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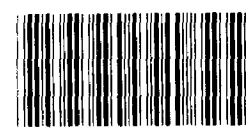
Comptroller General

OF THE UNITED STATES

Congressional Action Is Needed To Resolve The Northeast Corridor Cost-Sharing Dispute

Since Amtrak acquired the tracks and facilities of the Northeast Corridor rail system in 1976, the system users have been unable to agree on how to share millions of dollars in joint costs. Applicable law on how the costs should be shared is vague and there is no "best" cost-sharing method.

Since the ambiguities in the existing statutes make it difficult for the parties to agree on what is legal, equitable, and efficient, GAO recommends that the Congress decide in general terms how the Northeast Corridor joint operating and maintenance costs should be shared. Unless the disputing parties can arrive at a negotiated settlement within a fixed time, the Congress should direct the Interstate Commerce Commission to settle the dispute using the congressional guidance.



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CEG-81-97
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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-199306

The Honorable Bob Packwood, Chairman
The Honorable Howard W. Cannon,
Ranking Minority Member
Committee on Commerce, Science
and Transportation
United States Senate

This is our report on the Northeast Corridor cost-sharing dispute, which you requested in your June 9, 1980, letter. The report is based on the testimony we gave to the Subcommittee on Surface Transportation on March 24, 1981, with appendixes providing detailed information. At your request, we did not take the additional time needed to obtain agency comments on the report.

As arranged with the committee's office, we are sending copies to the Director, Office of Management and Budget; the Secretary of Transportation; the Acting Chairman of the Interstate Commerce Commission; the President of Amtrak; the President of Conrail; the Executive Director of New Jersey Transit; the General Manager of the Southeastern Pennsylvania Transportation Authority; the Secretary of the Maryland Department of Transportation; various Senate and House committees and Members of Congress; and other interested parties.

A handwritten signature in black ink that reads "Milton J. Jordan".

Acting Comptroller General
of the United States

D I G E S T

B Three types of rail service--Amtrak intercity passenger trains, regional commuter trains, and Conrail freight trains--jointly use the Northeast Corridor rail system tracks, services, and facilities between Washington, D.C., and Boston, Massachusetts. Since Amtrak acquired the tracks and facilities of the Northeast Corridor rail system, the users of this system have been unable to agree on how to share joint operating and maintenance costs. GAO was asked by the Senate Committee on Commerce, Science and Transportation to review this dispute. (See pp. 1 and 2.)

The dispute has arisen because some operating and maintenance costs cannot be directly attributed to a specific user, and each user wishes to pay as little as possible. Furthermore, applicable law is vague. Amtrak argues that the Railroad Revitalization and Regulatory Reform Act of 1976 prohibits it from charging any corridor user less than a full share of the joint operating and maintenance costs because that would constitute "cross subsidization." The commuter authorities argue that they legally are required to pay only the avoidable costs directly attributable to commuter trains. Conrail argues that it should not have to pay more for its freight trains than other railroads charge it for similar services. (See pp. 1 and 2.)

DOLLAR AMOUNTS INVOLVED

The difference between Amtrak's position on how corridor costs should be shared and the combined position of Conrail and the three involved commuter authorities (New Jersey Transit, Southeastern Pennsylvania Transportation Authority, and Maryland Department of Transportation) is about \$32 million for

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fiscal year 1979.) This includes \$19.3 million in Conrail freight-related costs and \$12.9 million in commuter-related costs. The cumulative backlog of disputed costs through March 1981 is about \$160 million, based on projected fiscal year 1979 figures. (See p. 4.)

Since Amtrak took over corridor ownership in 1976, the parties have been operating under interim cost-sharing arrangements providing for interim cash payments and retroactive payments when final agreement is reached. For commuter service, Conrail has paid Amtrak more under the interim agreement than it has billed the commuter agencies. In addition, the commuter authorities have not paid Conrail all they have been billed. From October 1, 1976, to December 31, 1980, Conrail was not reimbursed for \$117 million of commuter-related costs. (See p. 5.)

APPLICABLE LAW VAGUE

The statutes that apply to the Northeast Corridor cost-sharing dispute are vague. The Railroad Revitalization and Regulatory Reform Act of 1976 directs that charges to users of the Northeast Corridor should be "equitable and fair" and that "cross subsidization" among intercity, commuter, or freight rail service should not occur. However, the act does not define either "equitable and fair" or "cross subsidization." (See p. 6.)

The Rail Passenger Service Act of 1970 provides that the Interstate Commerce Commission may determine the proper amount of compensation. However, none of the involved parties has asked the Commission to intervene in the Northeast Corridor cost-sharing dispute and the Commission has not done so on its own initiative. (See p. 7.)

NO "BEST" COST-SHARING METHODOLOGY

Each of the parties to the dispute has proposed its version of the "best" cost-sharing methodology for use in dividing the joint

operating and maintenance costs of the corridor. GAO's review of similar cost-sharing arrangements in both the private and public sectors found that in the private sector parties negotiate cost-sharing arrangements, while in the public sector cost-sharing arrangements were legislatively mandated and reflect congressional goals regarding the best way to share costs among users and with the general public. [GAO found no evidence which would clearly favor one of the cost-sharing proposals and arguments put forward by the various participants in the corridor cost-sharing dispute. On the contrary, all of the parties have presented substantial economic and legal rationales in support of their proposals.] (See pp. 7 and 8.)

RECOMMENDATIONS TO THE CONGRESS

RC [The Congress should decide in general terms how the Northeast Corridor's joint operating and maintenance costs should be shared. Among the alternatives from which the Congress can choose are:

- Full allocation of all costs among users prorated according to use.
- Allocation of long-run variable costs plus a percentage of joint costs to users other than Amtrak, and allocation of the remaining costs to Amtrak.
- Allocation of long-run variable costs only to users other than Amtrak, and allocation of the remaining costs to Amtrak.]

See p. 10
This policy decision by the Congress is essential, since the ambiguities in the existing statutes make it difficult for the parties to reach agreement on what is legal, equitable, and efficient. The Congress can accomplish this by amending the statutes to specify the Federal cost-sharing policy for the corridor. Such legislation should clarify the meaning of cross subsidization if the term is retained. (See p. 10.)

