuter railroad if viable funding options are not made available.

To prevent delaying safety critical SOGR projects, avoid a complete shutdown of operations at some agencies, and ensure commuter railroads are successful in implementing PTC, APTA urges Congress to extend the implementation deadline to December 31, 2018, provide adequate federal funding equal to 80 percent of the estimated $2 billion implementation costs on commuter railroads, and to direct the FCC to set aside at no cost radio frequency spectrum. In making these recommendations we do not intend to inhibit efforts to implement PTC on some commuter railroads prior to the deadline, and we in fact urge Congress to prioritize funding for those efforts.

Please note, the information listed below is based on approximations provided by the individual commuter railroad agency. For additional or more specific information, please contact the individual commuter railroad or Joni Zielinski in the APTA Government Affairs department at jzielinski@apta.com or (202)496-4865.

## EXAMPLES OF COMMUTER RAILROAD SAFETY CRITICAL EXPENDITURES THAT WILL HAVE TO BE DEFERRED IN ORDER TO IMPLEMENT POSITIVE TRAIN CONTROL BY 2015

The following information was requested by Chairman Bill Shuster (R-PA) of the House Committee on Transportation and Infrastructure Subcommittee on Railroads, Pipelines and Hazardous Materials, during a hearing before the subcommittee on March 17, 2011. In response, APTA polled commuter railroads to determine which system safety critical expenditures might have to be deferred in order to implement Positive Train Control by 2015, as mandated by the Rail Safety Improvement Act (P.L. 110-432). The list contains information reported by 10 of 26 commuter railroads.

**APRIL 1, 2011**

| *COMMUTER RAILROAD AGENCY* | *PROJECT* | *COST* | *ORIGINAL START/END DATES* | *IMPACTS ON SERVICE* | *ANTICIPATED SAFETY IMPLICATIONS (Please provide hard examples of possible outcomes)* |
|---|---|---|---|---|---|
| **CALIFORNIA – CALTRAIN** | | | | | |
| | Systemwide Track State Of Good Repair (SOGR) | $40.0M | $10M annually; $40M (FY12 – FY15) | Increased slow orders, negative impact on on-time-performance (OTP) and competitive scheduling. Ultimately this will impact ridership due to the lack of competitive travel times. | Increased safety, liability exposure to incidents related to deteriorated track infrastructure. |
| | Systemwide Signal SOGR | $4.0M | $1M annually; $4M (FY12 – FY15) | Increased opportunity for service disruptions, loss of operational flexibility if some crossovers are taken out of service. Ultimately this will impact ridership due to the lack of reliability | Increased safety, liability exposure to incidents related to deteriorated signal infrastructure |
| | Systemwide Station SOGR | $2.0M | $.5M annually; $2M (FY12 – FY15) | Potential loss of ridership related to appearance and utility of deteriorating station infrastructure. May need to close some stations to fund maintenance of open ones | Increased safety and security liability exposure related to deterioration of access, lighting and security infrastructure. Exposure to additional litigation |
| | Voice Radio SOGR | $0.1M | 6/11 – 12/11 | Increased opportunity for service disruptions during construction and regular operations. Ultimately this will impact ridership due to the lack of reliability | May impact ability to respond promptly and effectively to safety and security incidents |
| | Quint Bridge Replacement | $23.0M | 7/11 – 12/13 | Slow orders, suspension of service to San Francisco station, the largest station in the system. In the event of an outage bus-bridging will need to be implemented, at a cost of several thousand dollars per day. | Bridge is over 100 years old and seismically unsound. May not survive earthquake, potentially leaving service to SF suspended. |

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| | SF Highway Bridge Replacement | $20.0M | 5/11 – 10/13 | Bridges crossover tracks, spalling from bridge seats could lead to slow orders and unpredictable service outages | Bridges seismically unsound. May force City of San Francisco to close streets over bridges; this will impact street traffic in the surrounding area. |
| | Los Gatos Bridge Replacement | $20.0M | 4/11 – 12/15 | Slow orders, suspension of freight and passenger traffic over UP Coast Subdivision. | Bridge is seismically unsound. May not survive earthquake, leaving service suspended indefinitely from Caltrain, UP Warm Springs and Coast Subs to Coast Sub south of San Jose suspended indefinitely |
| | Fencing | $4.0M | $1M annually; $4M (FY12 – FY15) | Greater access to right of way for trespassers, and vandals, more service disruptions due to trespasser strikes | Increased cost (repairing vandalism) of maintaining right of way, greater liability exposure to incidents involving trespassers and trains |
| | Rail Car and Locomotive SOGR | $40M | $10M annually; $40M (FY12 – FY15) | More equipment held out of service awaiting repair, OEM service. Less trains available to operate, reducing level of service available to customers. | Longer lead time between service may create opportunity for more equipment failures during service, possibly creating safety hazards within interior of train (doors, seating, lighting failures, etc.) |
| | **Notes from Caltrain**. The survey contains information about infrastructure projects for Caltrain e.g. bridges, tracks, stations, fencing, signals, and rolling stock, that need to be completed over the next 4 years. These projects can potentially be delayed in order to redirect the funding to PTC implementation before December 2015. We spoke to the impact on train service and railroad safety in the survey if these projects are delayed.<br><br>Majority of these projects are eligible and do get a good portion of the funding from Federal formula funds. Federal formula funds are programmed by MTC, the Metropolitan Planning Organization (MPO) in the SF Bay Region; the priority for the fund programming is for State-of-Good-Repair (SOGR) projects. Traditionally, legal mandates had been funded by the local agencies due to over-subscription in the federal formula funding programs. So if Caltrain has to re-direct funding to complete PTC, it would only be Caltrain's local match portion, unless there is a change by MTC regarding its regional fund programming policies.<br><br>**If policies do not change, and funding is not available to fund the PTC project, the likely remaining option would be for Caltrain to shut its system down.** | | | | |
| **CALIFORNIA – SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY** | | | | | |
| | Locomotive/Car Rehabilitation | $78M | 7/11 to 6/14 | On-time-performance Reliability | Lack of new seating and frangible tables in older cars |
| | Sealed Corridor | $50M* | 6/10 to 6/13 | Grade Crossing Safety | Un-improved grade crossings, more access to right-of way |
| | Infrastructure 'State of Good Repair' | $53M* | 6/10 to 6/13 | On-time-performance Reliability | More potential for rail failures at welds, more service down time for grade crossings and communication infrastructure. |
| | **Notes from SCRRA**. *These funds would be distributed throughout SCRRA Territory by member agency contribution. | | | | |
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| **ILLINOIS --METRA** | | | | | |
| | Locomotive rehabilitation | $40M | 2010-2012 | Failures, delays | Deferral of purchasing new locomotives results in use of equipment with reduced fuel economy and higher emission levels. Deferred maintenance can result in increased probability of failure. |
| | Track, grade crossing renewal, track rehabilitation | $2M shortfall per year | 2010-2015 | Reduced operating speed, degradation of ride | An altered maintenance schedule on crossings and track can affect compliance with FRA track standards which results in reduced operating speeds; derailment is a severe consequence. |
| | Signal upgrades | $2M shortfall per year | 2010-2015 | Impending slow orders | Interlocker upgrades to accommodate modern technology are essential to effective daily operations; continued delay in funding these will inevitably lead to slow orders. |
| | Yard Improvements | $10M per year | 2010-2015 | Maintenance impedance, service disruption | Deterioration of vital yard components like track, ties, rail, and service platforms can lead to maintenance impedance, unintended risk for employees, and service disruption. |
| | Bridge replacement | $120M | 2012-2015 | Slow orders | Continued delay in funding bridge renewal will inevitably lead to mandatory equipment restrictions and reduced operating speeds along structures systemwide |
| **INDIANA – NORTHERN INDIANA COMMUTER TRANSPORTATION DISTRICT** | | | | | |
| | Rail replacement | $35M | 2012-2016 | Infrastructure is over 90 years old, is fatigued, has a high failure incident rate and is at the end of its useful life. | Delaying replacement may result in failure during train movement, this cannot be mitigated by PTC, and may have catastrophic results in the event of a high speed derailment. |
| | Bridges:<br>-Kensington Subway Bridge Deck Replacement and Pier Reinforcement<br>-Trail Creek Bridge Replacement and Pier Reinforcement<br>-Industrial Hwy Bridge structural repairs | $4.5M | 2013-2015 | Reduced operating speed and potential stoppage of all rail traffic | On two of these bridges, operation is beyond useful service life which creates a higher risk of fracture of critical elements. |
| | Catenary Phase III | $25M | 2013-2016 | Infrastructure nearly 100 years old - failure common. Trains go out of service in isolated areas where no emergency access is available. | Failure may result in electrical hazards to passengers and public and may also result in passengers and employees being left stranded in isolated areas under severe weather conditions. |

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| **NEW JERSEY – NEW JERSEY TRANSIT** | | | | | |
| | Bridge Repairs | $40M | 2011/2016 | Slow orders or inability to operate on that portion of a line affected | Slow orders would preclude freight operations as well as service reductions due to through put constraints. There are11 bridges in the program affecting five different rail lines (Raritan, Morris & Essex, North Jersey Coast, Gladstone & Boonton). |
| | Gladstone Catenary Pole Replacement | $24M | 2012/2014 | If not replaced wooden poles will begin to fail | Inability to operate on line in electric mode, which would result in significant service reductions (single track line with passing sidings and diesel operation cannot match current schedule). Currently operate 49 weekday trains on the line. |
| | Bergen Tunnel Improvements | $35M | 2013/2015 | Peak period service reductions to/from Hoboken Terminal – currently 250 weekday trains | Bergen tunnels consist of 2 tunnel structures, each with two tracks, and provide the only access to and from Hoboken Terminal. Improvements include waterproofing, lighting, stand pipe, drainage and walking surface in the south tunnel (north tunnel has been improved). If conditions in south tunnel degrade further may have life safety implications and preclude use of same forcing two track operation; also impacts NY service for passengers transferring from NY at Secaucus to NJT's Main and Bergen Lines, Meadowlands Service, and MNR's west of Hudson service on the PVL and Southern Tier. |
| | **Notes from NJT:** NJ Transit has programmed $255M in capital funding between now and 2015 to implement PTC on our property as well as supporting operations on Amtrak's NEC, currently at $27.5M in FY11. Other major capital needs within this same time frame are bridge repairs ($40M), replacement of wood catenary poles with steel on the Gladstone Line ($24M) and Bergen Tunnel improvements ($35M), for a total of $99M in capital needs; currently there is only $40M allocated for all of these projects and each is being assessed to determine which projects, or portions of projects, will be prioritized given the capital funding that is available. If the PTC implementation date were to be moved to 2018 that would allow NJ Transit to spread those dollars over a longer time frame, thereby allowing a greater percentage of the three projects noted above to be completed over the next 5 years. | | | | |
| **NEW YORK – MTA LONG ISLAND RAILROAD** | | | | | |
| | Passenger Stations.<br>Defer replacement of platforms and station components at several viaduct stations | $60M | 2011 - 2016 | Increasing risk of a slip / trip / fall hazards for LIRR customers; continued deterioration of decades-old platform structures and associated platform level station components which are past their useful life and not in a state of good repair. This includes crumbling platform | To protect customer safety, the LIRR would be required to close off sections of the platform and/or limit platform access (close staircases). This would result in operational and customer crowding impacts, as customer crowd movement is limited to only a portion of the station. This creates dangerous |

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| | | | | edges, aging platform canopies, elevator / escalator, staircases, platform lighting and platform waiting rooms, along with the installation of tactile warning strips on platform edges. | conditions on the station platform and staircases along with uneven distribution of customers onboard trains, leading to onboard train crowding as customers scramble over deteriorating platform edges to board and alight trains. By deferring these projects, the LIRR will be unable to undertake safety improvements at elevated viaduct station, including better lighting, tactile warnings trips on platform edges, new platform railings of a taller height, and the installation of transparent windscreens. |
| | Track:<br>Defer aspects of the cyclical track renewal program and replacement of specialized track systems in critical locations | $117M | 2011 - 2014 | Without adequate levels of track funding, track failures will occur resulting in primary delays and ripple delays to train service which ultimately results in customer delay and lateness throughout the LIRR network. Poor track condition in the Atlantic Avenue tunnel will result in slow zones. The delayed running time between Atlantic Terminal and Jamaica will not only impact customers traveling to/from Brooklyn, but will create ripple delays throughout the system as selected trains are cancelled and other connecting trains need to be held (and are delayed) in Jamaica for late Atlantic Branch trains<br>Train delays and cancellations anticipated along the entire Babylon/Montauk Branch as deteriorated track structure in Merrick and Bellmore will require slow zones if allowed to deteriorate further. Increased operating costs to maintain deteriorated infrastructure. | The reduced funding will lead to a substantial reduction in track investments, which in turn is expected to result in higher track failures and increased systemwide delays and cancelled trains, customer delays and overall lost time and productivity each year. Should these cancelled and delayed trains be clustered during peak travel periods, the cumulative effects of service delays would require specialized crowd control measures to avoid dangerous levels of overcrowding both onboard trains and on station platforms. |
| | Communications:<br>Defer replacement of PBX-Wayside Phone System, Upgrades to Penn Station Radio Room, and replacement of Communication cables in the East River Tunnels | $13M | 2011 - 2017 | The existing obsolete Private Branch Exchange (PBX) and Wayside phones will continue to fall into disrepair. With the lack of manufacturer support and parts, LIRR will be in a perilous situation directly effecting LIRR operations, which relies upon these systems for critical communication functions. Failure to | Communications and response time would be delayed, particularly during service incidents. Depending on the location, trains crews may have difficulty contacting dispatch Towers or the LIRR Movement Bureau, to make necessary coordination regarding medical emergencies, necessary police intervention, fire / smoke conditions, or other |

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| | | | | replace the existing systems would result in eventual system failure, with an inability to recover. The LIRR cannot rely strictly on cell phone/ radio system coverage to move trains. A more reliable wired system is essential since it provides superior audio quality and can be recorded to support administration requirements.<br>Needed upgrades to the Penn Station Radio Room and replacement of the Communication cables in the East River Tunnels would be deferred. This would force continued reliance upon deteriorated, obsolete, decades-old infrastructure for communication needs at the busiest train station in North America. Communication reliability and associated operational response time would be negatively impacted. | serious operational circumstances. Response times would increase, particularly for stranded trains in the East River Tunnels. |
| | Shops & Yards:<br>Hillside Facility Roof Replacement & Diesel Locomotive Facility Investments | $11M | 2012 | Deferring replacement of leaking roofs at the Hillside Facility poses a risk to shop equipment needed to maintain the fleet. Deferment of investments for the LIRR's Locomotive Repair Facility at Morris Park, will impact productivity and the ability to maintain the LIRR's diesel fleet. This will also delay necessary state of good repair investments in the facility, which would improve employee safety and productivity, and overall diesel fleet performance. | The leaking roof will caused increased slip / fall hazards for LIRR employees, which are particularly dangerous in a shop environment around heavy machinery and tools.<br>Without necessary investments to the Morris Park facility, LIRR employees will continue to rely upon ancient, obsolete facilities for maintaining the LIRR's diesel fleet. These include leaky roofs, narrow work spaces without adequate clearance – which can lead to employee accidents, as well as the continued reliance upon unreliable and obsolete shop equipment. |
| | Power:<br>Substation Replacement | $32M | 2013 | Failure to replace up to 4 substations which have exceeded their useful life of 35 years. While it is impossible to predict when and where a traction power substation will fail, any failure will have a negative impact upon service reliability and on-time performance. Furthermore, a stalled train could create ripple delays for other trains. Depending on the | Stalled or stranded trains could result in lengthy delays and depending on the duration, lack of power inside trains could create onboard conditions without lighting, HVAC or working restrooms. Stranding passengers and train crews in an environment like this not only negatively impacts customer satisfaction and public confidence in LIRR service but it also increases the response time |

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| | | | | location of the inadequate power supply, it could impact a single branch or multiple branches, and could cause large scale delays, cancellations and train combinations, due to operational impacts of the stalled train. | for onboard medical emergencies. |
| **NEW YORK – MTA METRO-NORTH RAILROAD** | | | | | |
| | Grand Central Terminal:<br>GCT Trainshed, Park Avenue Tunnel, Elevators, Utilities | $20M | 2011 – 2014 | Reduces critical priority repair work in the GCT Trainshed and Park Avenue Tunnel, defers elevator replacement for the two main freight elevators serving the terminal and eliminates critical utilities work to maintain state of good repair for overage utility distribution system.<br>-Train service could be impacted by deteriorating structure in the Trainshed/Tunnel.<br>-Services in Grand Central Terminal could be affected by freight service interruptions. | -Potential for platform areas/sections of track in the Terminal/Tunnel to be taken out of service or isolated if critical structural repairs cannot be made. Impacts could range across the entire Trainshed, the Park Avenue Tunnel walls and the numerous city streets above the Trainshed/Tunnel area.<br>-Freight elevators are overused and overloaded.<br>-Without investment, deterioration of select utilities in GCT could impact customer safety. |
| | Stations/Parking/ Strategic Facilities/ Customer Communications | $65M | 2011-2014 | -Stations: Eliminates station work to repair platform support, platform edges, canopies and station lighting, could result in need to remove platform sections from service impacting safety and train loading/dwell times at stations<br>-Strategic Facilities: Deferral of design to progress needed parking expansion for the Upper Harlem including access route over an overhead bridge closed due to deterioration.<br>-Customer Communications: Deferral of customer communication improvements rollout including connectivity improvements to support remote access of passenger station CCTV etc. | -Platform sections could be taken out of service to protect safety of customers.<br>-Station maintenance needs will grow and will be primarily expended on unscheduled maintenance as priority needs arise. Results in slide out of SGR for stations in advance of normal replacement cycle.<br>-Overhead bridge is closed to traffic at this time. The bridge is beyond repair and requires full replacement. Absent project the bridge will remain closed to traffic; impact to the track below will have to be monitored.<br>-Continued reduction of funds to support this roll out limits ability to expand station CCTV for safety/security purposes |
| | Track:<br>Cyclical Track, Mainline Turnouts, Turnouts - Yards/Sidings, GCT Turnouts, miscellaneous track projects | $25M | 2011-2014 | Reduced funding would impact service as slow orders would have to be posted across the railroad. At present, Metro-North has very few delays related to track but reduced investment will result in reduced on time performance and reliability. | -Reduced funding impacts ability to replace track infrastructure when condition warrants. Initial operating costs would be used for additional inspections and repair/replacement. Slow orders to protect customer safety will have to be enacted and sections of track could be taken out of service to |

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| | | | | | ensure safety.<br>-Cyclical programs would be out of sync impacting the replacement cycles.<br>-As recovery from reduced cyclical replacement, to protect safety, rolling slow orders would result across the track infrastructure that was pushed out beyond its normal replacement cycle. |
| | Structures:<br>Reduced funds for Undergrade Bridges, Overhead Bridges, Harlem River Lift Bridge Cable Replacement, miscellaneous structures projects | $31M | 2011-2014 | -Slow orders on undergrade bridges could impact service reliability and on time performance.<br>-Local communities may lose overhead bridges that carry streets across the tracks below.<br>-Opening of the Harlem River Lift Bridge will be far riskier without replacement of the cables and could result in service disruptions between Grand Central Terminal and all lines north. | -Undergrade bridges will have to be inspected more frequently to ensure safety.<br>-Overhead bridges will likely be closed to traffic to ensure safety.<br>-The Harlem River Lift Bridge, mandated to open as part of a navigable waterway, will not support opening/closing without cable replacement. |
| | Power:<br>Harlem & Hudson Power Improvements | $5M | 2011 – 2014 | Deferral of work impacts power improvements in a vital corridor between GCT and points north.<br>-Existing service is at risk as insufficient contingency traction power backup exists in a critical location with the currently undersized 110th Street reactors.<br>-All of Metro-North service into and out of Grand Central Terminal will be affected. | -Increased risk of traction power loss which could impact customer safety as train stop along right of way away from stations. |
| | Shops & Yards:<br>Defer work on the Harmon EMU Shop, POK Yard Improvements, West of Hudson Mid Point Yard, and Port Jervis Yard. | $24M | 2010-2014 | Deferred funds for priority repairs to the Harmon EMU Shop, Metro-North's oldest and largest electric car facility. As replacement is pushed out due to funding constraints, priority repairs are needed to enable the shop to maintain the electric fleet; reduced funding of these critical shop repairs could compromise reliability and delivery of service for the aging electric fleet as well as the new electric fleet.<br><br>Deferred funding for the remaining yard projects impacts ability to add service on the | -Reduced funding to complete interim priority repairs to the 100 year old shop could limit Metro-North's ability to maintain the electric fleet in a safe environment. Continued deterioration of the structure and maintenance equipment could pose potential risks to employees and equipment. |

