COMPTROLLER GENERAL OF THE UNITED STATES
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The Honorable Harley O. Staggers
Chairman, Committee on Interstate
and Foreign Commerce
House of Representatives

Dear Mr. Chairman:

In our testimony before the Subcommittee on Transportation and Commerce, House Committee on Interstate and Foreign Commerce, on March 20, 1978 (copy enclosed), we mentioned that H.R. 11089, which proposes revision of the basic rail passenger system and for restructuring the National Railroad Passenger Corporation (Amtrak), contains several provisions we believe should be revised.

According to its sponsor, Congressman McFall,

> "the primary goal of this legislation is the development of a rational railroad passenger route system to meet our Nation's needs today and in the foreseeable future."

The underlying principle which the bill seeks to pursue is the development of a coordinated transportation system which allows the consumer a choice of services but encourages maximum economy and efficiency. There are two aspects of the proposed legislation that are intended to accomplish this goal. First, the bill provides for a major restructuring of Amtrak. Second, certain budgetary and accounting changes are proposed to bring Amtrak more in line with public rather than private sector operations.

We would like to draw your attention to the following provisions that we believe warrant reconsideration or revision.

Section 3: Designation and Implementation of a Revised Basic Rail Passenger System:

Section 3(a) calls for the Secretary of Transportation to undertake a comprehensive study of the Amtrak system and prepare preliminary recommendations for a route structure providing an optimal intercity rail passenger system based on current and future market and population requirements.

Section 3(b) provides a deadline of May 1, 1978, for publication of the Secretary's preliminary recommendations. We suggest the deletion of the phrase "on or before May 1, 1978," and in lieu thereof provide, "as soon as possible but not to exceed (insert desired number of days) days after the date of enactment of this section."

Section 4: Restructuring of the National Railroad Passenger Corporation:

Section 4(a) proposes to amend the second sentence of section 541 of title 45, United States Code (1970), by deleting the phrase, "for profit corporation." According to Congressman McFall in his comments before the House upon introducing H.R. 11089, this deletion recognizes that Amtrak is not a "for-profit" corporation and "has not operated with the goals and objectives that one finds in a normal private sector corporation." It should be noted, however, that the section 4(a) deletion would have no effect on Amtrak's corporate structure. Amtrak would still remain subject to the provisions of 45 U.S.C. 501, *et seq.*, and the District of Columbia Business Corporation Act, D.C. Code 29-901 *et seq.* If this bill is enacted, these laws may no longer be appropriate for application to Amtrak.

Section 4(c) would amend section 543 of title 45, United States Code, by reducing the number of directors from 17 to 3. The new board would be comprised of the Secretaries of Transportation and Treasury, and one member elected annually by the common stockholders of the corporation. One effect of the reduction of board members would be to increase common stock (i.e., railroad) participation on the board from 3/17 to 1/3, while at the same time completely eliminating any consumer representation on the board. Presently, 45 U.S.C. 543 provides for such representation by requiring that

> "(4) Not less than three members appointed by the President shall be designated by him, at the time of their appointment, to serve as consumer representatives, of whom not more than two shall be members of the same political party."

Section 4(e) of H.R. 11089 would make the Corporation subject to the provisions of 31 U.S.C. 665, commonly known as the Antideficiency Act, even though the Corporation is not an agency or establishment of the Government. Section 665 was intended to keep all the departments of the Government, with respect to the incurring of obligations for expenditures, within the limits and purposes of annual appropriations provided for conducting their lawful functions, and to prohibit any officer or employee of the Government from involving the Government in any contract or obligation for the payment of money for any purpose in advance of appropriations made for such purpose. Since H.R. 11089 would not change the nongovernmental status of Amtrak or its employees, section 4(e) might better accomplish its intended purposes if the particularly desired restrictions and limitations of 31 U.S.C 665 were specified rather than just making Amtrak generally "subject to" section 665. Alternatively, Amtrak officers and employees could, for section 665(a) and (b) purposes, be considered officers and employees of the United States.

Section 4(f) of H.R. 11089 would add new sections to Title 45 of the United States Code including, among others, the following subsections:

Subsection 550(b) would require the Corporation to prescribe budgetary and accounting standards in accordance with subsection 550(a) and sections 551, 552, 553 and 554 (report requirements). No Government corporation is so restricted; they are expected to prepare business-type budgets and be audited in accordance with principles and procedures applicable to commercial corporate transactions. We believe Amtrak should be treated the same.

Subsection 550(c) would require that the principles and standards developed under subsection 550(b) be approved by the Comptroller General "under the provisions of chapter 1A of title 31, United States Code." Subsection 65a of the referenced chapter specifically excludes, with limited exceptions not here pertinent, "any Government corporation or agency subject to the Government Corporation Control Act." We believe the National Railroad Passenger Corporation, as a mixed ownership Government corporation, should be consistently treated like other corporations subject to the Government Corporation Control Act and should not be be required to submit its commercial-type principles and standards to the Comptroller General for approval.

Section 551 would establish an "operations account" into which would be commingled all revenues and other receipts from the public and all direct appropriations by the Congress. Section 553 would provide a separate appropriation for general and administrative expenses. Since the Corporation as defined by 45 U.S.C. 541 "will not be an agency or establishment of the United States Government," we do not believe it should receive direct appropriations. We suggest the Corporation be financed through grants from the Secretary of Transportation as is presently the case. We oppose commingling direct appropriations with operating revenues because of the difficult control problems that would result.

Section 4(j) of the bill would amend title 45 of the United States Code by adding new section 554. Subsection (a) of this new section concerns the content of Amtrak's annual report to Congress and appears duplicative of the present report content requirements of 45 U.S.C. 548(b).

Section 554(c) would require the Comptroller General to report on the fairness and consistency of Amtrak's annual financial statements, and on the execution of Amtrak management's duties and responsibilities. The Comptroller General's report would accompany Amtrak's annual report. However, the proposed legislation would not rescind section 805 of the current legislation which provides for annual audits of Amtrak's financial statements by certified public accountants, and an annual performance audit by the Comptroller General. We believe that section 805 of the current legislation provides adequate audit and reporting authority and that section 554(c) of the proposed bill is not needed.

Finally, we would point out as a general observation that enactment of the bill would effect fundamental changes in Amtrak's structure and financing which cannot be implemented at once. We suggest, therefore, that consideration be given to including in the bill a delayed effective date and detailed transition provisions.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States

Enclosure