To encourage negotiations, the Congress should direct the Interstate Commerce Commission to settle the dispute using this guidance if settlement is not reached within a fixed time. (See p. 10.)

AGENCY COMMENTS

At the committee's request, GAO did not take the additional time needed to obtain agency comments on the report.

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ABBREVIATIONS

Antrak	National Railroad Passenger Corporation
Conrail	Consolidated Rail Corporation
DOT	Department of Transportation
4R Act	Railroad Revitalization and Regulatory Reform Act of 1976
GAO	General Accounting Office
ICC	Interstate Commerce Commission
RSPO	Rail Services Planning Office
SEPTA	Southeastern Pennsylvania Transportation Authority
3R Act	Regional Rail Reorganization Act of 1973

CHAPTER 1

INTRODUCTION

On June 9, 1980, the Chairman and Ranking Minority Member of the Senate Committee on Commerce, Science and Transportation asked us to review the dispute among the three types of Northeast Corridor rail users (intercity passenger, freight, and commuter) regarding the share of costs each should bear.

On March 24, 1981, we testified before the committee's Subcommittee on Transportation on the results of our review. This report is based on our testimony, with appendixes providing detailed information.

WHO IS INVOLVED IN THE DISPUTE?

Three types of rail service--Amtrak intercity passenger trains, regional commuter trains, and Conrail freight trains--jointly use the Northeast Corridor rail system tracks, services, and facilities between Washington, D.C., and Boston, Massachusetts.

--Amtrak, the National Railroad Passenger Corporation, owns most of the corridor right-of-way and operates intercity passenger trains over it. Amtrak also provides maintenance, dispatching, and other services for all corridor users and is currently participating in a federally funded program, the Northeast Corridor Improvement Project, to upgrade the corridor rail system.

--Three regional commuter authorities--New Jersey Transit, Southeastern Pennsylvania Transportation Authority, and the Maryland Department of Transportation--provide commuter rail service over the corridor. Conrail, the Consolidated Rail Corporation, operates the service for the commuter authorities. It pays Amtrak for this use of the Northeast Corridor and obtains reimbursement from the commuter authorities.

--Conrail operates rail freight service on the corridor and pays Amtrak for using it.

WHAT IS THE DISPUTE ABOUT?

The three users--Amtrak, the commuter authorities, and Conrail--jointly incur some operating and maintenance costs which cannot be directly attributed to a specific user. Such joint costs are often termed base or fixed costs. They include overhead, track maintenance that does not vary

with the type or amount of track use, station maintenance, and operating personnel who cannot be avoided so long as any service is provided.

Because these costs are not directly attributable to a specific user and applicable law is vague and because each user wishes to pay as little as possible, a dispute has arisen over how the costs should be divided.

Simply stated, Conrail and the commuter authorities wish to pay less for using the corridor than Amtrak is willing to accept.

--Regarding Conrail's freight service, Conrail argues that Amtrak wants more than other railroads charge Conrail for similar services. Conrail also argues that Amtrak's use of the corridor for high-speed passenger trains results in increased operating and maintenance costs which Conrail should not have to share. Amtrak counterargues that Conrail's heavy freight trains cause the increased costs.

--Regarding commuter service, the commuter authorities argue that they legally are required to pay only the avoidable costs directly attributable to commuter trains and should not have to pay any of the base costs of the corridor. They rely on the Regional Rail Reorganization Act of 1973 (3R Act) and Interstate Commerce Commission Rail Services Planning Office (RSPO) cost-sharing standards as authority. Amtrak counterargues that the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) prohibits Amtrak from charging any corridor user less than a full share of the joint costs because that would constitute "cross subsidization."

OBJECTIVES, SCOPE, AND METHODOLGY

Our objectives were to determine if there is a best cost-sharing method for allocating Northeast Corridor costs and determine the positions of the involved parties.

We interviewed officials and obtained supporting documents on cost sharing by freight railroads, commuter operations outside the corridor, and rail passenger operations in Canada. This was accomplished by:

--Visiting 13 of the 14 railroads identified by the Federal Railroad Administration as owning tracks involved in potential intercity passenger corridors. Appendix I lists these railroads.

--Visiting eight commuter authorities and nine freight railroads involved in commuter operations, as listed in appendix II.

--Visiting five organizations in Canada, including the two major railroads in Canada, the Canadian rail passenger agency, the Canadian Government, and a transport research group, as listed in appendix III.

We also interviewed agency officials and obtained documentation on existing and proposed cost-sharing methods for the Federal airport and airway, highway, and waterway systems. We contacted the Federal Aviation Administration, Federal Highway Administration, and U.S. Army Corps of Engineers.

In order to determine the positions of the parties and dollar amounts involved, we interviewed officials and obtained documentation at Amtrak, Conrail, New Jersey Transit, Southeastern Pennsylvania Transportation Authority, and the Maryland Department of Transportation. We did not verify the dollar amounts supplied to us because our main objective was to look at how costs should be shared.

We met with officials and obtained documents from the Federal Railroad Administration, Interstate Commerce Commission (ICC), United States Railway Association, and Association of American Railroads. We also reviewed applicable laws and regulations issued by ICC's Rail Services Planning Office.

CHAPTER 2

CONGRESSIONAL ACTION IS NEEDED

TO RESOLVE THE NORTHEAST

CORRIDOR COST-SHARING DISPUTE

Millions of dollars are involved in the dispute over how the joint operating and maintenance costs of the Northeast Corridor rail system should be shared. Applicable law on how these costs should be shared is vague. There is no single "best" cost-sharing method which should be used to settle the dispute. Since ambiguities in the existing statutes make it difficult for the parties to reach agreement, the Congress needs to decide in general terms how the Northeast Corridor costs should be shared. Also, in order to encourage the parties to negotiate, the Congress needs to direct the ICC to settle the dispute using this guidance unless the parties settle the dispute within a fixed time.

WHAT ARE THE DOLLAR AMOUNTS INVOLVED?