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| | | | | Upper Hudson as well as West of Hudson.<br>-Poughkeepsie Yard requires additional capacity to meet train storage requirements as well as to improve conditions for storage and maintenance of the fleet. The current configuration of the yard is a chokepoint for current and future service.<br>-Without Port Jervis Yard expansion no additional Port Jervis Line service can be added.<br>-Absent advancement of the West of Hudson Midpoint Yard project Metro-North will not be able to provide comparable service West of Hudson to East of Hudson or address long-term ridership needs for the underserved residents. | |
| | Miscellaneous: Environmental/ Asbestos Remediation funds, CCTV cameras, program support costs | $7M | 2012-2014 | Defers environmental remediation at various facilities throughout the railroad and reduces security improvements at various stations. | -Reduced funds for environmental remediation throughout right-of-way as needs arise protects the customers, employees and environment from the impacts of potentially hazardous conditions.<br>-Reduced funding for CCTV cameras at stations has potential to impact customer safety. |
| **TENNESSEE – REGIONAL TRANSPORTATION AUTHORITY, NASHVILLE** | | | | | |
| | Electric locks at sidings | $60,000 | | Currently have 20 MPH slow orders per FRA | |
| | Widen cuts between Mt. Juliet and Lebanon | $80,000 | | Needed to maintain level of current service | Could be rock slides that could impact line. |
| | Additional ties | $600,000 | | Needed to maintain level of current service | |
| | Redeck Stones River Bridge | $20,000 | | Needed to maintain level of current service | |
| | Replace remaining jointed rail and light weight rail | $4M | | Needed to maintain level of current service | |
| **PENNSYLVANIA – SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY** | | | | | |
| | Rehabilitation of Chestnut Hill West (CHW) Bridge 0.35 over Railroad Mainline | $5.6M | 1/11 – 7/12 | This Bridge was built in 1916 and has heavy gusset plate deterioration with very low load ratings as well as water leakage through the deck. Water leakage through the deck in the winter forms icicles which, in the past, have caused burn through of the overhead traction | None - SEPTA's ongoing detailed bridge safety inspection program will identify any issues and service will be interrupted or suspended by SEPTA as required to maintain safe operations. |

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| | | | | power lines (catenary) below, disrupting railroad service on SEPTA's Mainline. SEPTA's Mainline consists of the 6 branch lines on the former Reading Railroad side of SEPTA System and carries over 17.5 million passengers annually. Further delays in rehabilitation will result in speed and track restrictions on the bridge. If deterioration reaches a point where emergency repairs are no longer feasible, there will be a loss of service on the Chestnut Hill West Line. | |
| | Construction Jenkintown Traction Power Substation | $36.1M | 6/11 – 9/13 | The existing substation is circa 1931. Most components have been in continuous service since 1931. Component failures will cause loss of rail service, or severely limited capacity on 3 branch lines of the former Reading Railroad side of the SEPTA system. Disruption to or loss of service can vary from short to long durations. These 3 lines carry over 11.1 million passengers annually. | Breaker malfunctions may result and could have safety implications for maintenance employees as well as for people along the Right-of-Way (ROW). |
| | Norristown High Speed Line (NHSL) Viaduct Rehabilitation, Timber Replacement and Cable Relocation | Timber Replacement only $7.8M<br><br>Full Bridge Rehabilitation including Timber Replacement $33.8M | 6/11 – 9/12 | This 3175ft long open deck single track bridge was built in 1912. Bridge timbers (ties) are starting to fail and replacement is needed. Further delays in replacement of the bridge timbers will result in disruption to or loss of service on the Norristown High Speed Line (Rt. 100) north of the Bridgeport Station. This will impact a major intermodal transfer point at the Norristown Transportation Center. The bridge also needs attention. Long term delays in progressing this work can result in the need to replace the structure at a significantly greater cost and a longer service disruption. More economical to perform work together. | None - SEPTA's ongoing detailed bridge safety inspection program will identify any issues and service will be interrupted or suspended by SEPTA as required to maintain safe operations. |
| | Wayne Junction Traction Power Substation – Design Only | $5.0M | 1/11 – 12/12 | The existing substation has been in service since 1930. Most components have been in continuous service since 1930. Component failures will cause loss of rail service, or | Breaker malfunctions may result and could have safety implications for maintenance employees as well as for people along the Right-of-Way (ROW). |

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| | | | | severely limited capacity on 6 branch lines of the former Reading Railroad side of the SEPTA system. Disruption to or loss of service can vary from short to long durations. These 6 lines carry over 17.5 million passengers annually. | |
| | Crum Creek Viaduct Replacement | $58.4M | 9/10 – 9/13 | This 915 ft long two track open deck bridge was built in 1895. There are currently weight limits as well as speed and track restrictions for freight trains moving over this structure. The Crum Creek Viaduct was closed in the early 1980's for emergency repairs. We are now beyond the 25-year service life extension gained by these repairs. Further delays in replacing this structure will ultimately lead to disruption of rail service for 1,600 daily riders west of Swarthmore Station on the Media-Elwyn Line as well as freight operations. | None - SEPTA's ongoing detailed bridge safety inspection program will identify any issues and service will be interrupted or suspended by SEPTA as required to maintain safe operations. |
| | Broad Street Subway Radiax Cable Replacement | $10.8M | 7/10 – 6/11 | None | The Radiax cable provides for radio communication in the subway tunnel. The existing cable is more than 30 years old and is functionally obsolete. Additionally, this cable is not capable of providing interoperable communications for first responders. |
| **UTAH – UTAH TRANSIT AUTHORITY** | | | | | |
| | Commuter Rail South | $800 million | Fall 2009-Fall 2013 | Possible reduction of up to 50% | UTA's current cab signal system prevents train to train collisions, overspeed derailments, and operating through a misaligned switch. Investing in PTC as currently defined will cost over 10 million dollars for unproven technology and a non-quantifiable safety benefit. Since there are no additional capital funds and it is not realistic to raise fares in this economy, the additional money spent on PTC will come from a reduction in service. Operating fewer trains will mean more automobiles on the road and underutilization of a major capital investment. |

JOINT STATEMENT OF

EDWARD R. HAMBERGER
PRESIDENT & CHIEF EXECUTIVE OFFICER
ASSOCIATION OF AMERICAN RAILROADS

AND

MARK D. MANION
EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER
NORFOLK SOUTHERN RAILWAY

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON THE RAIL SAFETY IMPROVEMENT ACT OF 2008

MARCH 17, 2011

Association of American Railroads
425 Third Street SW
Washington, DC 20024
202-639-2100

On behalf of Norfolk Southern and the other members of the Association of American Railroads, thank you for the opportunity to discuss the Rail Safety Improvement Act of 2008 (RSIA). AAR freight railroad members, which include the seven large U.S. Class I railroads as well as approximately 75 U.S. short line and regional railroads, account for the vast majority of freight railroad mileage, employees, and traffic in Canada, Mexico, and the United States. Norfolk Southern (NS) operates approximately 21,000 route-miles in 22 states and the District of Columbia (16 percent of total mileage of AAR member freight railroads), has nearly 30,000 employees (18 percent of AAR member employment), and in 2010 had railway operating revenue of $9.5 billion (approximately 15 percent of total industry revenue). Amtrak and several commuter railroads are also members of the AAR.

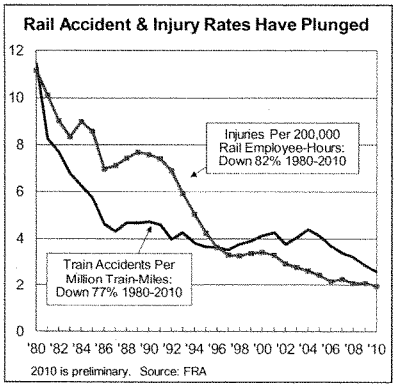
**Overview of Rail Safety**

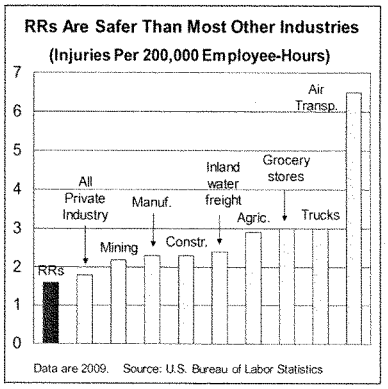
It's important to note at the outset that for Norfolk Southern and other freight and passenger railroads in this country, pursuing safe operations is not an option, it's an imperative. It makes business sense and it's the right thing to do. Through massive investments in safety-enhancing infrastructure, equipment, and technology; extensive employee training; extensive cooperation with rail labor, suppliers, customers, communities, and the Federal Railroad Administration (FRA); and cutting-edge research and development, railroads are at the forefront of advancing safety.

The rail industry's excellent safety record reflects its strong and pervasive commitment to safety. In fact, 2010 was the safest year ever for America's railroads, breaking the previous record set in 2009. From 1980 to 2010 the train accident rate has been reduced by 77 percent, the rail employee injury rate by 82 percent, and the grade crossing collision rate by 81 percent — setting new record lows in each category, according to the most recent FRA

data. At Norfolk Southern, safety improvement over the years has been even better than the industry average. For 21 consecutive years, Norfolk Southern has won the E. H. Harriman Gold Medal award for employee safety. The award is given annually to the major U.S. railroad with the lowest rate of employee injuries per employee hours worked. NS is proud of its successes in winning the awards, but every year the competition is extremely competitive because other railroads are very safe too.

According to data from the Bureau of Labor Statistics, railroads today have lower employee injury rates than most other major industries, including trucks, inland water transportation, airlines, agriculture, mining, manufacturing, and construction — even lower than grocery stores. Available data also indicate that U.S. railroads have employee injury rates well below those of most major foreign railroads.



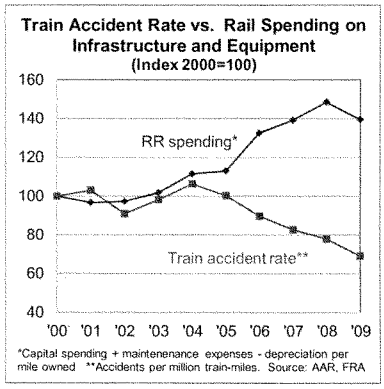




Railroads' impressive safety record results from their recognition of their responsibilities regarding safety and the enormous resources they devote to its advancement. At the same time, railroads recognize that more work remains to be done to further improve safety. Railroads are always willing to work cooperatively with members of this committee,

other policymakers, the FRA, rail employees, their customers, and others to find practical, effective ways to make this happen.

A commitment to safety demonstrated day in and day out in the workplace is critical to promoting safety. Norfolk Southern and other railroads have that commitment. But a healthy balance sheet is important to safety as well. A financially-viable railroad will be in a much better position to invest in safety enhancements and risk reduction strategies than a financially-challenged carrier.

The record investments that railroads have made in their infrastructure, equipment, and technology in recent years have made railroads much safer. In fact, there is a clear relationship between rail reinvestments and rail safety improvements (see chart at right). These investments were made possible by the moderate improvements in profitability that railroads have achieved since passage of the Staggers Rail Act of 1980. Consequently, legislative or regulatory actions that unduly restricted rail earnings could have unintended negative safety consequences in addition to negative capacity, efficiency, and service reliability consequences.




Of course, no budget is unlimited, even for something as important as safety. The cause of safety will not be advanced if resources are directed to programs or requirements that do little to improve safety, or if government mandates syphon resources that would have a more pronounced impact on safety if spent elsewhere. Policymakers should also be aware

that policies that increase the cost of rail service will drive more traffic to the highways, where the safety record is far less favorable than it is on the rails.

**The Rail Safety Improvement Act of 2008**

The Rail Safety Improvement Act of 2008 (Pub. L 410-132) was signed into law by President Bush on October 16, 2008. The Act's provisions address a wide range of topics related directly or indirectly to rail safety, including highway-rail grade crossings, pedestrian safety and trespasser prevention, hours of service reform, new technologies, regulatory oversight, substance abuse and drug testing, radio monitoring, and many other areas.

A major focus of the RSIA is "positive train control" (PTC). Railroads believe that the FRA's final rules implementing the PTC-related provisions of the RSIA impose onerous and unjustified requirements on railroads that are not consistent with the underlying statute or sound application of cost-benefit analysis. The rail industry's concerns in this regard are discussed in more detail below.

**What is Positive Train Control?**

The RSIA mandates that positive train control systems be installed by the end of 2015 on U.S. Class I rail main lines used to transport toxic-by-inhalation (TIH) materials and on all main lines used to transport passengers. [1,2] This is the most expensive and far-reaching safety mandate in U.S. railroad history.

Positive train control describes technologies designed to automatically stop or slow a train before certain accidents caused by human error occur. Specifically, PTC, as mandated by the RSIA, must be designed to prevent train-to-train collisions; derailments caused by

[1] "Main line" for freight rail purposes is defined as a rail line carrying 5 million or more gross tons of freight annually. That's roughly equal to one loaded and one unloaded 100-car train per day.

[2] Toxic inhalation hazard" materials (TIH) are gases or liquids (such as chlorine and anhydrous ammonia) that are especially hazardous if released into the atmosphere.

excessive speed; unauthorized incursions by trains onto sections of track where maintenance activities are taking place; and the movement of a train through a track switch left in the wrong position.

A fully functioning PTC system must be able to determine the location and speed of trains, warn train operators of potential problems, and take action if the operator does not respond to a warning. For example, if a train operator fails to stop a train at a stop signal or slow down for a speed-restricted area, the PTC system would provide a warning and then apply the brakes automatically (if the engineer does not do so) *before* the train exceeds its authority.

This might sound simple, but to work properly it requires highly complex technologies and information processing capabilities and communications systems able to incorporate and analyze the huge number of variables that affect rail operations. A simple example illustrates this point. A PTC system must be able to stop a train when circumstances require it, but the length of time it takes to stop a train depends on a number of factors, including the terrain, weight and length of the train, the type of braking technology on the train, track curvature, and track gradient. A PTC system must be able to take all of these factors into account reliably and accurately. In addition to these hurdles, the communications systems must be "interoperable" so that one railroad's PTC-equipped locomotive can operate on another railroad's lines and fully communicate.

AAR estimates that PTC technology will have to be deployed on approximately 73,000 miles of U.S. freight rail lines.[3]

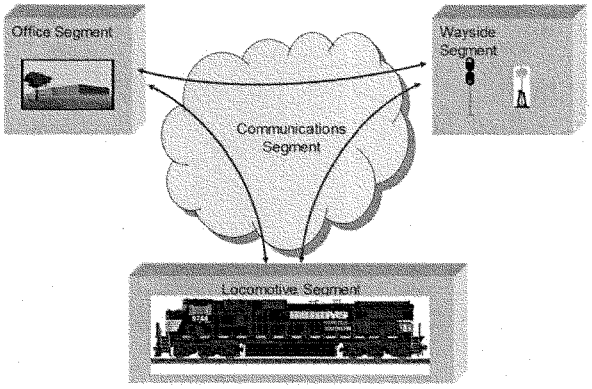
Figure 1 is a highly simplified illustration of the communication pathways required by a fully functioning PTC system. Railroad dispatching centers located throughout the country;

[3] Based on current FRA regulations that use 2008 as the base year. See page 9 for more on this.

tens of thousands of track-side devices installed at signals, switches, and other locations along the track; and thousands of freight and passenger locomotives must all function, in essence, as a single unit that operates seamlessly among the various railroads. Because it is an integrated system and all the components must operate hand in hand, if even one part of the PTC system does not function properly, then the entire PTC system will not function properly.

***Figure 1: PTC System Interactions***

*Each segment requires highly complex technologies and information processing capabilities.*




**Huge Costs That Far Outweigh Benefits**

Railroads are committed to meeting the PTC mandate and are working hard to make it happen, but it will be an enormous technical and financial undertaking. According to the FRA, railroads will have to spend around $5 billion just to install PTC. Railroads think that estimate is far too low. Their best estimate to date is that installation will cost approximately $5.8 billion for freight railroads and another $2.4 billion for passenger railroads. Both the FRA and the railroads agree that PTC will require hundreds of millions of dollars each year to maintain. In total, according to FRA estimates, the net present value of the costs to railroads to install and maintain PTC is as much as $13.2 billion over 20 years.

The benefits of PTC, however, will be nowhere near its costs. In fact, the FRA estimates that the net present value of PTC-related safety benefits over the next 20 years is no more than $674 million.

In other words, even using FRA's cost and benefit estimates, railroads will incur approximately $20 in PTC costs for each $1 in PTC safety benefits.

Because railroads do not have unlimited funds to devote to infrastructure projects, expenditures on PTC necessarily mean reduced expenditures on other projects that would increase capacity, promote economic recovery, improve service, provide environmental benefits, and, importantly, enhance safety in more effective ways.

PTC cab display unit

The disparity between costs and benefits is so large because railroad operations are already very safe, as previously discussed, and PTC will prevent only a very small number of the rail accidents which do occur. In fact, according to an AAR analysis of FRA safety data and as discussed further below, only around 4 percent of all train accidents on Class I rail main lines are likely to be prevented by PTC systems.

Many PTC-preventable accidents are minor, but some are not. Railroads are fully aware that some of the accidents that PTC systems are designed to prevent can be extremely serious, with significant injuries and loss of life. No one wants to find ways to prevent these types of accidents more than the railroads themselves. The question, though, is what's the best way to accomplish this. We understand that supporters of the PTC mandate in Congress and elsewhere are well intentioned, and railroads do not object to the PTC mandate when it

comes to rail lines carrying passengers. But railroads respectfully submit that, when it comes to rail lines carrying TIH materials, there are many far less costly ways to provide much greater improvements in rail safety than through the development and implementation of PTC on huge swaths of our nation's rail network.

**Alternative Risk Reduction Strategies**

Nothing is more important to our nation's freight railroads than the safety of their employees, customers, and the communities they serve, as is demonstrated by the scope and intensity of the industry's safety efforts. But as we noted at the beginning of this testimony, safety will not be advanced if resources are spent on programs or requirements that do little to improve safety, or if unnecessary or counterproductive mandates consume resources that would have a more pronounced impact on safety if spent elsewhere.

As noted above, PTC-preventable accidents constitute only around 4 percent of main-line accidents. By contrast, track-caused accidents account for approximately 34 percent of main-line accidents, while equipment-caused accidents account for approximately 26 percent. The railroads, of course, devote substantial resources to reducing the risk of accidents attributable to these causes, including through the use of advanced technology to detect rail and equipment defects. For example, wayside detectors that monitor the temperature of wheels can detect high temperatures due to stuck brakes. Other wayside detectors include acoustic bearing and cracked wheel detectors. For track, the railroads utilize ultrasonic detection and have worked on improving that technology.

The railroads believe that spending money on this type of equipment and other measures to reduce the overall safety risk would be more productive than the PTC expenditures mandated by Congress.

More generally, railroads believe that, as we move forward in our quest to improve railroad safety, a focus on flexible alternative risk reduction strategies would be far more fruitful than the current approach.

**FRA's Final Rule Exceeds RSIA**

In January 2010, the FRA issued its final rule implementing the RSIA. Unfortunately, the FRA's final rule on the PTC mandate includes provisions that go well beyond the requirements of the RSIA and what Congress intended. The industry's objections to the final rule include, among other issues, the baseline year and how to handle cases in which only very small amounts of TIH materials are carried on a railroad's lines.

Baseline Year

In its final rule, the FRA ordered railroads to install PTC on rail lines that carried TIH materials in 2008, even though 2015 is the deadline cited in the statute. Using 2008 makes no sense because TIH traffic patterns in 2015 will be vastly different than they were in 2008. In fact, TIH traffic patterns are already changing because of changes in the marketplace (*e.g.*, rail customers moving TIH production or use to other locations, going out of business, replacing TIH materials with safer substitutes, etc.)[4] and because of recent U.S. DOT regulations requiring railroads to make sure that TIH materials are being transported on the safest, most secure routes.

If unchanged, the 2008 as base-year provision means railroads would have to spend more than $500 million in the next few years to deploy PTC on more than 10,000 miles of rail lines on which neither passengers nor TIH materials will be moving in 2015.

[4] Clorox, for example, announced in November 2009 that it is phasing out, over several years, production of its namesake bleach out of chlorine and sodium hydroxide. Instead, it will purchase high-strength bleach of up to 15 percent concentration and dilute it to household strength of 6 percent. This will reduce shipments of chlorine, which is the second-highest volume TIH material (behind anhydrous ammonia) shipped by rail.

*De Minimis* Exception

A meaningful "*de minimis*" exception — exempting rail lines from the PTC requirement if the risk of a TIH release is *de minimis* — could significantly reduce rail industry costs without compromising safety in any meaningful way. The FRA's final rule contains a *de minimis* exception, but it is so restrictive that it would not afford any real relief.

Railroads respectfully suggest that exempting rail lines from the PTC requirement if the risk of a TIH release is comparatively very small and if railroads undertake other risk-reducing activities could significantly reduce rail industry costs without compromising safety in a meaningful way.