For fiscal year 1979, the difference between Amtrak's position on how the corridor's joint operating and maintenance costs should be shared and the combined positions of Conrail and the three commuter authorities is about \$32 million. This includes \$19.3 million of disputed freight-related costs and \$12.9 million of disputed commuter-related costs. The cumulative backlog of disputed costs through March 1981 is about \$160 million, based on a projection of fiscal year 1979 figures.

The dollar amounts involved in the cost dispute for 1979 are illustrated in schedule 1. Conrail wants to pay Amtrak \$19.3 million less than Amtrak is willing to accept for freight-related services. The amounts in dispute for the three commuter authorities are: \$9.5 million for New Jersey Transit, \$3.0 million for the Southeastern Pennsylvania Transportation Authority, and \$0.4 million for the Maryland Department of Transportation.

The \$12.9 million of commuter costs in dispute represents 10 percent of the commuter authorities' estimated losses for the year ended June 30, 1979 (see schedule 2). Either fares or State and local subsidies would have to be increased substantially in the absence of additional Federal operating subsidies. The disputed amount represents 21 percent of the \$63 million in State subsidies for the three authorities for the year ended June 30, 1979. The cumulative amount--\$65 million--of disputed costs projected through March 1981

is more than the total annual State subsidies for the three commuter authorities.

The additional \$19.3 million per year that Amtrak wants Conrail to pay for corridor freight service was 11 percent of Conrail's calendar year 1979 loss and 3 percent of its 1979 Federal funding (see schedule 2). The cumulative total of disputed freight service costs projected through March 1981 is about \$97 million. The additional \$32.2 million per year that Amtrak wants Conrail and the commuters to pay for both freight and commuter service costs is 5 percent of Amtrak's fiscal year 1979 loss and 5 percent of its Federal operating subsidies (see schedule 2). The cumulative amount of disputed freight and commuter service costs projected through March 1981 is about \$160 million or 26 percent of Amtrak's loss in 1979.

Since Amtrak took over corridor ownership in 1976, the parties have been operating under interim cost-sharing agreements providing for interim cash payments and retroactive payments when a final agreement is reached. Schedule 3 illustrates Conrail's payments under the interim agreements, in comparison to Amtrak's proposed cost-sharing agreement. For fiscal year 1979, for both freight and commuter services combined, Conrail's payments to Amtrak were more than Amtrak's proposed cost-sharing agreement would call for. These imbalances are particularly serious with respect to Conrail's reimbursable services for the commuter authorities. Schedule 4 shows that Conrail paid Amtrak \$45 million more for commuter costs than it billed the commuter authorities from October 1, 1976, through December 31, 1980.

It should be noted that the commuter authorities have not paid Conrail all they have been billed. An Assistant Vice President and other Conrail officials told us they could not tell whether amounts received from the commuter authorities were for Amtrak or Conrail services. However, they said the major portion of the \$72 million shown in schedule 4 as still owed to Conrail from past billings would probably be due to the Northeast Corridor cost-sharing dispute. Schedule 4 shows that in total for October 1, 1976, to December 31, 1980, Conrail was not reimbursed for \$117 million of commuter-related costs.

In addition to the disputed amounts just mentioned, there are also a number of other railroads and commuter authorities which Amtrak believes should pay a share of Northeast Corridor operating costs. These disputed costs include charges for stations owned by Amtrak and maintenance work performed by Amtrak on Northeast Corridor tracks owned by others. In fiscal year 1979, Amtrak received \$4 million from some of these

parties. Amtrak's proposed charges for fiscal year 1979 were \$14 million, as illustrated in schedule 5.

APPLICABLE LAW IS VAGUE
AND SHOULD BE CLARIFIED

The statutes that apply to the Northeast Corridor cost-sharing dispute are vague and should be clarified. The Railroad Revitalization and Regulatory Reform Act of 1976 uses vague, undefined terms to describe how Northeast Corridor costs are to be shared among users. The Regional Rail Reorganization Act of 1973 also uses undefined terms to describe how Conrail is to be reimbursed by commuter authorities and requires that ICC'S Rail Services Planning Office issue cost-sharing standards for this purpose. Both the 3R and 4R Acts prohibit "cross subsidization," but neither defines this term.

The 4R Act directs that charges to users of the Northeast Corridor should be "equitable and fair" and that "cross subsidization" among intercity, commuter, or freight rail service should not occur. However, the act does not define either "equitable and fair" or "cross subsidization." The only indication of the meaning of the term equitable and fair is in the conference report. It says that, in determining cost sharing, the actual magnitude and impact of operations conducted for intercity passenger, freight, and commuter users should be considered.

The 3R Act directs RSPO to develop standards for computing subsidies for Conrail commuter service. The subsidies are to be based on the net "avoidable costs" of providing commuter service plus a "reasonable return" on the value of rail properties used in providing the service. The 3R Act directs that RSPO determine avoidable costs and a reasonable return. It also directs that the standards avoid cross subsidization among commuter, intercity, and freight rail services, but does not define cross subsidization.

The RSPO standards say that the dominant user of jointly used facilities should pay the base or fixed costs. The RSPO standards are based on the assumption that negotiations would resolve any dispute over cost-sharing arrangements. However, the standards are ambiguous and permit conflicting interpretations. To date, RSPO has issued nine interpretations of the standards to clarify them, but in our opinion the standards still do not provide clearcut guidance on cost allocation.

The RSPO standards do not apply to Amtrak, but they do apply to Conrail and the commuter authorities when Conrail is under contract with the authorities. This puts Conrail in

a difficult position. On the one hand, the 3R Act and RSPO standards tell Conrail how it must divide costs with the commuter authorities it provides commuter rail service for. The commuter authorities assert that they should pay Conrail only avoidable costs, relying on the 3R Act as authority. On the other hand, the RSPO standards do not apply to Conrail's contracts with Amtrak for use of the corridor. Thus, Amtrak asserts that Conrail must pay a share of the fixed or base costs for the same commuter operations in order to avoid cross subsidization, relying on the 4R Act as authority. Because cross subsidization is undefined in the applicable statutes, both Amtrak and the commuter authorities can argue that their positions do not constitute cross subsidization.

The Rail Passenger Service Act of 1970 provides that the Interstate Commerce Commission may determine the proper amount of compensation for commuter rail or rail freight services over tracks, rights-of-way, and other facilities acquired by Amtrak. However, none of the involved parties has asked the Commission to intervene in the Northeast Corridor cost-sharing dispute and the Commission has not done so on its own initiative.

The Staggers Rail Act of 1980 created the Railroad Accounting Principles Board to establish cost accounting principles for the railroad industry. However, the board is not yet set up and is not expected to issue these principles for a few years and thus will not be useful in resolving the Northeast Corridor dispute.

We believe the Congress needs to revise the applicable statutes so as to clearly indicate the Federal policy regarding cost sharing in the Northeast Corridor. Specifically, the Congress needs to decide how the various users should share the joint operating and maintenance costs for the Northeast Corridor rail system. The Congress also needs to clarify the meaning of cross subsidization if this term is used in the revised legislation.

THERE IS NO "BEST" COST-SHARING METHODOLOGY

Each of the parties to the Northeast Corridor cost-sharing dispute has proposed its version of the "best" cost-sharing methodology for use in dividing the joint operating and maintenance costs of the corridor. We reviewed cost-sharing arrangements among both private sector freight railroads and various public sector transportation activities. We also reviewed the cost-sharing proposals of

the various Northeast Corridor user groups. We found no evidence that there is a "best" cost-sharing method which should be used to settle the dispute.

The 16 private freight railroads we visited told us that cost-sharing agreements are normally arrived at through negotiation. According to one railroad official, each side tries to achieve the best financial settlement for itself, and the agreement reached reflects each party's judgment as to the least it can pay or the most it can charge.

We reviewed the various cost allocation arrangements and methodologies for Federal airport and airway, highway, and waterway systems in the United States, and for joint rail passenger and freight operations in Canada. We found that all of these were legislatively mandated. Thus, the various U.S. cost-sharing arrangements reflect congressional goals regarding the best way to share airport or highway or waterway costs among users and with the general public. The Canadian Government has mandated a cost-sharing arrangement favorable to passenger service, by requiring passenger operations to pay only the long-term variable costs of facilities used jointly with freight railroads. Amtrak pays only incremental costs to other railroads for use of tracks, facilities, and services outside the Northeast Corridor, as mandated by the Congress in the Rail Passenger Service Act of 1970.

We found no evidence which would clearly favor one of the cost-sharing proposals and arguments put forward by the various participants in the corridor cost-sharing dispute. On the contrary, all of the parties have presented substantial economic and legal rationales in support of their proposals.

REPORTS ON CONRAIL REQUIRED BY THE STAGGERS RAIL ACT OF 1980

Section 703 of the Staggers Rail Act of 1980 required the Federal Railroad Administration, the United States Railway Association, and Conrail to issue reports on the future of rail services in the Northeast by April 1, 1981. These reports were issued as required but had not been issued at the time of our testimony on the Northeast Corridor cost-sharing dispute. The following is a brief description of parts of these reports which deal with the Northeast Corridor cost-sharing dispute.

The Federal Railroad Administration report notes that the Conrail and United States Railway Association reports recommend a decrease in Amtrak's charges to Conrail for freight trackage rights. The report comments that Conrail's

cost-sharing dispute with Amtrak is no closer to being resolved today than it was when it began 5 years ago and that a settlement favorable to Conrail might have to be offset by increasing Amtrak's Federal subsidy.

The United States Railway Association report showed a \$72.1 million net loss to Conrail for fiscal years 1977 to 1980 for the Northeast Corridor commuter service. This was computed by comparing Conrail payments to Amtrak under the interim agreements, with the estimates made by Conrail and the commuter agencies of what the commuter agencies owed Conrail for service over Amtrak lines. ^{1/} The report comments that while the ICC would appear to have jurisdiction to resolve cost allocation disputes between Conrail and Amtrak, neither has chosen to pursue that remedy and thus the situation is not likely to be resolved without intervention by the Congress.

Conrail's April 1, 1981, report comments that Conrail's payments to Amtrak for commuter authorities under the interim agreements have caused a flow of cash through Conrail for the benefit of either Amtrak or the commuter agencies. The report asserts that the resolution of the Northeast Corridor cost-sharing problem is a matter of public policy involving Federal funding policies toward commuter service and Amtrak and that Conrail should not be caught in the middle. The report estimates that the disputed charges for Northeast Corridor freight operations amount to approximately \$78.7 million (comparing Conrail's position to payments to Amtrak) for April 1976 through 1980 and are projected to grow at the rate of nearly \$20 million a year.

CONCLUSIONS

The users of the Northeast Corridor Rail System have been unable to agree on how to share costs. The main area of disagreement is over who should pay the joint operating and maintenance costs of the corridor.

The RSPO standards are based on the assumption that cost-sharing disputes will be settled primarily by negotiation among the disputing parties. We think this principle is a good one, since it gives a maximum of discretion to the parties who are affected most directly. However, this principle assumes that the applicable Federal law and the underlying intent of the Congress are clear and consistent. This

^{1/}This was mistakenly labeled "Agency Payments to Conrail For Service Over Amtrak Lines" in the United States Railway Association report.

is not the case in the Northeast Corridor cost dispute. On the contrary, the applicable statutes are vague.

Other factors also limit the ability of the disputing parties to negotiate a satisfactory cost-sharing agreement. All of the parties receive extensive financial assistance from the Federal Government and are reluctant to take any action which would adversely affect the other parties and thus arouse public criticism or controversy. In addition, all of the parties are experiencing severe financial difficulties which limit their ability and willingness to accept an unfavorable cost-sharing agreement. We believe congressional action is needed to help resolve the dispute.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress take two steps in order to help settle the dispute. First, the Congress should decide in general terms how the various users should share the corridor's joint operating and maintenance costs. Among the alternatives which the Congress can choose from are:

- Full allocation of all costs among all users prorated according to use.
- Allocation of long-run variable costs plus a percentage of joint costs to users other than Amtrak, and allocation of the remaining costs to Amtrak.
- Allocation of long-run variable costs only to users other than Amtrak, and allocation of the remaining costs to Amtrak.