**Recent Developments**

Members of this committee probably know that the AAR filed suit in federal court challenging the FRA's final rules on the baseline year and whether a conductor needs access to a PTC display. That suit has been put on hold under an agreement with the FRA that the FRA will entertain new notice of proposed rulemakings to revisit several issues in the current PTC rule. Accordingly, the industry is hopeful that its disagreements with the FRA regarding PTC can be resolved without any further court action.

Consistent with the agreement in the court case, the FRA recently announced that in the coming months it will review its implementing regulations to address the rail industry's concerns regarding the baseline year issue. The railroads are hopeful that the revised final rule will conform to the underlying statute.

Finally, consistent with the settlement agreement, the FRA also announced it would consider a new rulemaking petition from the industry requesting a reassessment of existing

regulations regarding the *de minimis* exception, the use of non-PTC equipped locomotives in and around rail yards[5], and "en-route failures."[6]

**The "Business Benefits" of Positive Train Control**

Some PTC proponents claim that railroads will achieve billions of dollars in so-called "business benefits" from PTC deployment. Specifically, they claim that PTC will allow trains to be more tightly spaced. Among other things, this would supposedly increase a rail line's effective capacity without the need to lay new track; reduce delays; save fuel; permit the removal of existing signal systems; and improve locomotive and freight car utilization.

In reality, though, these supposed "business benefits" of PTC have already been realized (usually much less expensively than would be possible using PTC) or have little or nothing to do with PTC.

For example, many of the claims that PTC will reduce train delays and allow more trains to move over a rail line presuppose the use of "precision dispatching." This term refers to a new technology that includes enhanced train positioning information and uses sophisticated computer algorithms to determine optimal train operations. A precision dispatching system automatically analyzes a variety of factors — such as the priority levels of different trains, crew availability, the location and schedules of other trains, and many other factors — to decide in what order and when trains on a railroad's network should travel.

But there is no direct relationship between the use of precision dispatching and PTC implementation. Even if PTC did not exist, the development of precision dispatching would

[5] Some rail yards are located along main line tracks. During day-to-day yard operations, locomotives used exclusively in yard service will occasionally use main line tracks, but it is impractical to utilize PTC systems for yard operations.

[6] When PTC equipment on PTC-equipped trains fails in some way while a train is away from a terminal, it will need to travel to a location where it can be repaired. It is crucial for the efficient functioning of the rail network that the PTC-disabled train not unduly disrupt the operations of other trains. Under existing FRA regulations, however, operating restrictions for these "en route failures" could unnecessarily disrupt other rail operations.

continue. NS, in fact, is deploying the nation's first precision dispatching system — called Unified Train Control System, or UTCS — with 6 of 11 divisions completed to date. In addition, NS is also rolling out across its network its "Movement Planner" system that automatically plans train movements in the most efficient manner. Neither UTCS nor Movement Planner require PTC to achieve their benefits.

Since PTC does not have a major influence on the implementation or performance of precision dispatching, PTC should not get credit for operational improvements stemming from it. Thus, great care must be taken not to credit PTC for operational improvements that are possible without its use and at far less cost.

There are two other major reasons to doubt the "business benefits" some claim for PTC. First, because of the high cost and need to rush to meet the 2015 deadline, railroads must use technologies that minimize implementation risk.[7] However, the PTC technologies with the most promising potential for capacity/velocity benefits — such as systems which support "moving blocks"[8] — exist only as a concept or are unproven, much more expensive, and will take much longer to develop and deploy.

In other words, there might be business benefits associated with second- or third-generation PTC systems, but railroads have not been afforded the time to develop these technologies. The result is the deployment of first-generation PTC systems, which are safety overlays on existing operating systems, that can be developed and installed in time to meet the 2015 legislative deadline. Any future PTC development with potential business benefits will come at great additional expense and well past the 2015 deadline. Thus, from a business-benefits perspective, a 2015 deadline is counterproductive.

[7] Implementation risk refers to the risk that the system will not perform as intended.

[8] "Moving block" refers to the creation of a "safe zone" around a moving train that no other train is permitted to enter.

Second, in some cases PTC will actually make existing rail operations *less* efficient. For example, traditional rail operations rely on the skills of locomotive engineers to stop a train. Because current PTC systems can't anticipate when to initiate train braking as well as an engineer can, they initiate braking much earlier than an engineer would. That means PTC-equipped trains will actually require *longer* braking times and *longer* distances than non-PTC equipped trains. Rather than allowing trains to be spaced more closely together, this actually forces trains to be spaced farther apart, with consequent disruptions to the flow of traffic.

An April 2010 study by the consulting firm Oliver Wyman agreed that business benefits associated with PTC will be low or nonexistent. The study found that railroads would achieve, at most, no more than around $400 million in PTC-related business benefits over 20 years. Oliver Wyman found that, more likely, business benefits would be zero. The Oliver Wyman study also concluded that PTC-like systems currently being implemented in Europe do not support the claim that PTC will yield significant business benefits for U.S. railroads.[9]

This point is supported by events underway now in the United Kingdom. A version of PTC called "European Rail Traffic Management System" (ERTMS) is being installed there. According to British experts, ERTMS cannot be economically justified in the UK on either safety grounds or on capacity (business benefits) grounds. The only time an economic case can be made for ERTMS in the UK is when there is a need to introduce some form of train control on a line that currently has no signals or where the existing signal system requires complete replacement. This situation occurs very infrequently in the United States.

[9] Oliver Wyman, Inc., "Assessment of the Commercial Benefits of Positive Train Control," April 23, 2010. The report is available upon request from the Association of American Railroads.

While the installation of ERTMS is being mandated under EU regulations, the planned rollout in the UK is not planned for completion until 2049, with the halfway point for installation set at 2029 — and this over fewer route-miles than will require PTC in the United States.

**PTC Is Still an Emerging Technology**

PTC as a concept has been around for many years, and over the years railroads have spent hundreds of millions of dollars developing it. As noted above, in the next few years railroads will be spending many billions of dollars on its development.

It is certainly true that our base of PTC-related knowledge is much deeper than it was even just a few years ago, and railroads and their suppliers will certainly continue to make progress. One of the major U.S. freight railroads, BNSF, actually has a PTC system in limited operation and the knowledge gained from BNSF's experience has been invaluable. However, PTC today is still an emerging technology and remains untested in terms of a real-world, day-to-day, multi-railroad environment implemented across all the Class I railroads.

An analogy from the world of pharmaceutical development might be useful here. Let's say a medical researcher wants to find a new treatment to fight a disease. The first step might be to screen thousands of compounds using computer simulations or other means to find candidates with certain desired chemical properties. Compounds that show sufficient promise after this initial screening then undergo further laboratory evaluation using, say, growth cultures in petri dishes. If those tests go well, the next step might be testing in mice or other animals.

Throughout this process, the foremost goal is to determine that the new compound is safe *prior* to its first use in humans. Indeed, only after all of these experiments are conducted

successfully and no toxicity is found is consideration given to clinical trials involving human subjects. The clinical trials might begin with a few human subjects, then expand if the initial trials are favorable. The trials are used to determine if the compound actually works to fight the disease and to determine if there are any long-term toxicities that did not show up in earlier tests.

Only if a compound emerges from all of these tests with an acceptable toxicity and safety profile and has been clearly demonstrated to have the desired effect in clinical trials can it be submitted for approval by the appropriate regulators for general rollout.

The entire drug development process is methodical, logical, and rigorous. So that patients with the targeted disease are able to take advantage of any potential new cure as quickly as possible, both medical researchers and regulators want to avoid unnecessary delays. However, all parties know that many parts of the drug development process simply cannot be rushed without potentially compromising safety. Such an outcome is, rightfully, considered unacceptable.

So it should be with positive train control. Railroads are fully aware of the 2015 deadline and are committed to meeting it. At the same time, the calendar should be less important than ensuring that the testing and development of PTC proceeds appropriately. Just as people can get hurt by taking new drugs that were not properly vetted, people can get hurt if PTC systems are not properly developed and tested. The last thing any of us wants is to roll out a new system that actually degrades safety, rather than enhances it. Forcing PTC implementation without adequate development and testing could lead to just that result.

A December 2010 report by the Government Accountability Office supports this view. The GAO noted that "implementing an immature system to meet the deadline could pose

serious safety risks," and that "[i]dentifying and mitigating risks sooner, rather than later, would better ensure a reliable PTC system can be fully implemented to provide the intended safety benefits of this technology without resulting in unintended consequences."[10]

**Other Provisions of the RSIA That Should Be Addressed**

Positive train control is clearly a major focus of the RSIA, but the legislation also addresses many other areas related to rail safety. As discussed below, railroads have concerns regarding FRA implementing rules regarding some of these areas.

Emergency Escape Breathing Apparatus

Section 413 of the RSIA mandates that railroads supply train crews with emergency escape breathing apparatus (*i.e.*, portable respirators) to provide respiratory protection for crew members in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release. On October 5, 2010, the FRA proposed standards implementing this RSIA mandate. The FRA estimated that costs to railroads will range from $74 million to $82 million and will exceed benefits by a ratio of 6 to 1. The benefits of this requirement are questionable at best. Several other initiatives — such as new tank car crashworthiness regulations — work to reduce exposures where respiratory protection would be beneficial. In addition, the rail industry believes that the FRA's proposal expands the materials subject to the mandate beyond what the RSIA requires.

Non-Signaled Territory Technology and Risk Reduction Programs

Section 406 of the RSIA requires the FRA to prescribe standards governing the use of technology in non-signaled territory (*i.e*, sections of track not governed by electronic signals).

[10] Government Accountability Office. "Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology," Report No. GAO-11-133, December 2010. The quotes are from pages 22 and 46, respectively.

Section 103 of the RSIA requires the FRA to issue regulations requiring Class I and passenger railroads to develop risk reduction programs addressing risk analysis of a railroad's operating rules and employment levels; plans to reduce accidents and injuries; fatigue management plans; and technology implementation, including analysis of electronically controlled pneumatic brakes and switch position indicators.

These two directives to the FRA have the potential to be extraordinarily burdensome to the rail industry. Having said that, the FRA is just beginning its efforts with respect to those two directives. Railroads look forward to working cooperatively with the FRA to ensure that the FRA's rules promote enhanced safety without excessively interfering with railroads' ability to provide the transportation service their customers and our economy demand.

In January 2011, President Obama announced that he is ordering a government-wide review of regulations that stifle our nation's economic competitiveness and job creation. The rail industry welcomes this review. To assist the FRA in implementing this order, the AAR recently sent a letter to FRA Administrator Joseph Szabo highlighting regulations that should be revised or eliminated consistent with the President's order. A copy of that letter is attached to this testimony as Appendix 1.

In addition, the December 2010 GAO report mentioned earlier discusses a case where FRA's existing regulations create disincentives for railroads to use state-of-the-art track inspection technologies. Track defect inspection technologies have advanced so much that many defects can now be detected well before they pose any safety risk. The problem is that, under current regulations, once the small defects are identified — even if they pose no threat to safety and instead need simply to be monitored to make sure they don't get worse —

railroads are required to take remedial action, such as limiting train speeds or repairing the track where the defects are located. Railroads can face fines if they fail to ameliorate defects, even insignificant ones, once they become aware of them. This creates a perverse incentive for railroads to remain ignorant by not employing the most advanced detection technology, rather than face sanctions for finding far more small defects than they can practically examine and fix in a timely manner.

**Conclusion**

Thank you for the opportunity to testify on this critical topic. The railroad industry is committed to working with its employees, Congress, the FRA, its customers, and others to ensure that rail safety continues to improve.

**Appendix 1**

**ASSOCIATION OF AMERICAN RAILROADS**

**Office of the President**
**Edward R. Hamberger**
**President and Chief Executive Officer**

January 25, 2011

Administrator Joseph Szabo
Federal Rail Administration
Room W30-308
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Administrator Szabo:

President's Obama's announcement last week that he is ordering a government-wide review of regulations that stifle this country's economic competitiveness and job creation is welcome news. We share the President's point of view that a 21st-century regulatory system should be void of excessive, inconsistent and redundant regulation so as to foster the right balance between benefits and costs.

Recognizing that the Federal Railroad Administration will look to implement the Order, the Association of American Railroads respectfully suggests that the agency work with the freight railroads to identify regulations that should be revised or eliminated consistent with the President's Executive Order. The AAR believes that to achieve the right balance between free markets and public safeguards sought by President Obama, there are a number of FRA regulations that deserve serious reexamination.

**Positive Train Control**

PTC represents the most expensive railroad safety program ever mandated by the federal government. And from a railroad perspective, there exists no greater disparity between costs and benefits than the Positive Train Control program. Even the FRA's own economic analysis concluded that the costs of PTC outweigh the benefits by approximately 20 to 1.

The AAR believes that the recent Executive Order directing agencies to adopt a regulation "only upon a reasoned determination that its benefits justify its costs" and review existing significant regulations to determine if they should be modified or repealed, coupled with FRA's conclusion that PTC costs outweigh PTC benefits by 20 to 1, requires a reexamination of the PTC regulations.

At the January 13, 2011, meeting with railroad Chief Operating Officers, the railroads identified key aspects of the PTC regulation that should be scrutinized as part of the review of regulations whose costs greatly exceed their benefits. Of particular note are the requirements for:

-- Use of 2008 instead of 2015 as the baseline year;
-- Installation of a second PTC display screen for the conductor (and FRA's recent position that the second PTC display must be interactive);
-- Operating restrictions for PTC en route failures; and
-- PTC for yard moves on main lines.

The railroads also pointed out at the January 13th meeting that the opportunity to reduce the burden of PTC through a *de minimis* provision has been missed because the *de minimis* provision in the existing PTC regulations contains restrictions making it virtually useless.

**Emergency Escape Breathing Apparatus**
On October 5, 2010, the FRA proposed standards implementing the Rail Safety Improvement Act's (RSIA) mandate for train crews to be supplied emergency escape breathing apparatus. The FRA estimated the cost benefit ratio at 6 to 1, with total costs ranging from $74 - $82 million. The AAR believes that the FRA's proposals to expand the materials subject to the mandate beyond what the RSIA requires, institute burdensome inspection requirements and require unnecessary recordkeeping are good examples of over-intrusive regulations that this White House is looking to eliminate.

**Locomotive Inspections**
The AAR petitioned the FRA in 2002 to adopt performance standards in lieu of the costly daily and periodic locomotive inspection requirements currently mandated by the FRA. The AAR believes this is aligned with President Obama's recent Order directing agencies to "specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt."

In the petition, the AAR estimated that daily locomotive inspections cost Class I railroads a minimum of $60 million annually and periodic inspections cost Class I railroads approximately $350 million annually. The AAR also observed that the annual number of accidents attributable to locomotive defects is generally well under 100. The AAR also noted that Canada does not require either daily or periodic inspections.

**Track Inspections**
In its just released report, "Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology," the Government Accountability Office noted that a number of people it consulted in preparing the report believed the current regulations are a disincentive to using new track inspection technologies. GAO stated that the concern is that these technologies "identify track defects perceived as too insignificant to pose a safety risk, but which nonetheless require remedial action under current regulations once such defects are identified." GAO reported that FRA is considering changes to its regulations and plans on issuing a notice of proposed rulemaking on the track inspection regulations in the spring of 2011. Clearly, changes to the track inspection regulations to correct disincentives to employ improved track inspection technologies represent the type of action required by the Executive Order. (See pp. 32 and 42 of the GAO report.)

**Intermediate Inspections**
With automated inspection equipment available, requiring an intermediate (1,000 mile) inspection by a qualified person is a costly, obsolete requirement. Indeed, the ECP-brake regulations require an inspection every 3,500 miles. FRA should repeal the 1,000-mile inspection requirement on routes equipped with hot-wheel detectors.

**Signal Inspections**
The FRA imposes a number of longstanding requirements for signal inspections, beginning with the monthly inspections that do not take into account or reflect modern electronic monitoring capability.

**Cranes**
The AAR believes the recently promulgated OSHA regulations governing the use of cranes along the railroad's right of way is an excellent example of a regulation President Obama wants to eliminate because they "are just plain dumb," as applied to the railroad industry. The OSHA regulations are not only inappropriate for railroad work, but they don't take into account the unique scenarios encountered in the railroad industry. Railroad workers would have to be trained on work they would never do, using equipment they would never use in their railroad work, to comply with the OSHA regulations.

The AAR has challenged the OSHA regulations in court and discussions have already started with OSHA. It would be beneficial for FRA to bring its expertise to the discussion and exercise its jurisdiction over crane safety.

**Dark Territory Technology**
The RSIA requires the FRA to prescribe standards governing the use of technology in dark territory. This potentially could be another area where the railroads are required to spend considerable sums on technology that is very cost ineffective.

**Civil Penalties**
FRA has proposed a tripling of the civil penalties assessed against the railroads for violations of its regulations. Given that the railroads have continually improved their safety records over the last 30 years, a tripling of penalties makes no sense.

**Risk Reduction Program**
The RSIA requires FRA to issue regulations requiring Class I and passenger railroads to develop risk reduction programs, addressing risk analysis of a carrier's operating rules and employment levels; plans to reduce accidents and injuries; fatigue management plans; and technology implementation, including analysis of ECP brakes, rail integrity systems, and switch position indicators. This potentially could be another area where the railroads are required to spend considerable sums without a corresponding benefit.

**Whistleblower Complaints**
The Occupational Safety and Health Review Commission has before it cases in which the issue is whether an employee believing the whistleblower protection statute, 49 U.S.C. section 20109, has been violated can pursue remedies under both the Railway Labor Act and before OSHA. OSHA should issue a regulation providing that the employee must choose which remedy to pursue. It makes no sense to have two simultaneous proceedings addressing the same issue in which contradictory decisions can be rendered.

The President's January 18th Executive Order is a well-timed directive. The freight railroads are committed to ensuring that this country's rail network remains the safest, most reliable and most efficient in the world. We are also committed to helping this President achieve full economic recovery and job creation.

The AAR is hopeful that the FRA will work with the railroads when it undertakes the regulatory review called for by the President and take into account those issues identified in this letter.

Sincerely,

Edward R. Hamberger

ASSOCIATION OF
AMERICAN RAILROADS

**Office of the President**
**Edward R. Hamberger**
**President and Chief Executive Officer**

May 5, 2011

The Honorable Corrine Brown
Subcommittee on Railroads, Pipelines, and Hazardous Materials
Committee on Transportation and Infrastructure
House of Representatives
Washington, DC 20515

Dear Congresswoman Brown:

Attached are the answers to your questions for the record in connection with the testimony provided by the Association of American Railroads and Norfolk Southern Corporation before the Subcommittee on March 17, 2011. I apologize for the delay in responding.

Please let me know if you have any further questions.

Sincerely,

Edward R. Hamberger

**May 6, 2011**

**Responses to March 17 Hearing Questions**

1. Your testimony states AAR estimates that PTC technology will have to be deployed on approximately 73,000 miles of U.S. freight rail lines, based on the final rule which essentially mandates implementation of PTC on PIH lines in existence in 2008 rather than 2015 which is when the mandate takes effect. How do you believe that would change if it was based on the map in 2015 and how do you think that would change your bottom line?

Answer:

AAR believes that approximately 10,000 miles would not have to be equipped with PTC if the mandate is based on 2015 traffic patterns instead of 2008 traffic patterns. FRA estimated wayside costs at $50,000 per mile. While AAR believes that estimate to be low, at $50,000 per mile that represents a savings of $500 million.

2. There were hundreds of FRA reportable incidents on the major railroads in 2010, many of which were trains that passed stop signals. Any one of those could have resulted in a collision. I do not want another accident like those that occurred in California or South Carolina. The House and Senate both dealt with PTC in their bills before that accident ever occurred; once the accident happened all the railroads came together and agreed to PTC and worked with us to craft the legislation. Now there seems to be a change of heart. What specific changes or additions to that mandate are you proposing now? And if we did any of those what will you do differently to provide an equivalent level of protection that would protect your passengers, workers, and the public from a human failure?

Answer:

PTC-preventable accidents account for approximately 4 percent of railroad main line accidents. The billions of dollars it will cost to implement and maintain PTC systems that can only address 4 percent of main line accidents might be better spent on other accident-prevention programs. The best way of improving railroad safety is to utilize the most cost-effective means of reducing overall risk. Focusing on specific types of accidents to the exclusion of others could result in foregoing an opportunity to obtain greater safety benefits, particularly if efforts to reduce a comparatively small number of accidents drain substantial resources from other programs.

**May 6, 2011**

Thus, FRA should be directed to approve alternative risk-reduction strategies that provide a better way of reducing overall risk that PTC. AAR is not suggesting that Congress statutorily bless any particular risk-reduction strategy. Rather, Congress should direct FRA to approve such strategies and provide the railroads with an incentive to develop risk-reduction strategies superior to PTC.