This policy decision by the Congress is essential, since the ambiguities in the existing statutes make it difficult for the parties to reach agreement on what is legal, equitable, and efficient. The Congress can accomplish this by amending the 3R and 4R Acts to specify the Federal cost-sharing policy for the corridor. Such legislation should clarify the meaning of cross subsidization if the term is retained. Once the committee decides how the joint operating and maintenance costs should be shared, we are available to assist in drafting appropriate legislative language.

Second, the Congress should encourage the parties to negotiate. The Congress can do this by directing the Interstate Commerce Commission to settle the dispute, using the congressional guidance discussed above, unless the disputing parties arrive at a negotiated settlement within a fixed time. This could be accomplished by amending the next-to-last sentence

in section 402(a) of the Rail Passenger Service Act of 1970, as amended (45 U.S.C. 562(a)), to read:

"In the event of a failure to agree within 90 days after a dispute arises, the Commission shall order that rail services continue to be provided, and it shall, consistent with equitable and fair compensation principles, decide, within 90 days, the proper amount of compensation for the provision of such services."

- - - - -

We asked the involved agencies to comment on the accuracy of dollar amounts in our March 24, 1981, testimony. Amtrak, Conrail, and two of the three commuter agencies had no disagreements with the dollar amounts in our testimony. For fiscal year 1979, New Jersey Transit estimates a disputed amount of \$14.0 million for New Jersey commuter services rather than the \$9.5 million indicated in our testimony, which is based on Conrail and Amtrak estimates. The difference between the two estimates does not significantly affect our testimony, which is intended to illustrate the comparative magnitude of the disputed amounts. The Southeastern Pennsylvania Transportation Authority pointed out that the testimony does not have up-to-date figures on the amounts in dispute and that Amtrak has been negligent in supplying information relative to costs within the corridor to Conrail. We used the most up-to-date figures available.

The Southeastern Pennsylvania Transportation Authority commented that Conrail and the commuter authorities should be given time to audit Amtrak's costs before the Congress sets a date for settling the dispute. We believe that settlement of the cost-sharing dispute would not preclude the commuter authorities from subsequently auditing and verifying the costs charged by Amtrak.

SCHEDULE 1
DOLLAR AMOUNTS INVOLVED
IN THE NORTHEAST CORRIDOR COST-
SHARING DISPUTE
(FISCAL YEAR 1979)

	<u>Antrak proposal</u>	<u>Conrail proposal</u>	<u>Difference</u>	<u>Cumulative difference through March 1981 a/</u>
	----- (millions) -----			
New Jersey Transit	\$23.0	\$13.5	\$9.5	\$ 47.5
SEPTA (including Delaware DOT b/)	10.0	7.0	3.0	15.0
Maryland DOT	<u>0.5</u>	<u>0.1</u>	<u>0.4</u>	<u>2.0</u>
Subtotal	<u>33.5</u>	<u>20.6</u>	<u>12.9</u>	<u>64.5</u>
Conrail freight (car mile related c/)	<u>40.6</u>	<u>21.3</u>	<u>19.3</u>	<u>96.5</u>
Total	<u>\$74.1</u>	<u>\$41.9</u>	<u>\$32.2</u>	<u>\$161.0</u>

a/ The cost-sharing dispute has existed since Antrak acquired the Northeast Corridor on April 1, 1976. We used fiscal year 1979 figures to project the cumulative backlog of disputed costs through March 1981. We multiplied the 1979 difference times 5—the number of years the dispute has existed—to arrive at the cumulative difference.

b/ DOT—Department of Transportation.

c/ Expenses not covered by specific agreement (such as fuel costs) which would be included in computing a car-mile rate.

SCHEDULE 2
NORTHEAST CORRIDOR DISPUTED
AMOUNTS AS COMPARED TO RAIL
REVENUES, LOSSES, AND SUBSIDIES OF
INVOLVED PARTIES FOR 1979 a/

	<u>Disputed</u> <u>amount b/</u>	<u>Revenues</u>	<u>Operating</u> <u>loss</u>	<u>Federal</u> <u>subsidy c/</u>	<u>State</u> <u>subsidy</u>
	----- (millions) -----				
Conrail freight (car mile related)	\$19.3	\$4,033.6 (d)	\$178.2 (11%)	\$729.8 (3%)	not applicable
New Jersey Transit e/	9.5	42.9 (22%)	71.5 (13%)	37.0 f/ (26%)	34.5 (28%)
SEPTA (including Delaware DOT)	3.0	34.1 (9%)	50.8 (6%)	19.4 (15%)	27.1 (11%)
Maryland DOT e/	<u>0.4</u>	1.8 (22%)	2.6 (15%)	1.3 (31%)	1.3 (31%)
Total disputed amount compared to Amtrak figures	<u>\$32.2</u>	381.3 (8%)	619.8 (5%)	600.0 (5%)	not applicable

Note: Numbers in parentheses are the percentages the disputed amount is of the given figures.

a/Disputed amounts and Amtrak figures are for the year ended September 30, 1979. Conrail amounts are for calendar year 1979. All other figures are for the year ended June 30, 1979.

b/The disputed amount is the difference between Amtrak and Conrail positions shown in schedule 1.

c/Subsidy amounts are for operating losses only except for the Conrail Federal subsidy which is the amount of Conrail preferred stock issued to the Federal Government in 1979.

d/Less than 1 percent.

e/Revenue, operating loss, and subsidy figures are estimates.

f/The Federal subsidy is more than the State subsidy because the Surface Transportation Assistance Act of 1978 permitted the use of fare increases as a portion of the local contribution. The 1978 fare increase was included as a local contribution but is reflected in operating revenues.

SCHEDULE 3
PAYMENTS BY CONRAIL
TO AMTRAK COMPARED
WITH AMTRAK'S PROPOSED
COST-SHARING AGREEMENT
(10-01-76 to 9-30-79)

	<u>New Jersey</u> <u>Transit</u>	<u>SEPTA</u>	<u>Maryland</u> <u>DOT</u>	<u>Total</u> <u>for commuter</u>	<u>Freight</u> <u>operating</u>
	----- (millions) -----				
Conrail payments to Amtrak	\$54.5	\$60.1	\$0.7	\$115.3	\$108.6
Amtrak proposal a/	<u>68.7</u>	<u>28.5</u>	<u>0.9</u>	<u>98.1</u>	<u>130.4</u>
Conrail over- payment to Amtrak	<u>(\$14.2)</u>	<u>\$31.6</u>	<u>(\$0.2)</u>	<u>\$17.2</u>	<u>(\$21.8)</u>

a/Excludes return on investment.

Fiscal year 1979 only

Conrail payments to Amtrak	\$20.0	\$18.0	\$0.3	\$38.3	\$36.3
Amtrak proposal	<u>23.0</u>	<u>10.0</u>	<u>0.5</u>	<u>33.5</u>	<u>40.6</u>
Conrail over- payment to Amtrak	<u>(\$3.0)</u>	<u>\$8.0</u>	<u>(\$0.2)</u>	<u>\$4.8</u>	<u>\$(4.3)</u>

SCHEDULE 4
UNREIMBURSED CONRAIL
COMMUTER SERVICE EXPENSES
(10-1-76 to 12-31-80)

	<u>New Jersey</u> <u>Transit</u>	<u>SEPTA</u>	<u>Maryland</u> <u>DOT</u>	<u>Total</u>
	----- (millions) -----			
Total amount Conrail billed commuter authorities for operating commuter service	\$331.0	\$361.0	\$4.0	\$696.0
<hr/>				
Amount Conrail billed commuter authorities for Amtrak costs	\$90.0	\$29.4	\$0.8	\$120.2
<u>Minus</u>				
Conrail payments to Amtrak for commuter service	<u>82.4</u>	<u>81.6</u>	<u>1.2</u>	<u>165.2</u>
<u>Equals</u>				
Amount Conrail paid Amtrak over what it billed commuters	(\$7.6)	\$52.2	\$0.4	\$45.0
<u>Plus</u>				
Total amount still owed to Conrail by commuters from Conrail billings for Amtrak and Conrail services	<u>42.9</u>	<u>29.1</u>	<u>-</u>	<u>72.0</u>
<u>Equals</u>				
Conrail commuter service expenses not reimbursed	<u>\$35.3</u>	<u>\$81.3</u>	<u>\$0.4</u>	<u>\$117.0</u>

SCHEDULE 5
AMTRAK-PROPOSED CHARGES
TO OTHER RAILROADS AND
COMMUTER AUTHORITIES
FOR CORRIDOR USE
(FISCAL YEAR 1979)

<u>User</u>	<u>Amtrak-proposed charge</u> <u>to user</u>
	(millions)
MBTA <u>a/</u>	\$ 6.4
Long Island Railroad	6.2
PATH <u>b/</u>	1.2
Delaware and Hudson (freight)	0.2
MTA/CTA <u>c/</u>	0.1
Baltimore and Ohio Railroad	<u>0.1</u>
Total	<u>\$14.2</u>

a/Massachusetts Bay Transportation Authority.

b/Port Authority Trans Hudson.

c/Metropolitan Transportation Authority (New York)/
Connecticut Transportation Authority.

FREIGHT RAILROADS VISITED BY GAO
WHICH OWN TRACK IDENTIFIED
AS PART OF A POTENTIAL INTERCITY
PASSENGER CORRIDOR 1/

Atchison, Topeka and Santa Fe Railway

Burlington Northern

Chicago, Milwaukee, St. Paul and Pacific Railroad

Consolidated Rail Corporation

Fort Worth and Denver Railway

Illinois Central Gulf Railroad

Louisville and Nashville Railroad

Missouri-Kansas-Texas Railroad

Missouri Pacific Railroad

Richmond, Fredericksburg and Potomac Railroad

Seaboard Coast Line Railroad

Southern Railway

Southern Pacific

1/GAO visited all the railroads identified as owning tracks in potential intercity rail passenger corridors in the Federal Railroad Administration's February 1980 and April 1980 reports on "Rail Passenger Corridors," except for Union Pacific Railroad, which refused to be included in the review.

COMMUTER AUTHORITIES AND FREIGHT
RAILROADS OPERATING COMMUTER SERVICE VISITED BY GAO

Commuter authorities

Cal Trans

Connecticut Department of Transportation

Maryland Department of Transportation

Massachusetts Bay Transportation Authority (Boston)

Metropolitan Transportation Authority (New York)

New Jersey Transit

Regional Transit Authority (Chicago)

Southeastern Pennsylvania Transportation Authority

Freight railroads operating
commuter service

Boston and Maine

Burlington Northern

Chessie System

Chicago and Northwestern

Chicago, Milwaukee, St. Paul and Pacific Railroad

Consolidated Rail Corporation

Illinois Central Gulf Railroad

Long Island Railroad 1/

Southern Pacific

1/The majority of Long Island Railroad's operations are passenger related.

ORGANIZATIONS IN CANADA
VISITED BY GAO

Canadian Institute for Guided Ground Transport
Canadian National (railroad)
Canadian Pacific (railroad)
Canadian Transport Commission
VIA Rail Inc. (Canadian rail passenger organization)

DESCRIPTION OF THE NORTHEAST
CORRIDOR AND INVOLVED PARTIES

NORTHEAST CORRIDOR

The Northeast Corridor is the 456-mile spine railroad system between Boston, Massachusetts, and Washington, D.C. Amtrak owns rail lines from New Haven, Connecticut, to Springfield, Massachusetts, and from Philadelphia to Harrisburg, Pennsylvania, in addition to owning most of the corridor right-of-way. The railroad system is electrified between Washington, D.C., and New Haven, Connecticut.

The corridor right-of-way is owned by the National Railroad Passenger Corporation (Amtrak), except for the following segments:

- The approaches (about 1 mile) to Union Station in Washington, D.C., are owned by the Washington Terminal Company, a joint Amtrak/Chessie System arrangement.
- New Rochelle, New York, (northeast of New York City) to the Connecticut/New York border (about 7 miles) is owned by the New York Metropolitan Transportation Authority.
- Connecticut/New York border to New Haven, Connecticut, (about 47 miles) is owned by the Penn Central Trustees and is leased to the State of Connecticut.
- Rhode Island/Massachusetts border to Boston South Station (about 38 miles) is owned by the Massachusetts Bay Transportation Authority.
- Yard tracks at Boston South Station are owned by the Boston Redevelopment Authority.