3. You mention that FRA's existing regulations create disincentives for railroads to use state-of-the-art track inspection technologies. Please discuss this. The leading cause of all accidents right now is track-related. What can be done to address this?

Answer:

The Government Accountability Office (GAO) recently issued a report on rail technology that noted a common belief that FRA regulations are an impediment to the adoption of new track inspection technologies. Rail Safety: Federal Railroad Administration Should Report on Risks to the Successful Implementation of Mandated Safety Technology, http://www.gao.gov/new.items/d11133.pdf, pp. 32, 42, 44 (Dec. 2010). The concern is that the technologies are capable of detecting minor defects that are irrelevant from a safety perspective, but that once detected must be addressed immediately under FRA regulations.

Two examples illustrating GAO's point are the use of track geometry cars to check track dimensions and ultrasonic inspections. Automated track geometry equipment can detect geometry deviations that visual inspections cannot. One example is tight gage. Minimum track gage, other than for excepted track, is 56 inches. Track geometry cars can detect very small deviations from the 56-inch requirement, e.g., a deviation of 1/16". Under FRA's regulations, if there is any deviation below 56 inches, operations can only take place at 10 mph or below (the speed limit for excepted track). Yet, AAR is unaware of any derailment attributable to "tight gage."

Ultrasonic equipment can detect minute internal rail defects that do not affect safety operations. Prior to 1998, any rail defect, no matter how small, resulted in the need to either immediately repair the defect or operate under severe operating restrictions. In 1998, some leeway was granted, but more is clearly appropriate. FRA's Rail Safety Advisory Council (RSAC) agreed that a different

approach to resolving defects found through ultrasonic inspection is appropriate and agreed on proposed changes. However, a notice of proposed rulemaking incorporating the changes suggested by RSAC has not been issued.

4. Labor proposes a 10-hour calling window, getting crews off trains by the end of the 12th hour, and other changes to the hours of service requirements. What are your views on labor's proposals?

Answer:

A 10-hour calling window would severely impact the ability of railroads to provide the nation and their customers with efficient rail service. No transportation sector is subject to such a requirement. Following are three examples of how the public and private industry would be adversely affected by such a change:

A. A MARC or VRE train is scheduled to leave Union Station at 6AM. A crew member becomes sick overnight and calls in at 4AM, two hours before departure time. The train cannot leave on time, if at all, because a replacement crew member would need 10 hours notice.

B. A plant plans on using product to be delivered by a 6PM rail crew to operate its plant during the next day. A crew member calls in sick at 4PM. Delivery is delayed and as a result the plant does not have the product needed to start on time the next day.

C. A crew is called with 10 hours notice to pick up cars from a coal mine at a certain hour. At the mine, one of the loaders goes down for unscheduled maintenance due to a mechanical problem so the train takes longer to load and is not ready until three hours past the scheduled time for departure. The crew now has only 9 hours to work for a normal 10 hour trip. Consequently, a relief crew is called to meet the train nine hours into the trip. The timing of when the train will arrive at the crew-change terminal is difficult to determine since the train has lost its "running slot" on the main line. If the replacement crew is called too soon, the crew will have time waiting that will reduce the time available to crew the train (due to the 12-hours maximum on-duty time); if called too late, the train will be further delayed and crew calling down the line will be affected, as will customers. The end result will be considerable delay for this train and other affected trains, unhappy customers, and extra costs incurred by the railroads. A two-hour calling window enables the railroad to more precisely time the arrival of the replacement crew and minimize subsequent delays.

**May 6, 2011**

Regarding the issue of "getting crews off trains by the end of the 12th hour," the amount of time it takes to release crews after they have worked 12 hours is not a safety issue because it does not affect crews' time off duty and that time is not spent on duty. Nevertheless, that time (limbo time) is already capped at 30 hours per month.

It was also suggested at the hearing that the minimum off-duty period at the away-from-home terminal be reduced from 10 consecutive hours to 8 consecutive hours (plus an amount equal to any limbo time incurred). AAR notes that the Administration has just extended the minimum time between shifts for air traffic controllers from eight to nine hours. In this light, reducing the minimum off-duty period to 8 hours does not seem credible.

Another suggestion was that railroad employees with fixed schedules should be subject to the hours-of-service requirements for passenger carriers. AAR strongly opposes the suggestion. The passenger requirements require the use of a model for analyzing the potential fatigue impact of certain schedules. In proposing the passenger requirements, FRA stated that it

> is not drawing any conclusion about the suitability of such a regulatory scheme for freight operations. There may be substantial differences between freight railroad operating and crew schedules and passenger operating and crew schedules. Passenger railroads have analyzed the results of applying the proposed regulations to their work schedules and concluded that this proposal is feasible. Freight railroads have not undertaken such analysis, nor would they be required to under the proposed regulations, except to the extent that employees of freight railroads may work in passenger service.

76 Fed. Reg. 16,200, 16,214 (March 22, 2011). Furthermore, railroad employees frequently move between jobs. Under this proposal, employees would be constantly moving between different hours-of-service regimes. Compliance would be a nightmare.

**Statement of Dennis R. Pierce**
**National President, Brotherhood of Locomotive Engineers and Trainmen**
**President of the International Brotherhood of Teamsters Rail Conference**
**Before the House Subcommittee on Railroads, Pipelines and Hazardous Materials**
**Hearing on**
**Federal Regulatory Overreach in the Railroad Industry:**
**Implementing the Rail Safety Improvement Act**
**March 17, 2011**

Good morning, Chairman Shuster and Ranking Member Brown. My name is Dennis Pierce and I am the National President of the Brotherhood of Locomotive Engineers and Trainmen; I also am the President of the Rail Conference of the International Brotherhood of Teamsters. My testimony today will encompass the views and concerns of both groups, and my comments today also have been endorsed by the United Transportation Union.

I would like to begin by commending the Subcommittee for holding this hearing and bringing to light some of the difficulties experienced with the implementation of the Rail Safety Improvement Act of 2008. In our view there are a couple of reasons that we've stumbled a bit in rolling out the RSIA. One is that it was a comprehensive, wide-ranging, and far-reaching piece of legislation, which was a function of the fact that Congress had not passed a rail safety act in more than sixteen years.

The other is that at the time of passage several portions of the bill were still being fine-tuned by stakeholders. For example our legislative and regulatory folks were in the midst of adjusting portions of the Hours of Service piece in the bill with Ed Hamberger from the AAR and with the UTU just days before the terrible Chatsworth accident. Of course, that tragedy was a game-changer, and Congress' decision to proceed with the bill that was on the shelf made our efforts — and similar ones — moot.

It has become popular in some quarters to criticize the Federal Railroad Administration for its work in implementing the RSIA. I want to tell you up front that I'm not among FRA's critics in this regard. The FRA was given a massive but imperfect bill. It included an extraordinary number of statutory mandates with short deadlines. Moreover, the agency's resources and personnel were not increased to the level necessary to quickly fulfill the tasks assigned. I can say based on first-hand knowledge because, since enactment of the RSIA, the BLET and the Rail Conference have taken an active leadership role in implementing the legislation, mainly through the auspices of the Rail Safety Advisory Committee — or RSAC — process, which has shepherded nearly every significant safety rulemaking in the railroad industry for the past fifteen years. We have witnessed, first-hand, the diligent and professional efforts by FRA to implement regulations that fulfill the Congressional intent as stated in the RSIA.

My colleague, Mr. Hamberger, and the Association of American Railroads — speaking on behalf of the Class I carriers — have been particularly critical of FRA's rulemaking governing Positive Train Control. Two aspects of the PTC rule they focused on were the baseline identified by FRA, which AAR said was too restrictive because of potential changing traffic patterns, and FRA's decision to not incorporate a broad *de minimis* exemption from the PTC requirement for

poisonous-by-inhalation, or PIH, traffic. The Subcommittee should note that the National Transportation Safety Board fully supported the provisions FRA proposed.

In a letter dated March 5, 2010, which can be found in the PTC docket at FRA-2008-0132-0069 and -0070, NTSB Chair Hersman addressed the baseline issue, stating — and I quote — "the final rule as written provides enough flexibility to railroads either at the time of initial filing or through a request for amendment to subsequently address changes in traffic patterns." The NTSB also opposed including a *de minimis* formula in the final rule because, quoting again, "some railroads might consider establishing annual PIH car limits on segments of track in order to be exempt from the requirements of implementing a PTC system on that segment."

But the carriers' main criticism of the PTC requirement is based on its cost. The industry's objection is based on a cost/benefit analysis that is based on a standard business case. However, that is a wholly inappropriate metric for evaluating a safety regulation, because health, safety, and environmental regulations "attempt[] to ameliorate the adverse consequences of market activities ... by reducing the attendant social costs." These regulations "attempt[] to internalize the social costs of production by ensuring that the prices of goods and services reflect the true costs to the society." *See* Ashford, Nicholas A., "Alternatives to Cost-Benefit Analysis in Regulatory Decisions," *Annuals of the New York Academy of Sciences* (30 April 1981), 363:130.

Moreover, the industry's horse left the barn long ago. We, and other rail labor organizations, have appeared repeatedly before this Subcommittee and other committees and subcommittees to inform Congress and the public of the dangers posed by non-signaled "dark territory," which comprises about 40% of the route miles in the nation. The NTSB has repeatedly urged that railroads install switch position detectors in dark territory, following horrific accidents that claimed many lives, caused mass numbers of injuries, and led to hundreds of billions of dollars in economic loss. Such technology has been affordable and available off the shelf for many years, but the railroads in large part sat on their hands because there was no statutory requirement for them to address this hazard ... now there is one.

And while the industry's business case may be appealing to some, my support for the statutory PTC requirements and the FRA's final rule implementing those requirements is of a much more personal nature. If you go to the BLET website and click on the link to our Memorial Page you will find the names of 70 of our members who were killed in the line of duty over the past 19½ years. Nearly 50 of those deaths would have been prevented by PTC. In February of 2008, the Department of Transportation revised its guidance memorandum — entitled "Treatment of Value of Life and Injuries in Preparing Economic Evaluations" — to increase its "best present estimate of the economic value of preventing a human fatality" to $5.8 million, or nearly $300 million at current value for the PTC-preventable deaths listed on our website. To me, there is no such thing as federal regulatory overreach when it comes to halting the needless slaughter of our members.

I also want to take this opportunity to bring to the Subcommittee's attention several other issues of vital interest to our members and all railroad workers as implementation of the RSIA continues. In these matters, too, the carriers are crying "overreach," when in actuality they seek do to nothing less than thwart the will of Congress.

First and foremost for operating employees is, of course, the hours of service changes contained in the RSIA. It was the intent of Congress — in revising the century-old hours of service laws — to truly address fatigue in the railroad industry. In our organization's testimony to this Subcommittee on several occasions, we outlined some ways this could be accomplished. Unfortunately, many of these were either excluded from the final bill or became convoluted during the implementation process. Several of our proposals were adopted by this body, but were watered down in conference committee with the Senate. Consequently, fatigue in the industry has not been alleviated by the legislation and, in fact, our members report that the problem has actually gotten worse in some respects since implementation.

As I have travelled around the country over the past two and a half years listening to our members, certain aspects of the hours of service changes have been their number one complaint to me. BLET members tell me — and all my fellow BLET leaders — that the legislation has in many instances done the exact opposite of Congress's intent; it has increased levels of fatigue. We believe that the legislation has fallen short of its goals because the changes that were made in 2008 focused on slowing the frequency with which train employees worked, along with adding caps for work hours and excess limbo time, rather than being based on specific scientific principles and empirical data.

We have heard countless reports of BLET and UTU members being deliberately stranded at their away from home terminals for artificial reasons and inflated periods of time in order to reset their "start" clock, so that the railroad does not have to provide them with the extended 48-hour rest period at home. This is exacerbated by the requirement that ten hours' undisturbed time off duty, extended by the amount of any excess limbo time, is required at the away-from-home terminal. The manipulation of on-duty times at away-from-home terminals prevents our members from getting true, restorative rest and spending time with their families, and we believe this is directly contrary to what Congress intended in the legislation. While these abuses and manipulations do not occur in every terminal of every railroad, we believe they are prevalent enough to warrant changes in the law.

From the time of our founding nearly 150 years ago, we have made the safety of our members a top priority, and proactively addressing fatigue remains a core item on our safety agenda. To that end, the BLET and the UTU have worked together to craft technical corrections to the hours of service portion of the RSIA, the purpose of which is to correct some unintended consequences of the implementation of the legislation. For example, a statutory off-duty period at the away-from-home terminal of eight hours' uninterrupted, extended by the amount of any excess limbo time, is sufficient and will reduce the incentive for railroads to artificially extend off-duty period in order to reset someone's "start" clock. It also was something that the AAR, the BLET and the UTU had agreed upon prior to Chatsworth.

Labor believes, and the records of this Subcommittee will show, that Congress intended to provide a predictable and defined work/rest period in the RSIA, and to this end our technical corrections are based on sound scientific evidence and simple common sense. They focus on the fatigue that is inherent in unscheduled operations, because the manipulation of off-duty periods at away-from-home terminals is undoing much of what you tried to accomplish. As we have said on numerous occasions, fatigue in unscheduled service is easily managed by (1) requiring a 10-hour call prior to work, instead of requiring 10 undisturbed hours off following a work

assignment, and (2) requiring that crews who outlaw be physically relieved from their trains no later than the expiration of the twelfth hour.

A 10-hour call would provide the ten hours of undisturbed rest immediately prior to performing covered service. It would eliminate nearly all of the uncertainty faced by our members who work in unassigned service. They would know 10 hours prior to going to work — instead of the one and a half to two hours currently standard in the industry — that they are, in fact, going to work that day. The thousands of BLET members I've discussed hours of service with over the past few years all tell us this would be the best solution to fatigue, because it's based on simple common sense. The fact of the matter is that the current system of providing 10 hours' undisturbed time off duty following a work tour is not mitigating fatigue because line-up information has not improved one iota, and our members remained deprived of sufficient reliable information on when to schedule sleep during off-duty periods so they are optimally rested when they return to work.

Regarding limbo time, I would be remiss if I didn't express our appreciation for the excess limbo time caps that were imposed in the RSIA. While the number of complaints we receive on this subject has declined significantly, problems continue. For example, we recently received the 2010 data from one of the Class I operating divisions that was the focus of our 2007 testimony before this Subcommittee. More than a year after the RSIA took effect this division still was experiencing an average of six crews working duty tours longer than thirteen hours every week. Further, our members report that there continue to be significant problems, particularly with the enormous gray area carved out by 49 U.S.C. § 21103(c)(2)(F), which exempts from the cap counting any excess limbo time associated with "a delay resulting from a cause unknown and unforeseeable to a railroad carrier or its officer or agent in charge of the employee when the employee left a terminal." We believe, again, that the cleanest and most direct method of controlling excess limbo time is to require that an outlawed crew be physically relieved from their train prior to the expiration of the twelfth hour.

Now, I have no doubt that Mr. Hamberger will tell you — just as he has told us and the UTU during our discussions on this subject over the years —that a 10-hour call and getting crews off trains by the end of the twelfth hour would create intractable scheduling issues for the railroads. I do not accept the word "can't" in this situation. On the two largest U.S. subsidiaries of Canadian National Railway — the former Illinois Central and the former Grand Trunk Western — the overwhelming majority of train employees either work jobs with a fixed starting time or are on-call for a narrow, four-hour window. This work schedule, alone, has qualified these two railroads for waiver relief from the "6&48" requirement of the Act. Based on these facts, it seems to me that the problem with the other railroads is not that they "can't" adopt these fatigue countermeasures ... it's that they "won't" do so. Therefore, to truly clamp down on fatigue in unassigned service, it is up to Congress to provide the predictable and defined work/rest schedules that the industry continues to refuse to provide.

Speaking of defined work/rest schedules, tremendous success has been achieved by the stakeholders involved in developing regulations to govern passenger and commuter hours of service. The scientific evidence that formed the basis for the passenger/commuter hours of service regulations — based on the actual work schedules of that segment of the industry — showed a much lower potential for fatigue in scheduled service because of the certainty of

knowing when one is required to report for work. These scientific studies also led to the development of a "toolbox" of fatigue countermeasures to further manage the problem. As a result, the passenger/commuter hours of service regulations will be far more effective in mitigating fatigue and far less stringent than the statutory provisions governing freight service.

Parallel to this development, and consistent with the latitude provided in the RSIA, the FRA has granted limited waivers to freight railroads for relief from some of the stricter requirements of the law for scheduled freight assignments — such as yard switching assignments — that do not work into the overnight period. We would urge Congress to amend the hours of service laws to provide that freight assignments with fixed and advertised on-duty times would be subject to the passenger/commuter hours of service regulations. There are three sound reasons why this amendment would be appropriate at this time.

First, we now have a well-developed body of data and evidence — the validity of which is accepted by management, labor, and the FRA — showing a path to appropriate fatigue management for jobs with assigned starting times. Second, a strong economic incentive would be created for freight railroads to better manage their operations by accessing potential increased productivity that could flow from applying these regulations to assigned freight service. And, third, there are far better uses of FRA's limited resources than to conform hours of service for regular freight assignments to the passenger/commuter regulations on a case-by-case basis via the slow, temporary and expensive waiver process.

Before closing, I want to briefly touch on three other issues where the railroads are crying "federal regulatory overreach" in an effort to neuter statutory mandates that you have required. Section 405 of the RSIA authorized studies of the locomotive cab environment, and empowered FRA to regulate based upon its findings. As part of an ongoing revision of locomotive safety standards, FRA is considering establishing an upper temperature limit in locomotive cabs, which comes some 109 years after Willis Carrier invented the modern air conditioning system and 72 years after Packard first installed an air conditioner in an automobile. I am not going to get into the volumes of data establishing the safety risks posed by excessive workplace heat, but I do want you to know that the carriers continue to resist movement on this important health and safety issue.

Our second issue is related to the first, because in hot weather operating crews in locomotive cabs without functioning air conditioning are forced to open doors and windows to release captured heat from the operating environment. When a crew chooses physical comfort in this way, their security and the security of the train is placed at risk, because there currently is no federal requirement that locomotive cabs be secure from invasion by unauthorized persons. In two security surveys, conducted five years apart by the Teamsters Rail Conference, we documented that fewer than half of respondents, all of whom work for Class I railroads, could secure their locomotive cab.

Last June a CSX conductor was murdered during a locomotive cab invasion and robbery, during which the engineer was shot and wounded. Shortly thereafter I wrote to the Federal Railroad Administrator, requesting that FRA promulgate rules addressing the security of the locomotive operating compartment. After a meeting with Administrator Szabo and his staff in October, FRA also added this issue to the locomotive safety standards rulemaking, which we greatly appreciate.

I also want to update you briefly on an issue of critical concern for our Brothers and Sisters in our Rail Conference affiliate, the Brotherhood of Maintenance of Way Employes Division. As you may recall, we requested that Congress prohibit the continued housing of maintenance of way workers in camp cars, a contemptible practice that has been abandoned by all but one major railroad. The RSIA stopped short of outright abolition, but increased regulatory oversight of this barbaric practice. FRA has an ongoing rulemaking on this subject, but you should know that the single bad actor who refuses to provide 20th Century conditions for its workers has been waging a war against your statute, claiming that the law doesn't limit where camp cars may be placed. But the struggle continues.

Before closing, I want to take the opportunity to raise another issue that the BLET — and, in fact, all of rail labor — feels very strongly about ... and that is Amtrak. For the past 40 years, Amtrak has done a remarkable job efficiently moving our nation's intercity and commuter rail passengers, and keeping the public safe and secure, even though they've only been appropriated enough money to fail. Indeed, setting ridership records has become an annual event for Amtrak, and should be a cause for all of us to celebrate. In our view, Amtrak is synonymous with high speed rail in this country, and should be treated as such as federal programs for high speed rail systems continue to be developed. I also urge, in the strongest terms, that Amtrak be authorized appropriate and full levels of funding in any legislation that comes out of this committee.

Chairman Shuster and Ranking Member Brown, I appreciate the opportunity to address you today. Working together with this Subcommittee and the full Committee over the years, much has been accomplished to enhance rail safety, and I look forward to working with you to make appropriate adjustments in this term. Thank you for allowing me to speak, and I will be happy to answer any questions the Subcommittee may have.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

1370 Ontario Street
Standard Building, Mezzanine
Cleveland, Ohio 44113-1702

DENNIS R. PIERCE
National President

Phone: 216.241.2630
Fax: 216.241.6516
www.ble-t.org

April 19, 2011

The Honorable Corinne Brown, Ranking Member
United States House of Representatives
Transportation and Infrastructure Committee
Subcommittee on Railroads, Pipelines, and Hazardous Materials
2165 Rayburn House Office Building
Washington, D.C. 20515

Re: March 17, 2011 Subcommittee Hearing

Dear Ranking Member Brown:

This responds to your Questions for the Record in the above-referenced hearing, which was titled "Federal Regulatory Overreach in the Railroad Industry: Implementing the Rail Safety Improvement Act." For ease of review, I will restate each question, and will follow with my response.

1. **The hours of service changes in the 2008 law were designed to provide workers with more rest to reduce fatigue on the job. Do you think this has been achieved? If not, why not and what further changes would you suggest?**

In the 2½ years since enactment of the Rail Safety Improvement Act of 2008 (RSIA) we see both reason for cautious optimism and, unfortunately, some troubling trends concerning on-the-job fatigue for certain train employees. On the positive side, the number of complaints we receive about train employees being contacted during their off-duty time — thereby having their rest interrupted — has declined significantly. Also, it appears that some of the worst of the abuses associated with excess limbo time have been curbed, although occurrences of railroads leaving crews on their trains beyond the 12th hour remain far too frequent and provide a basis for manipulating the law. Moreover, groundbreaking progress has been made by the Railroad Safety Advisory Committee (RSAC) of the Federal Railroad Administration (FRA) in developing regulations that will govern passenger rail and commuter rail service beginning later this year. The scientific research undertaken in the process of developing these regulations provides a cornerstone for fatigue management that will serve the industry well for years to come.

At the same time, though, it is now clear that the fatigue management goal set by Congress will not be achieved for train employees working in unassigned freight service. Three primary factors contribute to this failure. First, railroads are regularly manipulating on-duty times at away-

from-home terminals in order to avoid their 49 U.S.C. § 21103(a)(4) obligation to provide extended time off duty at the home terminal after a train employee has initiated an on-duty period for six or seven consecutive days. Train employees frequently have their on-duty time deferred for numerous hours at the away-from-home terminal for no purpose other than to artificially create a calendar day during which they do not initiate an on-duty period. While not every railroad engages in such manipulation at every away-from-home terminal, this issue is responsible for more complaints by BLET members than any other aspect of RSIA hours of service implementation. This is an unintended consequence of the RSIA that, in hindsight, should have been entirely foreseeable. Further, no railroad has taken a significant step either to provide better information by which off-duty train employees can reasonably calculate when their next duty tour will begin and, therefore, regulate their sleep so they may be optimally rested when they next go to work. And, finally, railroads continue to enforce unilaterally imposed "availability" policies in arbitrary ways that are diametrically opposite from sound fatigue management. Our solutions to these problems are listed within the below text.

**2. In your view, what changes, if any, do you think should be made to the hours of service requirements yet still ensure they act to increase railroad safety?**

We believe the cornerstone for refining the hours of service laws to fully realize the potential contained in the RSIA is an acknowledgement that the challenges of fatigue mitigation are fundamentally different for train employees who work a set schedule than for those who work on call in unassigned service. The research undertaken as part of the rulemaking for the intercity passenger / commuter rail hours of service regulation establishes beyond any reasonable doubt that the risk of fatigue is substantially less for train employees who work assignments with fixed reporting times as compared to those who work on call. As a result, the intercity passenger / commuter rail hours of service regulation is far less stringent, much more flexible, and demonstrably more cost-effective and productivity-friendly than the statutory provisions governing freight employees. Moreover, several of the waivers granted by FRA relaxing the "6&48" requirement — pursuant to its 49 U.S.C. § 21103(a)(4) authority — are targeted for freight assignments that either have fixed reporting times or are unassigned positions called in a very narrow window of time. Thus, our first suggestion is that the hours of service laws should be amended to provide that train employees in freight service who work positions with fixed reporting times are subject to the intercity passenger / commuter rail hours of service regulation. Doing so would provide several benefits for all stakeholders. First, the provisions governing the railroads regarding those employees would be less stringent than at the current time. Further, there would be an increase in work opportunities for those employees with concurrent productivity gains for the railroads. Finally, recourse to the slow and costly waiver process would no longer be required as to these assignments, saving time and money for railroads, unions, and the FRA.

While this change is easy to accomplish and implement, the next step poses much more of a challenge. Armed with the data from the intercity passenger / commuter hours of service rulemaking that establishes what common sense tells us — that fatigue mitigation and control in-

crease exponentially with the knowledge of when one will next go to work — the task is to consider what steps can be taken structurally to reduce fatigue for those working in non-scheduled service. At the present time, the law requires only that a train employee in freight service have at least ten (10) consecutive hours off duty, without being disturbed by the railroad, within the 24-hour period prior to going on duty. Current operating practices provide such employees with between ninety (90) minutes and two (2) hours' advance notice to report to work. Employees working in this way simply cannot schedule their sleep and rest in a way that optimizes their alertness when they begin work. If that 10-hour undisturbed time off duty requirement is moved from the entirety of the 24 hours prior to going on duty to the 10 hours prior to that time — a concept we refer to as the "10-hour call" — fatigue levels for these employees will plummet to near the levels for scheduled employees because the employee will receive notice to report to work longer than one sleep cycle prior to their on-duty time. For these reasons, our second suggestion is that Congress mandate a 10-hour call for all train employees working in non-scheduled service.

The industry continues to vigorously resist this proposal, claiming that it is **impossible** to manage because of the uncertainty of its train operations, and that employees **cannot** be provided with reliable advance information when they may be required to go to work for this same reason. Both the industry's history and contemporary developments expose the falsity of this claim.

Several years ago the BLET participated in a symposium titled "Fatigue Countermeasures in the Transportation Industry," which was sponsored by the National Center for Intermodal Transportation at the University of Denver. Part of our presentation was an analysis of Employee Timetable No. 9 for the Pennsylvania Railroad's Philadelphia Terminal Division, which went into effect in the spring of 1955. This division was small, with main tracks that ran 14.3 miles northward, 21.3 miles westward, and 6.3 miles southward from Philadelphia. Total main line trackage for the entire division was 41.9 miles, and there were a number of branches and extensions, about half of which provided alternate commuter rail routes into and around 30th Street Station. Passenger service was a mix of intercity passenger and commuter rail trains. Some 500 different train symbols operated in a typical week, with over 3,500 total trains. Two facts stand out to this day: (1) the timetable contained the same number of scheduled freight train symbols as intercity passenger train symbols (69); and (2) nearly 425 of the 3,500+ scheduled trains were freight trains, comprising almost 12% of the total. There were neither computers nor GPS more than a half century ago. "Just-in-time" manufacturing delivery demands hadn't been conceived. Many aspects of railroad operations were still in the "pencil and paper" age, although most of the division was equipped with an automatic block signal system. Yet, during that relative technological Stone Age, the PRR did on the busiest passenger rail corridor in the nation — what many say is impossible today.

Late last month, BNSF Railway proudly promoted new "smart phone" applications, which are available at no cost for Blackberry, iPhone, Droid, and Windows 7 phones. These applications, according to the railroad, allow customers to "track their shipment while it is on the BNSF network," and coal customers to track "entire trains by a specific mine or utility location." *See* http://www.bnsf.com/media/news-releases/2011/march/2011-03-30a.html. Therefore, it is far

beyond incredible for the largest railroads in the nation, each earning multi-billion dollar net profits, to expect anyone to seriously believe that they are incapable of providing their train employees with consistent, reliable information regarding when they will next work, so they may report rested, refreshed, and optimally alert. We believe it is time for the Congress to force them to do so by enacting the 10-hour call into law for non-scheduled train employees.

Recalibrating the approach to fatigue, by moving beyond the arbitrary and irrelevant distinction between freight and passenger service, to the core causes of fatigue associated with unscheduled freight service also would enable the Congress to correct those aspects of the RSIA-mandated changes to the law that have not produced the desired result. As I stated in my testimony, and reiterated above, the requirement that train employees who initiate an on-duty period for six (6) consecutive days must be off duty for at least 48 hours at their home terminal[1] — during which time they cannot perform any service for any railroad — was enacted with the best of intentions. However, two problems are now clearly identifiable from this "one-size-fits-all" approach. One is that the requirement is arbitrary, to the extent that it is based on a calendar, rather one's own requirements. Thus, there are train employees — including, for example, those working in unscheduled service that consists of short runs made during daylight hours — who are withheld from work for an extended period of time when they are not fatigued. The other is that railroads routinely defer on-duty times for train employees at their away-from-home terminal by several hours so that a calendar day passes without the initiation of an on-duty period. This effectively "resets the start clock" so the railroad can avoid its obligation to provide extended rest at home. While it is true that not every railroad manipulates the law in this way at every location, it is undeniable that this loophole is being used to deny extended rest at home to train employees who are genuinely fatigued. Our third proposal is that Congress reduce the statutory off-duty period at the away-from-home terminal from ten (10) hours back to eight (8) hours, which will make it harder for such manipulation to occur. As I indicated in my testimony, prior to the 2008 Chatsworth accident the BLET, the United Transportation Union and the Association of American Railroads all agreed to pursue such an amendment.

Another way for railroads to manipulate the law to deny train employees extended rest at their home terminals is to simply delay relieving them from their trains when they "outlaw" on the line of road. The cap on excess limbo time contained in the RSIA has produced a noticeable decrease in the number of occasions of crews being left stranded on their trains for inordinate and unconscionable periods of time, which has benefited our members. However, there continues to be an incentive for railroads to delay getting outlawed crews off their trains in order to slow

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[1] There are two exceptions to this general requirement. One is when the completion of the sixth on-duty period is at an away-from-home terminal, in which case the employee may work back home on the seventh day, but then must be off duty for at least 72 hours at their home terminal, during which time they cannot perform any service for any railroad. The other is when an employee is working service governed by either a FRA-approved pilot program for an alternate hours of service regime pursuant to 49 U.S.C. § 21108, or a FRA-granted waiver based on a collective bargaining agreement. *See* 49 U.S.C. § 21103(a)(4).

work rotation as a means to reset the "start clock" and avoid their obligation to provided extended rest at the home terminal, particularly later in the month, when the time nears that the excess limbo time is set back to zero. The only reliable way to end this form of manipulation is to amend the hours of service laws to make it unlawful for a railroad to leave a crew on its train beyond the expiration of the twelfth hour, except in cases of bona fide emergency such as road closure that makes the train inaccessible for relief purposes. This is our fourth suggestion to refine the law so that the intent of Congress is fulfilled.

More than sufficient scientific knowledge about fatigue and fatigue management exists to address the problem more vigorously than it has been to this point. Since enactment of the RSIA, a significant body of railroad-specific data have been gathered and analyzed, and the results of those analyses are being enacted as regulation for intercity passenger and commuter rail train employees. The only thing that is lacking is the will to take serious steps on the part of freight rail carriers. The development of the intercity passenger / commuter rail regulation shows a benefit to employer and employee alike, and we strongly believe it is time for the Congress to direct the freight railroads to develop the willpower to act, which they have avoided for far too long.

3. **The railroads maintain that the benefits of the emergency escape breathing apparatus are "questionable at best." What benefits will respiratory protection bring to rail workers?**

My response to the carriers' claim that the benefits of the emergency escape breathing apparatus requirement are "questionable at best" can be summed up in two words — Chris Seeling. Mr. Seeling, who was the Secretary-Treasurer of BLET Division 85, was just 28 years old when his life was needlessly snuffed out on January 6, 2005, following a collision and derailment in Graniteville, South Carolina. The accident was accompanied by a release of chorine contained in rail cars that had been struck, and Chris was one of eight fatalities who were overcome by the toxic cloud produced by the collision and derailment. What distinguishes his death from the others is the fact that he was forced to evacuate his locomotive cab without the benefit of an emergency escape breathing apparatus, and perished before he could get to a safe place.

Had Mr. Seeling been provided with what now is required by law, he could tell you in his own words the true value of this important piece of personal protective equipment. Just because his voice has been stilled, however, we cannot ignore his message, regardless of what the railroads argue. The railroad industry has been one of the most hazardous of all industries since its inception. Increasing amounts of the most hazardous materials are shifting to rail due to the deterioration of the interstate highway system, and those shipments will be concentrated over fewer routes because of Positive Train Control requirements, thereby substantially raising the risk for railroad workers on those routes. It is reprehensible that, after nearly two centuries, railroads continue to argue that they should be free from any obligation to ensure the safety of their workers. While major railroad accidents are relatively rare, each has the potential to be catastrophic, as the Graniteville tragedy proved. America's rail safety laws and regulations have come at a cost of literally tens of thousands of lives and hundreds of thousands of limbs. We have devoted substantial resources to addressing how emergency escape breathing apparatus should be provided to rail-

road workers, and the current law and proposed regulation provide a reasonable balance of competing safety and financial interests. For the Congress to reverse course on this issue now would be tantamount to saying that railroad industry mega-profits are more important than the lives of railroad workers exposed to poisonous and toxic releases.

Once again, please accept my most sincere thanks for allowing the Brotherhood of Locomotive Engineers and Trainmen to participate in the hearing, and our gratitude for your tireless efforts on behalf of railroad workers and their safety.

Respectfully submitted,

National President

cc: Erin Sulla, Staff Assistant, Subcommittee on Railroads, Pipelines, and Hazardous Materials (via electronic mail)
F. N. Simpson, BMWED President
W. D. Pickett, BRS President
M. B. Futhey, Jr., UTU International President

**U.S. HOUSE OF REPRESENTATIVES**
**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE**
**HEARING OF THE SUBCOMMITTEE ON RAILROADS**
**MARCH 17, 2010**

**STATEMENT OF MACKENZIE SOUSER**

My Dad, Doyle Souser, an executive at a manufacturing company, left work on the afternoon of Friday, September 12, 2008 and boarded the Metrolink 111 train to come home. He usually took the later train but was coming home early to cook a barbeque tri-tip dinner for a struggling family in our community. I was really excited because my 13th birthday party was scheduled for the next day, Saturday. My Dad always helped with all of the details for family events. Earlier in the week, my Dad and I painted the necklaces I was going to be giving to my guests as party favors. After dinner on Friday, we were going to finish the rest of the preparations for my party.

Instead, on that Friday afternoon, my Dad's train, which was filled with passengers, collided head-on at full speed with a freight train on a bend in Chatsworth in Los Angeles County. The 80 mile per hour force of the crash caused the Metrolink locomotive to completely enter the first passenger car and ignite in flames. Twenty-four hours later, we learned that my Dad was riding in the front of the first car and was one of the 24 passengers killed. The Chatsworth Metrolink collision was the worst ever in California's history. In addition to all of the people who died, more than 150 others were injured, many seriously and permanently.

The survivors of the crash – those who were injured as well as those of those of us who are trying to make it through each day without someone we depended on – do not refer to this event an accident. It really was not just an accident. According to the National Transportation Safety Board, the collision was caused when the engineer of the Metrolink train, Robert Sanchez, ran through a red signal while using his personal cell phone to send text messages. The NTSB also determined that the engineer, an employee of Veolia Transportation, sent and received 43 text messages and made three phone calls while on duty on the day of the crash. Two days before the collision, the Veolia engineer sent or received 125 messages during the time he was responsible for operating the train. He would regularly send and receive an average of 180 text messages each day.

Many of the text messages the engineer typed were sent to teenage boys he was communicating with. The engineer had recently invited a teenager for a ride-along in the cabin with him and allowed him have contact with the controls. The engineer had been planning on letting the same teenager actually drive the train on the evening of the collision.

Within minutes and a few text messages, my life was changed, my family's life was changed, and over 150 other families' lives were drastically changed by this avoidable disaster. I am telling you this because I would never want anyone to go through such a traumatic loss as I have for the past 2 ½ years. I am simply not a normal teenager anymore without my Dad. The best part of every day was when my Dad came home from work and our family had dinner together. I struggle every day with the fact that my Dad, who was the sole breadwinner for our family, isn't coming home from work ever again.

My Dad was my best friend and a strong Christian influence who was helping me become a lovely young lady inside and out. I miss spending time with him talking about cars, watching cooking shows on TV, going to movies, playing in our backyard, and discussing school and many other things. I miss joining him at work for "father-daughter day" which he would let me do when I wanted to spend the day with him. I remember observing the great relationship my Mom and Dad had—a wonderful example of a beautiful marriage. I hope someday to find a husband that will treat me like my Dad treated my Mom. My loss is not only physical, but also emotional.

My Dad was also my brother Zach's best friend. It is so hard to watch my brother trying to grow up without his best buddy and male role model. Others my age get to worry about normal teenage concerns, while I worry about our Mom, our family's finances and future and how my brother and I will be able to go to college. I worry about what we would do if someone broke into our home during the night or if there was a fire. It is hard knowing that my Dad will not be here to walk my older sister Kelsey or me down the aisle on our wedding days. It is hard knowing that he will never be here for us again.

As a teenager I am very familiar with the popularity of text messaging. But every teenager I meet knows that driving and texting do not mix! My Mom and I relied on the pilot of the plane that brought us here today to do his job very carefully. In the same way, my Dad and all of the other passengers relied on the Veolia engineer to pay attention to the signals and drive the train according to all of the important safety rules. Those rules said NO cell phones and NO unauthorized people in the driver's seat. The engineer's supervisors knew that he was using his cell phone while on duty. It is so hard for me to understand why they did not immediately investigate and put a stop to this. We learned that the engineer had been reprimanded recently before the collision, but then we learned that what he got in trouble for had nothing to do with text messaging or allowing kids to ride with him. It had to do with not bringing a train into one of the stations on time. This means the company was concerned about profits and not about major safety issues and the hundreds and hundreds of safety violations that were going on.

The truth is that the engineer's company took such a big gamble with my Dad's and all of the other passengers' lives. This was wrong. It is also wrong that in these unbelievable circumstances, Veolia is relying on the federal law that limits how much it has to reimburse all of the survivors for their injuries. My Dad always taught me to accept full responsibility in any circumstances where I ever hurt someone. He never said "Well, Mackenzie, just try to make things 30% or 50% better." My Dad knew that being 100% responsible was not only fair to the person that I hurt. He also knew that if I had to be fully responsible for any harm I caused I would be more careful about my actions in the future.

My family is so grateful to Congressman Gallegly for trying to fix this problem with legislation that would increase the damages cap. Congressman Gallegly has provided several opportunities for the survivors to meet one another, share our stories and suffering and honor our loved ones. I got to hear the story of the boy and his Mom who were on the train with their Dad and experienced the horror of watching him die before their eyes. I got to spend an evening with the family of Walt Fuller, another amazing Dad and husband that was killed. He was an FAA air traffic controller who always put safety first and had recently disciplined someone for text messaging. I got to meet Cheryl Santor whose head was split open and had to be sewn and stapled back together. She

needs a surgery for the injury to her back that is interfering with her ability to walk and another surgery for her damaged neck. I got to meet the family of Rachel Mofya, a foreign exchange student whose skull was cracked and body was burnt in the fire. Doctors had to remove part of her brain. Her dreams of attending the medical school where she was accepted are gone. Another future medical student who had the highest SAT score in the history of his high school and scored in the top 1% of his medical school entrance exam did not survive the crash. I got to meet Curtis Whitney who is 25 and now has screws and hardware all through his back and will need more operations to be able to just function. I got to meet Mike Kloster who has already had 5 major surgeries and now has diabetes because the doctors had to remove his pancreas. There are many, many more stories like theirs and like mine. Just like me and my brother and sister worry about how my Mom is going to be able to pay for our college, the other survivors worry about how will they pay all the bills from all the time they could not work, and how will they be able to afford the medical care they need for the rest of their lives.

My family will appear before the Judge soon and tell him about all of our losses. We have been trying to make it for 2 ½ years without my Dad's support and we have a long road ahead. If there is no change in the law or Veolia does not offer additional funds, the Judge will have to determine some fair way to reduce each award so everyone's case fits inside the limit. I can only imagine how difficult this will be.

I am so glad that new technology will be in place in 2015 that will make it impossible for a horrible collision like this to ever take anyone else's Dad away at thirteen. In the meantime, thank you for doing anything you can to hold those who refuse to follow or enforce important railroad safety rules one hundred percent responsible for the harm that they may cause. Thank you for helping us honor my Dad, Doyle Souser, and all of the others whose lives were taken or forever damaged by this tragedy.

**Written Statement of**
**Jo Strang,**
**Associate Administrator for Railroad Safety/Chief Safety Officer,**
**Federal Railroad Administration,**
**U.S. Department of Transportation**
**Before**
**the Subcommittee on Railroads, Pipelines, and Hazardous Materials,**
**Committee on Transportation and Infrastructure,**
**U.S. House of Representatives**

**March 17, 2011**

**Federal Railroad Administration**
**1200 New Jersey Avenue, S.E.**
**Washington, DC 20590**

**(202) 493-6304**

**Written Statement of Jo Strang,**
**Associate Administrator for Railroad Safety/Chief Safety Officer,**
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**Before**
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**March 17, 2011**

Chairmen Mica and Shuster, Vice Chairman Reed, Ranking Members Rahall and Brown, and other Members of the Committee and Subcommittee, I am very pleased to be here today, on behalf of Secretary of Transportation LaHood and Administrator Szabo of the Federal Railroad Administration (FRA), to discuss FRA's role in carrying out the Rail Safety Improvement Act of 2008 (RSIA), especially the provisions in that Act regarding positive train control (PTC) and hours of service. My prepared testimony for this hearing is intended to supplement and update the written information on FRA's work to effectuate RSIA that the agency has supplied to Congress previously.