Amtrak operates intercity passenger trains on the entire corridor, and freight and commuter trains also operate over most of the corridor. Through freight trains extensively use the corridor between Washington and Newark, New Jersey, but there is only a small amount of such service north of Newark. Local freight service is provided on almost all of the corridor. Commuter trains operate between Baltimore, Maryland, and Washington, D.C.; Wilmington, Delaware, and Philadelphia, Pennsylvania; New York City and New Haven, Connecticut; in New Jersey; and around Boston, Massachusetts. Commuter trains account for most of the corridor traffic in the areas around New York City.

The rail properties acquired by Amtrak had been part of the bankrupt Penn Central estate, which transferred them to Conrail shortly before Amtrak's purchase of the Northeast Corridor in April 1976. The Railroad Revitalization and Regulatory Reform Act of 1976 included a provision stating that rail freight and rail commuter service, in addition to Amtrak's intercity passenger service, were to continue to operate over the corridor.

The Northeast Corridor Improvement Project (NECIP) officially began on March 31, 1976. The federally funded improvement project was to provide for rebuilding the corridor from Boston to Washington so that Amtrak can operate intercity passenger trains at speeds of up to 120 miles per hour and thus reduce running times between Washington and New York to two hours, 40 minutes and between New York and Boston to 3 hours, 40 minutes, each with five intermediate stops. However, the Reagan administration has proposed reducing the amount of Federal funding for NECIP; consequently, speed and running time goals may not be met.

National Railroad Passenger Corporation

The National Railroad Passenger Corporation, or Amtrak as it is commonly known, was established by the Rail Passenger Service Act of 1970. Amtrak was intended to be a for-profit, non-governmental corporation designed to halt the nationwide decline of intercity rail passenger service. However, since 1971 when Amtrak became responsible for managing and developing the Nation's intercity rail passenger service, it has required increasing amounts of taxpayer assistance for its day-to-day operations and for investments in improved facilities and equipment. Its operating revenues grew from \$153 million in 1972 to \$436 million in fiscal year 1980, but during the same period its operating expenses increased from \$306 million to over \$1.1 billion. Federal grants for Amtrak's operating losses total more than \$3.3 billion through fiscal year 1980. In addition, the Government has guaranteed loans of \$900 million and provided grants of about \$686 million to Amtrak through 1980 for capital improvements, primarily new passenger cars and locomotives.

Until the Rail Passenger Service Act was passed in 1970, it appeared that passenger trains might disappear in a relatively short time. At that time the Congress clearly stated that it was in the public interest to provide for continued and improved intercity passenger rail service and established Amtrak to do this. The Federal goal for passenger train service was defined at that time to include a national route structure and a rate

structure that would compete with the rates of other modes of transportation. To meet this goal, large and continued Federal expenditures have been required for capital improvements and operational deficits.

Even though Amtrak has taken over many of its own operating functions, it must still rely on other railroad companies to a great extent. Except in the Northeast Corridor, which Amtrak now owns, the railroads own and maintain the tracks and other right-of-way facilities Amtrak uses. In addition, the railroads control actual train operations and dispatching, provide operating crews, and routinely inspect and service many of the trains en route.

The railroads providing their services and facilities charged Amtrak \$305 million in fiscal year 1980. These charges were over one-fourth of Amtrak's total operating expenses and absorbed 70 percent of its operating income. The railroad services and their costs are governed primarily by passenger service contracts Amtrak negotiates with each performing railroad.

Consolidated Rail Corporation

The Consolidated Rail Corporation (Conrail) is also a for-profit, non-governmental corporation. Under the Regional Rail Reorganization Act of 1973, Conrail was to acquire all interests, including properties, of those railroads of the Midwest and Northeast regions deemed insolvent and unable to reorganize within the framework of the Bankruptcy Act and to restructure them into an economically viable system capable of providing adequate and efficient service. In creating Conrail, the Congress established a 17,000-route-mile system serving 16 Northeastern and Midwestern States, the District of Columbia, and two Canadian provinces.

On April 1, 1976, Conrail began operations with the mandate to rehabilitate the rail facilities and revitalize the rail freight service of the Northeast and Midwest, which had been operated by six collapsing, bankrupt railroads. The purpose was to give shippers first-class service and to remove the burden of subsidizing the railroad from the shoulders of the American taxpayer. Conrail's 1979 annual report said its 17,000-route-mile system comprises 8.9 percent of America's rail route miles, but originates, terminates, or handles 21.8 percent of the Nation's rail traffic.

The six railroads originally incorporated into Conrail were largely freight railroads. However, some also provided

commuter service for State and regional transportation authorities. The 3R Act required Conrail to continue providing commuter services if State and regional transportation authorities agreed to compensation payments. Conrail operates intercity rail passenger service for Amtrak outside of the Northeast Corridor and, as an independent contractor, provides suburban rail commuter services for State and regional agencies. The States and agencies involved are the New York Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Southeastern Pennsylvania Transportation Authority, and the Maryland Department of Transportation.

Amtrak and the commuter agencies establish policy for fares, frequency of service, station stops, and levels of maintenance for cars, locomotives, stations, and track. Conrail's contractual responsibility is to provide the services specified as efficiently and economically as possible. This includes the operation and control of trains and, with regard to the suburban rail services, staffing of stations, and maintaining or arranging for others to maintain equipment, track, and other facilities.

Conrail began operations on April 1, 1976, with a Federal funding commitment of \$2.1 billion. In 1978, the Congress authorized an additional \$1.2 billion, bringing the total Federal commitment to \$3.3 billion. The original \$2.1 billion authorization was fully drawn down in March 1979. Conrail drew down \$2.655 billion of the \$3.3 billion by the end of calendar year 1979. The Staggers Rail Act of 1980, which was signed October 14, 1980, provided for an additional \$329 million of Federal funding.