As background for the discussion of FRA's implementation of RSIA, I would like to report that the railroad industry's safety record is very positive for calendar year 2010, the last complete year for which preliminary data are available. The industry achieved all-time lows in two important indices of railroad safety: in the accident/incident rate per million train-miles and in the train accident rate per million train-miles. FRA is encouraged by the results, but will continue to work with industry to lower the rate and severity of railroad accidents.

Through delegations from the Secretary of Transportation (Secretary), the Federal railroad safety laws provide FRA with very broad authority over every aspect of railroad safety. In exercising that authority, the agency has issued and enforces a wide range of rail safety regulations and orders. FRA currently has active rulemaking projects on a number of important safety topics; some of those rulemakings pursuant to RSIA will be described later in this testimony. FRA also enforces the Federal railroad safety statutes as well as the Hazardous Materials Regulations, promulgated by the Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration, as they pertain to rail transportation. Please see FRA's Web site (http://www.fra.dot.gov) for additional background.

## I. Overview of RSIA Rulemakings and Other RSIA Projects in General

RSIA mandates that the Secretary produce more than 40 final rules, guidance documents, model State laws, studies, and reports, including 3 types of annual reports and hundreds of periodic audits of railroads' reports of crossing accidents. The Secretary has delegated this responsibility to FRA. Roughly 36 of the mandated projects are to produce single deliverables, as opposed to periodic deliverables. So far, FRA has essentially completed[1] 12 of the roughly 36 projects involving single deliverables and 4 of the 5 annual reports required so far by the 3 annual-reporting mandates. The agency has also completed the first set of the RSIA-mandated periodic audits of railroads' compliance with their duty to report grade crossing collisions and fatalities, with respect to the eight Class I railroads, and has set up a system to handle the first set of RSIA-mandated periodic audits of hundreds of other railroads.

Besides final amendments to the hours of service recordkeeping regulations, interim guidance on the hours of service statutory amendments, and final rules on PTC, all of which will be discussed later, FRA has issued the following: (1) bridge safety standards; (2) regulations requiring the ten States that have had the most highway-rail grade crossing accidents during calendar years 2006-2008 to file State-specific action plans to improve grade crossing safety for FRA approval; and (3) most recently, a model State law on sight obstructions at passively signed highway-rail grade crossings. Moreover, FRA has made a great deal of progress on a number of other RSIA-mandated projects. For example, just last month, FRA submitted a draft of the other RSIA-mandated model law, which concerns motorists' violation of warning signals grade crossings, to various organizations with a request for their comments. FRA has also published an advance notice of proposed rulemaking on the safety risk reduction program and five notices of proposed rulemaking (NPRM)--on concrete crossties, emergency escape breathing apparatus, conductor certification, camp cars used as sleeping quarters, and systems for telephonic notification of unsafe conditions at grade crossings. Further, in 2008 and 2009, FRA completed two final rules that were necessitated by RSIA even though not explicitly mandated by it. The first of these final rules revised the provisions on civil penalties in all of the safety rules to reflect the higher ordinary maximum and aggravated maximum penalty per violation. The other final rule amended FRA's rules of practice to provide for temporary waiver of safety rules on an emergency basis and revised FRA's enforcement procedures to provide for disqualification of railroad employees from safety-sensitive service based on violations of the hazardous materials laws.

In terms of RSIA-mandated single (as opposed to periodic) reports or studies, FRA has completed five and partially completed a sixth. First, FRA has submitted a

[1] That is, the projects are completed apart from litigation in the case of the January 15, 2010, final rule and September 27, 2010, final rule amendments on PTC.

long-term strategy for improving rail safety, with annual plans for the five fiscal years involved. Second, FRA has provided a report to Congress on whether diesel-electric locomotives operated by tourist, excursion, or museum railroads should be subject to less frequent inspections; the report did not support relaxing the requirement. Third, FRA has posted on its Web site its evaluation of current laws on trespass, vandalism, and violation of crossing warning devices. Fourth, after consultation with several other Federal agencies, FRA completed a report to Congress on the exposure of railroad employees to radiation, which it submitted by letter dated January 27, 2011. Fifth, the Secretary submitted a report to Congress on station platform gaps by letter dated January 10, 2011. Finally, FRA has also submitted a report to Congress on the use of personal electronic devices by locomotive engineers, conductors, trainmen, and other railroad operating employees; this initial report will be supplemented by a report dealing with other types of safety-related employees, such as maintenance-of-way employees.

On February 23 of this year, FRA entered into a contract with a law firm to carry out the mandated study on whether barring discovery of certain documents related to safety risk reduction programs would be in the public interest; the contract provides that the study is to be completed within six months. FRA has also made progress on a number of other RSIA-mandated reports, including those on (1) the effect of repeal of "the Conrail exemption," (2) recommendations for assistance to families of those affected by passenger rail accidents, (3) the adequacy of transportation of domestically produced renewable fuels, and (4) track-inspection intervals.

In terms of RSIA-mandated, periodic reports, FRA has provided two RSIA-mandated annual reports to Congress that list all unmet rail safety statutory mandates and open rail safety recommendations from the DOT Inspector General and the National Transportation Safety Board and summarize FRA's responsive action. The latest report that has been submitted to Congress is current through December 30, 2009. A draft of the third such annual report is in clearance in the Executive Branch. Finally, FRA has posted on its Web site its first two annual enforcement reports under RSIA (an expanded version of FRA's traditional report on civil penalty cases closed), which provide specific analyses of civil penalty assessments and settlements as well as information on other types of enforcement actions, the activities of the Locomotive Engineer Review Board, and the results of FRA safety inspections.

## II. Four RSIA-Based Projects Involving Hours of Service

On May 27, 2009, less than eight months after enactment of RSIA, FRA published a final rule amending FRA's existing regulations requiring records and reports on hours of service, primarily to reflect the RSIA amendments to the hours of service laws and also to permit electronic recordkeeping. The mandatory rulemaking was conducted with the assistance of the Railroad Safety Advisory Committee (RSAC). The RSAC includes representatives from all of FRA's major stakeholder groups, including

railroads, labor organizations, suppliers and manufacturers, other government agencies, and other interested parties.

Less than a month after producing that final rule, on June 26, 2009, FRA published lengthy and detailed interim and proposed interpretations of the major hours of service statutory provisions amended by RSIA. The RSAC aided FRA's development of this document to a certain extent, as well. During the comment period, FRA received 56 comments on the proposed interpretation and interim interpretations, the majority of which addressed either the proposed "continuous lookback" interpretation or the interpretation of the requirement of time off after a series of consecutive days of covered service. Most opposed the new proposed interpretation. FRA is in the process of drafting the Final Statement of Agency Policy and Interpretation, which will respond to comments and may revise some of the interim interpretations.

On January 3, 2011, FRA published a proposed rule on safety and health requirements for camp cars used as sleeping quarters for covered-service employees or maintenance-of-way employees. In response to the rulemaking mandate, FRA has proposed to require a number of improvements to camp-car living arrangements. In addition, to implement a related RSIA amendment, the proposal would extend FRA's existing regulations prohibiting railroads from beginning construction or reconstruction of employee sleeping quarters in the immediate vicinity of switching or humping operations to cover camp cars used as sleeping quarters for maintenance-of-way workers.

Finally, with the assistance of the RSAC, FRA has recently issued and sent to the Federal Register for publication an NPRM to establish hours of service requirements for train employees providing commuter or intercity rail passenger transportation. When the proposed rule is published in the Federal Register, FRA will welcome comments. FRA is working hard to meet the statutory deadline of producing a final rule that is effective before October 16, 2011, to avoid the requirements of the RSIA currently in effect for other train employees going into effect for these employees.

## III. Carrying Out RSIA Provisions on PTC

I would like to end my testimony by discussing the agency's work to implement the two major RSIA provisions on PTC. RSIA defines a "positive train control system" as "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." RSIA requires that by April 16, 2010, each Class I railroad and each entity that provides regularly scheduled intercity or commuter rail passenger transportation submit to FRA (as the Secretary's delegate) a plan for implementation of such a PTC system on certain specified lines by the end of calendar 2015. RSIA also requires that the railroad implement a PTC system in accordance with its plan. Further, RSIA requires that FRA review and either approve or disapprove each plan within 90 days of receipt, conduct an annual review to ensure that railroads are complying with their respective plans, issue regulations or orders necessary to implement

that section, and report to Congress by December 31, 2012, on railroads' progress in implementing PTC systems. Finally, RSIA allows FRA to require PTC systems on lines other than those specified in the statute, provide technical assistance to railroads in developing their plans, and assess civil penalties for a railroad's failure to submit a PTC implementation plan or comply with its PTC implementation plan.

In response to this PTC regulatory mandate in RSIA, FRA conducted a rulemaking with the assistance of its RSAC. In January 2010, when FRA issued the PTC final rule, the agency simultaneously sought comment on certain narrow issues, in contemplation of making future amendments to the PTC final rule. The Association of American Railroads (AAR), The Chlorine Institute, Inc., and various other parties filed petitions for reconsideration of the January 2010 final rule, all of which FRA denied by letter in July 2010. Final rule amendments were published in September 2010.

As to the contents of FRA's January 2010 PTC final rule as amended in September 2010 (the PTC Rule), it provides that, with some limited exceptions, PTC systems must be installed and operated (1) on lines over which intercity rail passenger transportation or commuter rail passenger transportation is regularly provided and (2) on freight-only rail lines if they are part of a Class I railroad's system, carrying at least 5 million gross tons (mgt) of freight annually, and carrying any amount of poison- or toxic-by-inhalation (PIH/TIH) material (e.g., chlorine or anhydrous ammonia).

In issuing the PTC Rule, FRA provided the following exceptions and exclusions that provide relief to the railroads while maintaining safety. First, a *de minimis* PIH risk exclusion for low volume Class I tracks that have no passenger traffic. Second, an exception for low speed operations occurring in passenger yards and terminals when the trains are either empty or no freight operations are permitted and reverse movements are restricted. Third, an exception for limited passenger operations where track speeds are restricted, temporal separation is maintained, or the passenger trains are operated under a risk mitigation plan. Fourth, a number of exclusions for Class II and III railroads. A Class II or III railroad is not required to install PTC on its locomotives when operating on a Class I PTC-equipped track if: (1) the track segment has no regularly scheduled intercity or commuter passenger rail traffic, or if it does have such traffic, the applicable PTC system permits the operation of a non-equipped train; (2) the operations are restricted to four trains a day; and (3) the train movement is less than 20 miles or if the movement is greater than 20 miles, the non-equipped operations may continue only until December 31, 2020. A Class II or III railroad is not required to install PTC on its line if: (1) the freight traffic is less than 15 mgt per year; and (2) if the line segment is un-signaled, no more than 4 regularly scheduled passenger trains operate per day; or if the line segment is signaled, no more than 12 regularly scheduled passenger trains operate per day.

A PTC system or component of such a system may not be permitted to be installed in revenue service unless FRA has certified that the system or component has been approved by FRA. In order to receive such approval, subject railroads must each

submit, and FRA must approve, the following three plans: (1) a PTC Implementation Plan, which includes a full schedule for PTC system implementation on the railroad by December 31, 2015; (2) a PTC Development Plan, which describes in technical detail the PTC system to be implemented, if the PTC system has not yet been approved by FRA; and (3) a PTC Safety Plan, which shows that the PTC system described in the PTC Development Plan will work correctly in the subject territory.

Both the PTC Implementation Plan and the PTC Development Plan were required to be submitted together by April 16, 2010. Simultaneous submission was required to evaluate the feasibility of the proposed PTC Implementation Plan schedule with respect to the technology being selected according to the PTC Development Plan. In recognition that such an early deadline may limit the railroads' opportunities to research, bid, and otherwise "shop around" for PTC systems, thus reducing market competitiveness, the rule permitted railroads to submit with their PTC Implementation Plan a shorter version of a PTC Development Plan, called a Notice of Product Intent. The Notices of Product Intent describe the functions and requirements of the intended system without identifying the particular manufacturer or product. If a railroad submitted a Notice of Product Intent with its PTC Implementation Plan, the railroad would have an additional 270 days to submit its PTC Development Plan.

Pursuant to the January 2010 final rule, 41 railroads filed PTC Implementation Plans describing how they proposed to deploy PTC systems on their properties by the December 31, 2015, statutory deadline. FRA successfully approved or disapproved all of these PTC Implementation Plans before the 90-day deadline specified in the January 2010 PTC rule. If FRA disapproved the plan, the agency identified the specific issues needing to be addressed. Of these 41 submissions, FRA approved 24 plans without conditions, provisionally approved 1 plan with conditions, provisionally approved 14 plans submitted with Notices of Product Intent pending resubmission with a PTC Development Plan, and disapproved two plans without prejudice. FRA staff is diligently working with these two railroads to create an acceptable plan. As FRA has already informed the Congress, a 42$^{nd}$ railroad was recently identified that is required to submit a PTC Implementation Plan for a single small section of track, and FRA staff is working closely with a representative of that railroad.

FRA has subsequently approved dozens of filings seeking approval to modify railroads' PTC Implementation Plans so as not to install PTC systems on 100 passenger-traffic line segments. FRA staff has also reviewed more than 100 freight-line-exclusion requests based on a *de minimis* PIH/TIH risk. FRA action on some of these requests is pending resolution of the litigation. FRA expects additional requests for exclusions.

FRA staff is also working with several railroads on final approval of their PTC Development Plans so that their proposed PTC systems may be approved. FRA is providing both informal and formal technical assistance to railroads via conference calls, working meetings, e-mail exchanges, and other written correspondence. FRA technical

staff is also supporting both laboratory and field PTC system development and implementation testing. Increased requests for support are expected as the December 31, 2015, implementation deadline approaches.

In addition to supporting PTC implementation by providing technical assistance, FRA has also supported PTC implementation by providing financial assistance. FRA has two means of providing funding to help offset the significant costs of PTC: the Railroad Rehabilitation and Improvement Financing Program (commonly known as the "RRIF Program") and the Railroad Safety Technology Grant Program mandated by RSIA.

Under the RRIF Program, FRA is authorized to provide direct loans and loan guarantees up to $35 billion. Eligible borrowers include railroads, State and local governments, government-sponsored authorities and corporations, joint ventures that include at least one railroad, and limited-option shippers that intend to construct a new rail connection. Up to $7 billion is reserved for projects benefitting freight railroads other than Class I carriers. Direct loans may fund up to 100 percent of a railroad project, with repayment periods of up to 35 years.

RSIA requires FRA as the Secretary's delegate "to establish a grant program for the deployment of . . . new or novel railroad safety technology," which FRA has designated the Railroad Safety Technology Grant Program. The section authorizes appropriations of $50 million annually from FY 2009 through FY 2013 to implement this section. FY 2010 was the first year that FRA received an appropriation to carry out this mandate. In view of the high costs associated with PTC implementation, and the limited funding available in the program, FRA elected to dedicate the FY 2010 funds for collaborative projects that address the resolution of shared technical issues associated with PTC system implementation. Thus far, FRA has provided nine grants for a total of about $49.9 million under the program. The nine grants are identified in the following table:

| Grantee | Project | State | Dollar Amount |
|---|---|---|---|
| Southern California Regional Rail Authority | Interoperable Digital Communications Infrastructure Construction | CA | $ 6,605,446 |
| Amtrak | Vital Electronic Train Management System (VETMS)-Advanced Civil Speed Enforcement System (ACSES) Interoperability | DC | $ 10,280,000 |
| New York Metropolitan Transit Authority | ACSES Interface Specification Verification | NY | $ 6,596,000 |

| | | | |
|---|---|---|---|
| Meteorcomm LLC | Interoperable Train Control (ITC) Interoperable 220 Megahertz Radio | WA | $ 21,050,000 |
| Howard University | Interoperable Identity Management | DC | $ 857,106 |
| Railroad Research Foundation | Risk Route Evaluation | DC | $ 1,541,448 |
| WABTEC Corp. | Video PTC Database Verification | IA | $ 500,000 |
| The Kansas City Southern Ry. Co. | Analog to Digital Communications Infrastructure Conversion | MO | $ 1,867,450 |
| Maryland Dept. of Transportation | Hi-speed VETMS Performance Verification | MD | $ 642,445 |

Finally, I would like to close my discussion of FRA's implementation of the major PTC provisions of RSIA by focusing on the recent settlement agreement in the lawsuit filed by AAR challenging certain provisions of FRA's PTC Rule. As previously mentioned, under RSIA, all Class I railroads are required to install PTC systems by December 31, 2015, on their main lines carrying at least 5 million gross tons of annual traffic and any PIH/TIH hazardous materials. Under the PTC Rule as currently crafted, each railroad's PTC Implementation Plan must indicate that a PTC system will be implemented on each of its track segments that met these statutory criteria during the year that RSIA became law (2008). However, the PTC Rule allows for relief from PTC implementation requirements on a track segment if two conditions are satisfied: (1) if PIH/TIH traffic subsequently ceases on the particular track segment before the end of 2015 or if the annual gross tonnage on the track segment falls below 5 million before the end of 2015 and (2) the track segment passes both a residual risk analysis test (which would be defined in a future rulemaking) and an alternative route analysis test. These tests have the potential of requiring PTC system implementation on Class I track segments that had PIH/TIH hazardous materials traffic in calendar year 2008, but that would not carry such traffic as of December 31, 2015.

In July 2010, the AAR petitioned the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) for review of those provisions of the PTC Rule as well as other provisions regarding requirements associated with the visibility of onboard PTC system information to crewmembers. Recently the AAR approached FRA and suggested that the parties discuss a possible settlement of the suit. On March 2 of this year, FRA and the AAR signed a settlement agreement regarding the AAR's lawsuit, and on March 3, the D.C. Circuit granted the parties' motion to hold the case in abeyance with the parties required to file status reports at 60-day intervals. Under the parties' agreement, FRA will issue two new NPRMs addressing issues that the AAR has raised regarding the PTC Rule. The reexamination of the PTC Rule is consistent with the President's recently issued Executive Order 13563 requiring agencies to review their significant rules and ensure that the safety benefits of the rules justify the costs imposed by the rules.

The first NPRM will address issues related to the requirements to install PTC on Class I railroad mainline track segments that do not carry PIH traffic and are not used for intercity or commuter rail passenger transportation as of December 31, 2015. The second NPRM will address the issues of how to handle enroute failures of PTC-equipped trains, circumstances under which a signal system may be removed after PTC installation, and whether yard movements and certain other train movements should qualify for a *de minimis* exception to the PTC Rule. Upon the completion of the rulemaking proceeding related to the first NPRM, the parties will determine whether to file a joint motion to dismiss the lawsuit in its entirety. In the second NPRM, FRA expects to address a number of PTC issues unrelated to the litigation that have been raised by the AAR and others since the issuance of the PTC Rule.

It is our understanding that the AAR will be filing a petition with FRA requesting amendments to the PTC Rule and providing FRA with the safety rationale that the AAR believes supports the requested changes. Other parties may also seek amendments to the rule.

In developing an NPRM in response to any rulemaking petition that FRA receives with respect to the PTC Rule, this agency will consult with the PTC working group of the RSAC, which helped FRA develop the PTC Rule. As previously mentioned, RSAC includes representatives of all of FRA's major stakeholder groups, which include freight and passenger railroads, labor organizations, etc.

Both NPRMs will invite public comments on the proposed changes to the PTC Rule. FRA will consider all comments submitted during the rulemaking comment period in determining (1) whether to issue amendments to the PTC Rule, and (2) if so, the contents of those amendments; as a result, any amendments to the PTC Rule may differ from the proposals contained in the NPRMs.

## IV. Conclusion

I appreciate this opportunity to speak with you today about FRA's efforts to implement RSIA and look forward to working with the Committee and Subcommittee to learn your ideas on how FRA can do an even better job implementing this important legislation. I would be happy to answer any of your questions.

**Questions for the Record**
**to**
**Ms. Jo Strang, Associate Administrator for Railroad Safety/Chief Safety Officer, FRA**

**from the**

**Hearing on "Federal Regulatory Overreach in the Railroad Industry: Implementing the Rail Safety Improvement Act"**

**Committee on Transportation and Infrastructure**

**Subcommittee on Railroads, Pipelines, and Hazardous Materials**

**U.S. House of Representatives**

**March 17, 2011**

**Questions from Congresswoman Corrine Brown:**

**1. A witness testified that track and mechanical caused accidents were 60 percent of all accidents. Is that accurate? Positive Train Control is designed to eliminate human factor accidents. What percent are human factor-caused accidents?**

**ANSWER:** According to FRA's accident/incident database, in the 10 years from 2001 through 2010, train accidents[1] resulting from a track defect or a motive power and equipment defect were an average of approximately 47 percent of all train accidents.

| Category | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|---|---|---|---|---|---|---|---|---|---|
| ***TRAIN ACCIDENTS*** | 3,023.00 | 2,738.00 | 3,019.00 | 3,385.00 | 3,266.00 | 2,995.00 | 2,692.00 | 2,472.00 | 1,895.00 | 1,831.00 |
| Train accidents per million train-miles | 4.2 | 3.8 | 4.1 | 4.4 | 4.1 | 3.7 | 3.4 | 3.2 | 2.9 | 2.6 |

[1] Train accidents are rail equipment accidents/incidents as defined by 49 CFR 225.19(c), except for rail equipment accidents/incidents that are also classified as highway-rail grade crossing accidents. Highway-rail grade crossing accidents are excluded to avoid double-counting of the same event. Figures are based on railroads' reports to FRA pursuant to FRA regulations at 49 CFR Part 225.

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| > Track-caused train accidents | 1,126.00 | 945 | 979 | 1,068.00 | 1,084.00 | 1,076.00 | 930 | 854 | 663 | 645 | |
| > Motive power/equipment-caused train accidents | 425 | 365 | 360 | 421 | 371 | 333 | 330 | 316 | 265 | 244 | |
| | | | | | | | | | | | |
| Track-caused + equipment-caused train accidents | 1,551.00 | 1,310.00 | 1,339.00 | 1,489.00 | 1,455.00 | 1,429.00 | 1,260.00 | 1,170.00 | 928.00 | 889.00 | **Average** |
| Proportion of total train accidents | 0.51306649 | 0.478451 | 0.443524 | 0.439882 | 0.445499 | 0.477129 | 0.468053 | 0.473301 | 0.48971 | 0.485527 | 0.4714143 |

From 2006 to 2010 (the last full year for which data are available), human factor-caused train accidents accounted for approximately 30-35 percent of the total train accidents reported to FRA. FRA estimates indicate that approximately 1.5-2.5 percent of the total train accidents reported to FRA, or 5-8 percent of human factor-caused train accidents, are PTC-preventable.

**2. What other countries require PTC and how much is installed?**

**ANSWER:** The most significant deployments of foreign PTC systems are located in the European Union (EU) and Asia. The system adopted by the EU is known as the European Rail Traffic Management System (ERTMS). ERTMS has multiple versions of increasing complexity and functionality. Currently, 32 countries in Europe and Asia[2] have some version of ERTMS installed and operational or are actively pursuing installation. In Europe, ERTMS installations involve 3,813 vehicles operating on 19,302 kilometers (km) of track, while in Asia, ERTMS involves 1,865 vehicles and 18,369 km of track. By way of contrast, PTC system installation in the United States involves approximately 20,000 vehicles and 130,000 km of track.

There are also very limited deployments of the Incremental Train Control System (ITCS) in China, Train Sentinel in Panama, and Electronic Train Management System (ETMS) in Iraq.

**3. Mr. Giulietti testified that spectrum could be a problem for certain commuter railroads. Please identify which commuter railroads have not yet secured sufficient spectrum and what steps these railroads are taking to secure the necessary spectrum.**

**ANSWER:** It is my understanding that, with the exception of Southern California Regional Rail Authority (SCRRA), no other commuter railroad has obtained the required spectrum. SCRRA has identified and purchased the additional spectrum necessary to support its operational needs. The SCRRA spectrum procurement is being challenged, and a Federal Communications Commission (FCC) decision on the challenge is pending. FRA has filed petitions with the FCC in support of SCRRA.

Other commuter railroads have contracted for, or are in the process of contracting for, detailed studies of communications needs to identify the least amount of spectrum necessary to support their operational requirements.

**4. It was brought out in testimony that the four largest Class I freight railroads share ownership in the company that is developing PTC data radios and that these railroads have also jointly purchased radio spectrum to enable PTC communications. What steps are these four railroads taking to make the data radios being developed available to other railroads at reasonable prices? Will these railroads begin making spectrum that they have purchased available to other railroads and, if so, when and at what price?**

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[2] These 32 countries are Austria, Belgium, Bulgaria, Croatia, Czech Republic, France, Finland, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, Switzerland, United Kingdom, Algeria, China, India, Kazakhstan, Libya, Mexico, Morocco, New Zealand, Saudi Arabia, South Korea, Taiwan, and Turkey.

**ANSWER:** The per-unit cost for the radios has not yet been determined, and the cost recovery model has not yet been announced. The design, testing, and certification of the data radios are not complete; therefore, the total development costs are not yet known. Additionally the company doing the radio design work, Meteorcomm Communications, has insufficient capability to mass produce the radios. This work must be done by other third-party manufacturers and will incur additional production costs. Regardless of the cost recovery model eventually chosen by the Class I railroads, all of these costs must also be determined before a per-unit radio cost decision can be made. FRA has awarded a Railroad Safety Technology Grant for more than $21 million to Meteorcomm Communications to defray the radio development costs that must be recovered, and as a consequence the final per-unit radio costs.

The Class I railroads have publically stated that they will allow other railroads to use the spectrum they have purchased thorough their PTC 220 MHz subsidiary. They have not, however, announced the price recovery model and the costs that will be charged to other railroads.

**5. The FRA's Final PTC Rule requires the railroads to equip their lines with PTC based on the routes they used to transport toxic chemicals in 2008. But the deadline for installing PTC isn't until the end of 2015. Why did the rule have 2008 as the base year? What happens if the railroad doesn't transport toxic chemicals on that line in 2015?**

**ANSWER:** The 2008 baseline was merely a starting point for planning purposes, with the end result of implementation to more closely reflect traffic patterns in 2015. FRA required the railroads to base their PTC planning in the PTC Implementation Plans on the 2008 toxic inhalation hazard (TIH) traffic patterns of 2008. The 2008 baseline was selected because it reflected the footprint of TIH traffic at the time the Rail Safety Improvement Act of 2008 (RSIA) was signed into law with TIH traffic as one of the PTC implementation criteria. The traffic patterns of 2008, considered a "normal" year, were also the most recent data available. To use future years would be too speculative and subject to atypical economic conditions that started during the 2009 recession. The PTC rule, however, made provisions for railroads to amend that route structure based on changes in TIH traffic patterns between 2008 and 2015. These route amendment requests are required to be submitted to FRA in either the PTC Implementation Plan, or subsequently in a document known as a Request for Amendment. However, PTC is not required to be installed on an identified track segment if it either satisfies the de minimis exception provision of the rule or the segment no longer carries TIH materials and the railroad satisfies two tests. AAR has brought a lawsuit challenging certain provisions of the PTC rule, including the two tests. FRA and AAR have entered into a settlement agreement. The settlement agreement provides that FRA will issue two notices of proposed rulemaking (NPRM). The first NPRM would propose to eliminate from the rule the two tests that could potentially require PTC to be installed on track segments not specifically required to be equipped by the RSIA. The second NPRM will address other important railroad concerns related to PTC implementation that are not involved in the litigation.

**6. Please describe the differences between automatic cab signaling and PTC. Does cab signaling afford the level of safety that PTC systems provide for "preventing 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" as the 2008 law requires?**

**ANSWER:** While automatic cab signal, train stop, and train control systems have provided a higher level of safety related to train operations for many years, their functional capabilities in actually preventing accidents have been quite limited. These systems do not provide the level of safety that the Rail Safety Improvement Act of 2008 (RSIA) requires for PTC systems.

A cab signal system provides an onboard indication of route conditions ahead in nearly instantaneous real time that does not require visibility of any wayside signals by the crewmembers before an appropriate response may be taken. A cab signal system with automatic train stop functions provides an onboard audible alarm when any condition ahead becomes more restrictive (when the cab signal downgrades to a more restrictive indication) and enforces a full service brake application of the train's air brake system bringing the train to a stop if that change is not "acknowledged" by the crew within not more than eight seconds. A cab signal system with automatic train control functions provides essentially the same as automatic train stop with additional audible warning and enforcement of speed limitations. Unlike PTC, none of these systems will enforce an absolute stop at such things as a signal requiring a stop, a movement beyond the limits of authority, an incursion into an established work zone, or a movement through a misaligned switch.

**7. The freight railroads have requested an exemption from the Positive Train Control mandate for lines where rail transportation of chemicals that are poisonous by inhalation is minimal, or less than 100 cars. How many loaded poisonous by inhalation cars are offered for transportation in the United States each year? What are FRA's views on this request, and how would it affect the PTC mandate for the freight railroads?**

**ANSWER:** Demand for rail movement of poisonous by inhalation (PIH) materials varies yearly depending upon economic conditions and changes in the marketplace, including product substitution. Shipments typically average around 110,000 car loads of PIH materials annually.

The current rule provides an exception to the installation requirement for track segments with "de minimis PIH risk." Under this exception, briefly summarized, the track segment must meet all of the following characteristics: (1) carry less than 100 PIH cars (loaded and residue) annually; (2) consist entirely of Class 1 or 2 track; (3) carry less than 15 million gross tons of freight traffic annually; (4) have a ruling grade of less than one percent; (5) be operated with temporal separation of any train with a PIH car from other freight trains; and (6) not be used for intercity or commuter passenger service. Carriers are also eligible to request FRA approval of additional line segments where the traffic volume is less than 15 million gross tons annually and the carrier proposes satisfactory mitigation measures.

FRA would consider further liberalization of the current de minimis exemption, provided the industry provides sufficient safety data that any such liberalization would not increase safety risks.

**8. Mr. Manion testified that due to complexities of the design and implementation of PTC major reliability issues could result and could lead to system-wide slowdowns and network congestion. Do you agree with this statement?**

**ANSWER:** FRA partially agrees with this statement, as the potential for such an effect is real. As system complexity increases, the potential for reduced PTC system availability increases as a consequence of decreased reliability of individual system components. Reductions in PTC system availability, however, do not automatically mean system-wide slowdowns and network congestion, provided that the railroads have implemented adequate contingency plans to address availability issues.

High system reliability can be designed into the system to provide for high availability. There are a number of different design techniques that will support high system, subsystem, or component reliability. The total system costs, however, will increase as the individual component and system reliability requirements become more exacting.

Further, in part to realize the safety gains incrementally during the PTC system implementation years, and to identify and work out the bugs of these technologies without any operational restrictions being associated with system, subsystem, or component failures, FRA included in the PTC rule a requirement that railroads set goals within their PTC Implementation Plans for incremental use of PTC functionality during the implementation years leading up to the deadline of December 31, 2015. This is to be accomplished such that upon a train with a controlling locomotive being operated in a track segment equipped with PTC, the PTC of that train must be turned on and made operational. Should any failure occur, the train would merely be operated in the conventional manner without penalty. Again, this process will provide significant benefit toward a higher level of system reliability on and after December 31, 2015.

**9. How does the TSA rule requiring railroads to modify their routing of hazardous materials impact the PTC rule?**

**ANSWER:** The TSA's 2008 security rule (49 CFR Part 1580) requires that a railroad transporting a rail security-sensitive material, including a PIH material, implement chain-of-custody requirements to ensure a positive and secure exchange of the material between railroads, thereby minimizing security vulnerabilities. In response to the TSA rule, certain railroads have elected to close interchanges where they do not have manpower resources to perform attended interchanges. These closures of interchange points have somewhat restricted the number of routes that carriers have available to handle PIH traffic. Under FRA's PTC rule, carriers need only examine routes where they can comply with the TSA security rule in determining where to install PTC.

**10. If a railroad's PTC network fails, what is the stop-gap measure to ensure there are no accidents out on the tracks?**

**ANSWER:** The PTC rule addresses the en route failure of a PTC system by specifying restrictions on the operation. Essentially, upon PTC failure, the affected train may proceed at

restricted speed or proceed at another speed depending upon the kind of signal system that is in operation in the territory where the affected train is operating.

If the affected train is in signaled territory, the affected train may proceed according to signal indications at a speed not exceeding 40 mph, to the first point available where communication concerning the failure can be made to the appropriate person (e.g., dispatcher); and continue in the same manner until an absolute block can be established.

If the affected train is in territory without a block signal system, upon the train's reaching the point where an absolute block has been established in advance of the train, the train may proceed at a speed not to exceed either 40 mph or 30 mph if it is a passenger train or a train hauling any PIH.

If the affected train is within a block signal system, an affected passenger train may proceed at a speed not exceeding 59 mph and an affected freight train at a speed not exceeding 49 mph.

Where a cab signal system with an automatic train control system is in operation (and functioning on the train), an affected train may proceed at a speed not exceeding 79 mph.

The PTC rule further specifies that a railroad may describe a deviation from these requirements, with justification, within its PTC Development Plan or PTC Safety Plan, subject to FRA approval.

**11. The GAO recently recommended in a report on PTC that DOT include in its 2012 report to Congress on the status of PTC implementation the following: (1) the likelihood that railroads will meet the PTC implementation deadline; (2) the risks to successful implementation of PTC; and (3) actions Congress, railroads, or other stakeholders can take to mitigate risks to successful PTC implementation. Does DOT plan to do this?**

**ANSWER:** FRA agrees with this recommendation and intends to include the identified information in its report to Congress.

**12. With implementation of the PTC rule, how many accidents would be prevented with how many associated casualties? With implementation of the rule, how many PIH (poison by inhalation hazardous materials) would be prevented and with how many associated casualties?**

**ANSWER:** FRA estimates that annually approximately 32 accidents would be prevented by implementation of the PTC rule, resulting in a combined total of about 4 fatalities and 64 injuries prevented. Other accident consequences that would be prevented by implementation of the PTC rule include evacuations, train delays due to track closures, environmental clean-up, property damage, emergency response, and highway delays due to road closures.

FRA is not able to estimate the number of PIH releases that would be prevented by implementation of the PTC rule with a high degree of confidence due to the low number of such incidents in the past. Clearly, the Graniteville, South Carolina, accident that resulted in 9

fatalities, more than 550 injuries, and the evacuation of about 5,400 people would have been prevented. This accident demonstrates the severity of the harm that can result from railroad accidents involving the release of PIH materials.

**13. What progress has been made to fulfill the October 2009 requirement in RSIA that FRA prescribe regulations to implement safety technologies in dark territory, and what impact, if any, has a lack of such regulations had on safety?**

**ANSWER:** The statute does not require the promulgation of regulations, but rather any of a range of documents: "standards, guidance, regulations, or orders . . . ." The task of developing recommendations to the FRA Administrator regarding the required "standards, guidance, regulations, or orders governing the development, use, and implementation of safety technologies in dark territory" was presented to and accepted by the Railroad Safety Advisory Committee. FRA convened the working group's first two-day meeting during the first week of March 2011, with the second meeting scheduled for the week of May 9, 2011. FRA is looking forward to speedy accomplishment and development of a written recommendation in this effort.

**14. What are your views on applying hours-of-service standards to yard crews?**

**ANSWER:** Employees working in yards have always been subject to the hours of service laws if they perform covered functions. Members of a train crew assembling or operating a train in a yard are performing functions within the definition of a "train employee" and are ordinarily subject to one of two hours of service provisions. Train employees working in yard service who are engaged in providing commuter or intercity passenger rail transportation are currently subject to the requirements of 49 U.S.C. § 21103 as it was in effect prior to the enactment of the RSIA. Other train employees working in yard service are subject to the requirements of 49 U.S.C. § 21103 as amended by the RSIA.

Yardmasters may be covered under any of the existing provisions of the hours of service laws, or under none of them, depending on the functions they perform during a given tour of duty. For example, a yardmaster who is engaged in or connected with the movement of a train during a duty tour would be covered under the hours of service provisions for train employees, but a yardmaster who issues orders affecting train movements during a duty tour would be covered by the requirements for dispatching service employees. However, a yardmaster who did not perform any covered functions during a duty tour (for example, where the yardmaster is purely a managerial position) would not be covered.

**15. What is the status of the mandate to retrofit or replace camp cars?**

**ANSWER:** The RSIA amended the "employee sleeping quarters" provision of the hours of service laws by strengthening the "clean, safe, and sanitary" requirements at 49 U.S.C. § 21106(a)(1) and by establishing two mandates related to camp cars used as employee sleeping quarters—one mandate to railroads and a separate mandate to the Secretary.

The RSIA mandate to the Secretary (at 49 U.S.C. § 21106(c)), which he delegated to FRA, requires the issuance of regulations to implement the strengthened statutory provision with

respect to camp cars used as sleeping quarters. Subsection (a)(1) requires that sleeping quarters provided to covered-service employees or maintenance-of-way workers not only be "clean, safe, and sanitary" and provide "an opportunity for rest free from the interruptions caused by noise under the control of the [railroad]" but also that the facility has "indoor toilet facilities, potable water, and other features to protect the health of employees." FRA published a notice of proposed rulemaking entitled, "Safety and Health Requirements Related to Camp Cars," in the Federal Register on January 3, 2011. The docket closed on March 4, 2011. FRA is reviewing the comments submitted to the docket and intends to issue a final rule in September.

The RSIA mandate to railroads (at 49 U.S.C. § 21106(b)) requires that railroads using camp cars as sleeping quarters for their covered-service employees or maintenance-of-way workers "fully retrofit or replace such cars in compliance with" 49 U.S.C. § 21106(a) and that they do so by December 31, 2009. Subsection (a) has two parts. Subsection (a)(2) requires that railroads not begin construction or reconstruction of such sleeping quarters near switching or humping operations. Although a number of railroads own camp cars, Norfolk Southern Railway Company (NS) appears to be the only railroad actually using camp cars as sleeping quarters for employees or maintenance-of-way workers instead of using motels. (NS has approximately 270 camp cars.) Since the RSIA was enacted, NS has replaced or retrofitted its outdated cars. FRA believes that all of NS's current cars substantially comply with both aspects of 49 U.S.C. § 21106(a) and with most, if not all, of FRA's proposed regulations on camp cars.

**Questions from Congressman Bill Shuster:**

1. **To what extent is sufficient spectrum available to enable PTC communication?**

   **ANSWER:** Spectrum availability or, more accurately, spectrum unavailability, is a critical issue that has the potential to significantly hamper PTC system deployment. There is currently no designated spectrum solely for PTC operations. Spectrum in the 220 megahertz (MHz) band actually refers to spectrum between 218 MHz and 222 MHz, and is currently allocated for maritime and private land mobile radio services. In order for railroads to use this spectrum to support PTC operations, they must not only purchase spectrum from the current license holders, but also obtain waivers to use it for purposes other than maritime and private land mobile service. A major consideration in the railroads' decision to use spectrum in the 220 MHz band was its relative availability compared to other frequencies. There is potentially sufficient spectrum in the 220 MHz band that the railroads may be able to purchase from existing license holders to support slow-speed freight and commuter operations. The limited bandwidth (250 KHz) of the 220 MHz spectrum that the freight railroads have been able to procure may be sufficient to support their operational needs in low- to medium-density traffic areas. The ability to support freight operations, let alone the additional spectrum needs of passenger/commuter railroads, is yet to be proven. As a result of this uncertainty, the passenger/commuter services must compete on the open market to buy additional spectrum to support their PTC operations.

The problem becomes even more acute for high-speed operations. Spectrum bandwidth requirements increase significantly. The most developed, least-implementation-risk communications-based PTC solution for these operations is the European Train Control System (ETCS). ETCS consists of two components: (1) the European Rail Traffic Management System (ERTMS) and (2) its associated communications system, Global System for Mobile Communications–Railway (GSM-R). GSM-R requires 8 MHz of spectrum in the 800 and 900 MHz bands for ERTMS to be able to function as designed. Spectrum in this region is already designated for, and heavily used to support, public safety and public/private mobile communications services. The 8 MHz to support high-speed operations also far exceeds the entire 4 MHz bandwidth available in the 220 MHz band.

It may be possible to reduce spectrum requirements; however, this would involve a significant engineering effort to do so. This effort would not only be costly, but may not be successful in the timeframe needed to support any sort of reasonable deployment schedule.

2. **Is spectrum allocation a bigger problem for some sectors of the rail industry than others?**

   **ANSWER:** Yes, spectrum allocation is a bigger problem for the short line and passenger/commuter rail services. For the most part, they do not have the same technical capabilities as the major freight railroads to determine their spectrum needs, nor the same access to capital necessary to compete for spectrum. Additionally, the publicly owned entities do not have the same flexibility as freight railroads with regards to procurement. Acquisitions by the former are constrained by public law and policy.

3. **What is the Federal Communications Commission doing to help railroads secure this spectrum? Could the FCC set aside some spectrum for commuter rail use, specifically?**

   **ANSWER:** The FCC has been extremely cooperative in trying to aid the railroads. The FCC has expeditiously reviewed and granted waivers for the use of PTC in the maritime and private land mobile service. Where possible, and when requested, the FCC has worked with individual railroads to address technical issues associated with spectrum use.

4. **To your knowledge, are other key rail safety risks not being adequately addressed because of the PTC focus?**

   **ANSWER:** FRA is unaware of specific instances of deteriorating safety risk levels; however, I believe that the full impact of the PTC focus is not yet known. I can say with certainty that the PTC implementation focus requires railroads to divert capital that would otherwise be available for other railroad safety technologies, as well as for maintenance and repair needs that indirectly impact safety.

5. **In your view, what impact has the rail hours of service changes had on railroad safety?**

**ANSWER:** It is too early to accurately assess the impact of the changes on railroad safety. Although anecdotal statistical information is positive, the universe of data is too small for meaningful analysis. Railroads are still adjusting their operations to the changes, as well as to the increasing traffic levels. An engagement by the Government Accountability Office on railroad hours of service (Code 541070), which has been underway since the spring of 2010, may provide additional insight.

6. **Why hasn't FRA implemented the two hours of service pilot projects authorized by the Rail Safety Improvement Act regarding 10-hour calls and employee scheduling?**

   **ANSWER:** FRA must receive requests from railroads and labor organizations in order to fulfill this requirement with any reasonable prospect for success. FRA has not received any requests as of this hearing, but continues to encourage affected parties to use this option.

7. **Can FRA assist commuter railroads in meeting the requirements of the forthcoming passenger rail hours of service final rule by providing a bio-mathematical model of human performance and fatigue for free and open use by these publicly funded agencies?**

**ANSWER:** FRA does not own a bio-mathematical model of human performance and fatigue; therefore, it cannot provide free access to the railroads that will be subject to the final rule, assuming that it contains a provision requiring use of such a model. The costs of model access were accounted for in the Regulatory Impact Analysis of the proposed rule, which was published on March 22. However, FRA will continue to work with the vendors and industry groups to reduce costs to the greatest extent possible.

**Statement Of**

**Paul Victor**

**President**

**Anacostia & Pacific Railroad Company, Inc.**

**On Behalf Of**

**The American Short Line & Regional Railroad Association**

Before The

United States House Of Representatives

Committee On Transportation And Infrastructure

Subcommittee On Railroads, Pipelines And Hazardous Materials

Hearing On

Federal Regulatory Overreach in the Railroad Industry:
Implementing the Rail Safety Improvement Act

March 17, 2011

Anacostia & Pacific Railroad Company, Inc.
53 West Jackson Blvd.
Suite 335
Chicago, IL 60604
(718) 928-2319

I am Paul Victor, President of the New York & Atlantic Railway (NYA), a 250 miles short line railroad that operates the freight service over the Long Island Rail Road. We carry approximately 22,000 carloads annually, including 350 HAZMAT (LPG) cars. That means we take approximately 180,000 one way truck trips off the highways of New York City and Long Island annually. New York & Atlantic is one of five short lines owned by Anacostia Rail Holdings (ARC) and four of those railroads will be required to install PTC. Because the New York & Atlantic Railway operates over one of the busiest passenger corridors in the country I have been heavily involved in the Positive Train Control (PTC) issue, and our railroad is heavily impacted by this mandate.

I am also appearing here on behalf of the American Short Line and Regional Railroad Association (ASLRRA) which represents the nation's 550 Class II and III railroads.

In the time I have today I would like to make a number of points.

As you know, short line railroads are not exempt from the PTC mandate. While the statute specifies that it applies to Class I railroads, the impacts reach many of the short line and regional railroads. Railroading in the U.S is an integrated network. Short line railroads interact with their Class I partners in many ways. We cross their tracks to enter our yards. We switch cars to and from their tracks at interchange points. We often have operating rights over their tracks for various reasons, including interchange and picking up or delivering railcars to individual shippers. We cannot enter and exit the Class tracks without their permission and when we do so we must operate under their rules. Their rules will now include the PTC mandate and each Class I will be obligated under the mandate to determine whether an individual short line must be PTC equipped.

In those cases where short lines are handling TIH cars or where short lines are operating over track used by passenger trains, there is no question. Under the mandate, the short line will have to install PTC. Beyond that, each Class I railroad has the ability to require any short line that operates in any way over its property to operate under its PTC system. The Class I's have already identified some of those short lines for sure and are still working on a list of others where a final determination has not been made. In the end we believe the number of short lines covered will be well over a hundred.

Second, this is a very expensive unfunded mandate. Looking at just Anacostia Rail Holdings, the company I work for, we own or lease 36 locomotive units, 27 of which will need to be PTC equipped. The estimated cost to equip these units is currently estimated at $2.2 million. This cost includes both equipping 8 units with an AMTRAK compatible system as well as 19 units to be equipped with the GPS based nationwide system. This $2.2 million cost is equal to 5% of our companies' combined annual gross revenues as well as 92% of the combined annual capital expenditure budget. Literally, we will have to take monies we would normally use to repair and upgrade our tracks and infrastructure, and reallocate it to installation of PTC. Ultimately we could end up with safe locomotives, but with a less safe railroad to run them on.

Anacostia Rail Holdings is also an example of another issue plaguing the PTC initiative. My railroad, NYA, will equip its locomotives with one type of PTC (ACSES Type 2) because we operate over passenger railroad owned rights of way along or adjacent to the North East Corridor. Our sister roads will be installing a GPS based technology (ITCS/ETMS), since they will be operating of non-NEC rights of way. Because of the lack of interoperability between these systems, we will not have the luxury of being able to move PTC equipped locomotives from NYA to our sister roads, or utilizing PTC equipped from those roads on our property

For many short lines, like my railroad, this enormous expense is exacerbated by the fact that we don't have the luxury of outfitting just a portion of our locomotive fleet. Short lines have been successful because they offer flexible local service to many small customers. Our operations are not large enough to have two sets of locomotives, one for PTC territory and one for non-PTC territory. Consequently, a locomotive that might only be in PTC territory once a month will have to be fully outfitted and maintained.

Locomotive installation costs are not the only costs we will have to account for. Short lines will be hiring consultants, training personnel, installing new communications, computers, office equipment and wayside equipment. Perhaps the largest and yet undefined expense will be for the operation and maintenance of the new system.

Third, the vast majority of short lines are not running the kind of operations that require the presumed sophistication of PTC. Short line operations are characterized by relatively low speeds and light traffic density. I have worked in the railroad industry my entire adult life and I understand that even a single injury or fatality is something to be avoided. But surely, it is reasonable for public policy makers to balance the need for action with the cost of that action. PTC will be an enormous financial burden on our small businesses with very little impact on the safety of our railroad operations. Indeed it is likely to have an adverse impact on our short line safety. Implementing the PTC mandate will take millions of dollars away from short line track rehabilitation that does more to improve railroad safety than any other expenditure we can make.

Fourth, short line railroads serve light density customers where the cost benefit ratio of adding new service is often a very close call. One of the key factors in making that call is the cost of installing and maintaining the so-called rail switch into the customer's facility. Future switch installation cost will be much higher in PTC territory. This simply raises the "price of admission," the cost a local company will have to pay to get rail service. This added cost will drive potential customers away from rail. Where will their traffic go then? It will end up on our already overcrowded highway system. The PTC mandate will impact shippers and receivers, large companies as well as small companies. To the extent that it drives traffic from rail to truck, it will increase truck traffic and the highway congestion associated with that traffic.

Fifth, the potential for negatively impacting the national railroad network is substantial. PTC involves a vast array of satellites, computers and communication devices. Dispatch offices will be transmitting millions of bits of data in continuous data streams to

thousands of locomotives across 150,000 miles of railroad. Even with a 99.9 percent system success rate every second, we will experience 100 train shut downs a day across the rail network due to PTC malfunctions.

At the end of the day I know that the PTC mandate will remain. Notwithstanding the problems I have outlined above, I am not here to suggest that the New York & Atlantic be exempt from the mandate. We operate in a high density passenger corridor. We want to do so safely, and want to utilize every available tool to do so.

I have actually been involved in establishment of PTC platforms in Brazil, Chile and Panama. My Transportation Superintendant at NYA was the person who oversaw the installation of the PTC system currently operating on the Panama Railroad. We understand the value of PTC when PTC is prudently developed and installed,

In the instant case, I am suggesting that the federal government has imposed an enormously expensive mandate that cannot be afforded by most short lines, that will have virtually no impact on the safety of short line operations and that will dramatically reduce a short line's ability to invest in real safety improvements. Presumably the government believes this mandate is in the public interest and if that is the case, I would hope that the government would provide public monies to help pay for the cost.

I appreciate the opportunity to present these thoughts and welcome any questions.

VEOLIA
TRANSPORTATION

March 24, 2011

The Honorable John L. Mica
Chairman
House Transportation and Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Bill Shuster
Subcommittee Chairman
Railroads, Pipelines and Hazardous Materials Subcommittee
House Transportation and Infrastructure Committee
204 Cannon House Office Building
Washington, DC 20515

Dear Chairman Mica and Subcommittee Chairman Shuster:

On March 17th, the Committee's Subcommittee on Railroad, Pipeline, and Hazardous Materials held a hearing on the Congressional mandate for the implementation of Positive Train Control ("Federal Regulatory Overreach in the Railroad Industry: Implementing the Railroad Safety Improvement Act"). Congressman Elton Gallegly testified at the hearing, on the subject of the September 12, 2008 commuter rail accident in Chatsworth, California, in which 24 passengers died (in addition to the Engineer) and more than 100 were injured. In his testimony, Congressman Gallegly criticized the adequacy of the $200 million recovery fund created by Veolia Transportation and the Southern California Regional Rail Authority ("SCRRA" or "Metrolink") for victims and their families. He also addressed purported events surrounding the tragedy and its aftermath. We believe it is necessary to correct the Congressman's misstatements for the record.

Congressman Gallegly suffered a personal loss in the Chatsworth accident. His friend, Doyle Souser, father of Mackenzie Souser, the 15-year-old who testified to the Committee at the behest of the Congressman, died in the accident. For this loss, he deserves genuine sympathy, as do all of the survivors of this tragedy. However, his status as an elected official who suffered a personal loss does not entitle the Congressman to intentionally spread misinformation regarding the accident or its aftermath.

By way of background, Connex Railroad was the railroad subsidiary of Veolia Transportation that employed the engineers, conductors and managers who operated Metrolink trains from 2005 to 2010 under a 5-year contract with the SCRRA. Veolia was one of several private contractors that managed various aspects of Metrolink's operations. Prior to the exercise of the option to renew our contract, Veolia informed the SCRRA that we would not accept a renewal

Veolia Transportation, Inc.
720 E. Butterfield Road, Suite 300
Lombard, Illinois 60148
www.veoliatransportation.com

for several reasons, including the SCRRA's failure to honor its contractual obligations to adequately insure and subsequently to indemnify its contractors for the liability arising from the accident. Veolia did not have its contract taken away but declined the renewal of it.

However, this point is minor compared with several false and misleading statements that were made to the Committee about the accident and its aftermath.

Correction of False and Misleading Statements

First, Congressman Gallegly asserted that the National Transportation Safety Board (NTSB) "after a thorough investigation of the Chatsworth accident" found that Connex Railroad had "a culture of ignoring risk and accepting rule violations." This assertion is false. The NTSB's final report of its investigation of the accident made no such findings—it is completely devoid of any criticisms of Connex management or its oversight. The NTSB actually found the opposite with regard to Connex's policies, procedures and management oversight.

Second, the Congressman presented an exhibit at the hearing purporting to show the cell phone activity of Engineer Sanchez on days prior to the accident, taken from the Engineer's personal cell phone records. The Congressman asserted that Connex managers knew of this cell phone use by Mr. Sanchez and did nothing to stop it. This assertion is also false. As clearly stated in the NTSB Accident Report, the personal cell phone records of Mr. Sanchez were not available to Connex until the NTSB obtained them by subpoena in the year after the accident and there was no way that Connex managers could otherwise have known about Sanchez' pattern of violating the Connex ban on cell phones. (NTSB Accident Report, p. 31.) The NTSB concluded that the remoteness of the locomotive cab made direct observation by supervisors of illicit cell phone use nearly impossible. Even Conductor Heldebrand, who worked with Engineer Sanchez 5 days a week, 2 shifts per day, for 5 months prior to the accident, was not aware of texting or actual cell phone use aboard the train.

Third, Congressman Gallegly asserted that Conductor Heldebrand had complained to his supervisors about cell phone use by Mr. Sanchez before the accident and that he had been ignored by those supervisors. Both aspects of this allegation are also false. The NTSB investigated this allegation and found that it was without foundation. Conductor Heldebrand on one occasion a few weeks before the accident had observed Engineer Sanchez's cell phone out of his grip (bag) in the cab car of the train while the train was stopped at a station. Having a cell phone out of a grip is not a violation of either the General Code of Operating Rules (GCOR) or Federal Railroad Administration (FRA) regulations (which had no rule), but it was a violation of Connex rules. Conductor Heldebrand reminded his engineer of the Connex rule and reported his observation to his supervisor, as the Connex rule was well known to its crews and was enforced by Connex. Connex Railroad, at the time of the Chatsworth accident, had the strictest rule against cell phones in the railroad industry. Connex was the only railroad in the U.S. that prohibited not only use of a cell phone in the cab of a moving locomotive but also the

mere possession of a cell phone on the person of an engineer in the cab of a locomotive at any time. The NTSB found that as a result of this report by Conductor Heldebrand, Supervisor Rick Dahl appropriately counseled Engineer Sanchez. The NTSB report also noted that Conductor Heldebrand told the NTSB—again contrary to what Congressman Gallegly asserted—that he did not believe at that time that his observation evidenced a problem of cell phone use by his engineer. *"The conductor said the engineer acknowledged that such use was a violation of company rules. He also said he believed this to be an isolated event."* (NTSB Accident Report, p. 31)

The NTSB Found No Fault with Veolia Management Oversight

Just as significantly, the NTSB found that the performance monitoring practices and efficiency (compliance) testing of Connex Railroad management met or exceeded industry standards in all respects and did not question or criticize in any way those practices or testing. The NTSB found that the Connex policy that prohibited the possession of a cell phone out of an engineer's grip in the cab of a locomotive, whether the train was moving or stopped, exceeded industry standards; that management conducted regular testing for cellphone use violations; and that it appropriately counseled Engineer Sanchez on what were only two cell phone related incidents in more than three years at Connex since coming over from Amtrak, of 1) once in 2006 when, in a routine inspection by a supervisor, his cell phone was discovered left on inside his grip[1] and 2) the above-mentioned occasion when his conductor observed Mr. Sanchez' cell phone out of his bag while stopped at a station—neither of which incident violated any CGOR or industry rule other than Connex' industry-leading rule. With respect to these two instances, the NTSB specifically stated: *"As already noted, on two occasions in the previous 2 years he [Sanchez] had been counseled about his use of a cell phone while on duty, but neither instance suggested a pattern of violations or an ongoing, willful disregard for the rules."* (NTSB Accident Report, p 56.) Clearly, contrary to what the Congressman asserted, the NTSB found no fault with Connex rules, procedures or management oversight—or safety culture.

The men and women who made up the Connex engineer and conductor crews and their supervisory staff at Metrolink were experienced, well-trained professionals, all of whom came over to Connex from Amtrak and other railroads when the Metrolink service transitioned from Amtrak to Connex in 2005. Under its contract with the SCRRA, Connex was required to hire all Amtrak crews in good standing, including Engineer Sanchez and Conductor Heldebrand. Under Connex, efficiency (compliance) testing was increased by 60% over the level performed under Amtrak, was twice what was required of Connex under its contract with the SCRRA. During the three years before Chatsworth under Connex, these crews and management were responsible for compiling the best safety record in the 17-year history of Metrolink. It is unfair to attempt to damage the reputation of these men and women and the company that employed them based upon false information.

The Recovery Fund for Victims—Largest in the History of Passenger Rail

With regard to the $200 million recovery fund created by Veolia and the SCRRA, Congressman Gallegly asserts that $200 million is inadequate to pay the damages claims of victims and their families. To the extent that any amount of money can adequately compensate for the loss of life and or serious injuries, the facts are that the $200 million settlement constitutes the largest financial recovery in the history of passenger rail, exceeding the amounts paid on a per claim basis for the deaths and injuries suffered in the 9/11 disaster and in every other passenger rail accident in the U.S., including the 2005 Metrolink collision in Glendale, California (when Amtrak was Metrolink's operator) that only was recently settled after years of protracted litigation. Further, the federal and state courts have now approved the creation of the fund and all claimants in the pending litigation have formally agreed to the $200 million settlement, discharging all defendants from further liability. To get to the particular damages model cited by the Congressman, one would have to accept valuations that far exceed the norm in serious accident cases.

The Congressman refers to Veolia as "a French conglomerate". Veolia Transportation is a subsidiary of Veolia Environnement, S.A. based in Paris. But, Veolia Transportation is a U.S. company, based in Chicago, that employs almost 20,000 Americans, and its leadership, except for one officer, is made up of all U.S.-born citizens. Our corporate structure has no affect on the application of federal law on our operations in the U.S.

Congressman Gallegly asserted at the hearing that Veolia carries global excess insurance of $700 million that is available to pay claims. That amount is overstated, but as you know, insurance companies determine when and whether to pay claims, not insureds, and it took Veolia almost a year of hard work to persuade its domestic insurers, along with the joint insurers of the SCRRA and Veolia, to help create the $200 million recovery fund without a judicial determination of causation or liability and despite the SCRRA's full contractual indemnification of Veolia. The only alternative to the creation of this historic fund was protracted litigation that would have taken years to resolve the complex causation, liability and indemnification issues involved in this case. We are convinced that Veolia and the SCRRA did the right thing to put aside these issues to bring financial recovery to the Chatsworth victims and their families when we did. The notion that Veolia could tell its excess insurers to go beyond the historic amount of the recovery fund and make additional awards to the plaintiffs under the circumstances of this case, even if Veolia believed it justified, is simplistic and fallacious.

We appreciate your attention to this matter and the opportunity to correct the record as to the misinformation in it. We respectfully request that this letter be added to the official hearing record and shared with your staff and colleagues on the Committee. We are available to you at any time to answer any additional questions you may have.

Very truly yours,

Mark L. Joseph
Vice Chairman and CEO

cc:
Ranking Member Nick Joe Rahall
Ranking Subcommittee Member Corrine Brown
Congressman Elton Gallegly

The Fertilizer Institute

Nourish, Replenish, Grow

Ford B. West
President

March 25, 2011

The Honorable Bill Shuster
Chairman
Subcommittee on Railroads, Pipelines, and
Hazardous Materials
Committee on Transportation and Infrastructure
Washington, D. C. 20515

Dear Chairman Shuster:

The Fertilizer Institute (TFI) appreciates the opportunity to comment on the hearing held last week to review Federal regulatory overreach in implementing the *Rail Safety Improvement Act*.

TFI represents fertilizer producers, importers, wholesalers and retailers. Our mission is to promote and protect the use of fertilizer from the plant where it is manufactured to the plants where it is used and at all points in between. The U.S. fertilizer industry is a critical part of our nation's food security, provides an input that is indispensable to American agriculture and ensures a ready supply of high-quality and low-cost food for American consumers. One of our vital fertilizers is anhydrous ammonia. It is the most economical and efficient source of nitrogen for most farmers and the primary ingredient in all nitrogen fertilizers. Anhydrous ammonia is classified by the Department of Transportation as a toxic-by-inhalation (TIH) material.

TFI members who ship and receive anhydrous ammonia make safety a top priority and work daily to ensure the safe transportation of this product. They work closely with carriers to ensure tank cars and all appurtenances are in quality condition and to develop research for improved survivability of tank cars in the event an accident occurs in the future. Shippers and carriers have also been working together to develop the best routing options for the safe and secure transportation of anhydrous ammonia.

The railroads and TFI agree, that rail transportation of TIH materials is the safest way to transport these materials. TFI members must have access to rail transportation of anhydrous ammonia in order to meet the demands of U.S. farmers for optimal crop production.

We would like to highlight the following concerns with the current positive train control (PTC) requirements:

- We believe there may be other rail safety improvement projects with potentially greater safety benefits and lower costs. We believe it would be helpful to conduct a rigorous cost

Capitol View
425 Third Street, S.W., Suite 950
Washington, DC 20024

202.962.0490
202.962.0577 fax
www.tfi.org

benefit analysis of possible safety projects to ensure available funds are used as efficiently as possible;

- We want to ensure that any railroad investment in PTC technology is equitably allocated among all shippers. Railroads have stated that their preference is to allocate the entire cost of PTC technology to shippers of TIH materials. Given previous attempts by the railroads to seek relief from the common carrier obligation to transport TIH materials there are concerns that these costs will be used to raise rates until rail transportation is no longer economically feasible.

As the committee reviews rail safety and the implementation of various aspects of the *Rail Safety Improvement Act*, we look forward to working with you and all concerned parties.

Sincerely,

Ford B. West

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