New Jersey Transit

The New Jersey Transit passenger rail system consists of commuter rail, light rail, and rapid rail service and facilities. Passenger rail service presently operates over 490 route miles in 11 counties. The two rapid rail services, PATH and PATCO, operate in three counties on almost 28 route miles of track serving over 90,000 passengers daily. The Newark City Subway, a light rail system serving the City of Newark, operates over 4.2 miles of track and carries 15,000 passengers daily.

New Jersey Transit contracts with Conrail for the day-to-day operations of 11 rail lines serving 16 counties. During 1979, approximately 68,000 passengers were carried daily. The regional rail passenger system operated by New Jersey Transit involves service on Amtrak's Northeast Corridor and three Conrail divisions.

Conrail provides electrified rail commuter service from Trenton to New York's Pennsylvania Station via a portion of the Northeast Corridor, linking Boston and Washington, D.C. Service is provided for patrons in Mercer, Union, Middlesex, and Essex counties. A branch line between Princeton and Princeton Junction shuttles passengers to the Northeast Corridor Line.

Since 1976, the State has exercised its option under Federal law to take title to most rail properties of New Jersey's bankrupt lines. New Jersey Transit now owns nearly all passenger rail rights-of-way, coaches, and stations with the exception of the Northeast Corridor Line. It currently contracts with Amtrak and Conrail for all rail maintenance facilities that service State-owned equipment on each passenger rail line in New Jersey.

For the year ended June 30, 1980, for New Jersey Transit rail operations expenses were \$125 million, revenues were \$49 million, and subsidies were \$76 million, including an estimated Federal subsidy of \$33 million.

Southeastern Pennsylvania Transportation Authority

The Southeastern Pennsylvania Transportation Authority's (SEPTA's) commuter rail operations are divided into two districts, both of which are contracted to Conrail to operate. The Reading District operates outside of the Northeast Corridor. The Philadelphia District's operations are on-corridor and cover the suburbs of Trenton, Wilmington, and Paoli. SEPTA commuter rail service on the Northeast Corridor includes service for the Delaware Department of Transportation as part of its Philadelphia District. The two districts each total about 400 trains each weekday, for a total of almost 800 trains per weekday.

The SEPTA commuter rail service involves 365 route miles of track including 151 miles owned by SEPTA, 102 miles owned by Conrail, and 112 miles owned by Amtrak. All of the Amtrak-owned route miles are electrified.

Conrail operates the commuter rail service with SEPTA providing the equipment. In 1979 SEPTA exercised its option to purchase rail lines from Conrail. SEPTA has a trackage rights agreement with Conrail permitting Conrail to run freight trains on SEPTA-owned tracks with compensation based on the Rail Services Planning Office standards as long as Conrail operates SEPTA's commuter service.

For the year ended June 30, 1980, SEPTA commuter rail expenses were \$101 million, revenues were \$38 million, and estimated Federal subsidies were \$16 million.

Maryland Department of Transportation

The major components of the rail passenger system in Maryland are the National Railroad Passenger Corporation (Amtrak) intercity service and the subsidized commuter rail services. Amtrak service is a part of its nationwide intercity service network. The commuter system is operated by the Chessie System and Conrail and basically serves workers commuting to Washington, D.C.

The Chessie operates 18 weekday trains into Washington, D.C., with approximately 4,900 daily passenger trips each weekday. Amtrak operates a "long local" train called the Chesapeake between Philadelphia and Washington which is subsidized by Maryland and Pennsylvania and which typically carries 630 people each weekday.

Conrail operates two morning and two evening trains during rush hours between Penn Station in Baltimore and Union Station in Washington over the Amtrak mainline. Approximately 1,350 passengers ride the four trains each weekday.

Maryland's subsidy payments to the Chessie System are estimated at \$2.5 million annually. Maryland also pays the operating deficit on the Conrail commuter service of approximately \$500,000 annually. Maryland's cost to lease and maintain New Jersey Transit commuter cars (about \$500,000 annually) is also attributable to the Conrail commuter service. Operating deficits on the Chesapeake, Amtrak's local train between Washington and Philadelphia, are jointly funded by Maryland and Pennsylvania. Maryland will pay 84 percent of the estimated \$86,000 loss for the year ending June 30, 1981.

The Chessie and Conrail commuter service, and the Chesapeake, are eligible for limited Federal operating assistance under the Federal Public Transportation Act of 1978. These Federal funds cover 40-50 percent of the commuter operating deficits subsidized by the Maryland Department of Transportation.

DESCRIPTION OF APPLICABLE LAW

Three statutes are applicable in determining how costs should be shared among the users of the Northeast Corridor tracks: (1) the Rail Passenger Service Act of 1970, (2) the Regional Rail Reorganization Act of 1973, and (3) the Railroad Revitalization and Regulatory Reform Act of 1976.

The Rail Passenger Service Act created the National Railroad Passenger Corporation (Amtrak) to provide improved intercity passenger service. The 3R Act authorized the development of a "Final System Plan" (which has now been adopted) to create a financially self-sustaining rail service system that satisfied rail service needs in the Midwest and Northeast. It created the Consolidated Rail Corporation (Conrail) to provide certain rail services, and authorized it to acquire rail properties, as designated by the Final System Plan, from bankrupt railroads. Conrail was to provide rail service (commuter, as well as freight), among other situations, wherever a financially responsible party (such as a State or local transportation authority) would make rail service continuation payments to subsidize any unprofitable services. The continuation payment is to cover "the difference between the revenue attributable to such rail properties and the avoidable costs of providing rail service on such properties, together with a reasonable return on the value of such properties." 1/ The 3R Act also created the Rail Services Planning Office within ICC to, among other things, issue standards for determining "revenue attributable to the rail properties," "avoidable costs," and "a reasonable return." 2/

The 4R Act expanded the 3R Act to accomplish many of its objectives nationally and made certain substantive changes in the 3R Act. It added to the RSPO's responsibilities the issuance of

"* * * standards for the computation of subsidies for rail passenger service (except passenger service compensation disputes subject to the jurisdiction of the Commission under section 402(a) of the Rail Passenger Service Act (45 U.S.C. 562(a))), which are consistent with the compensation principles described in the

1/3R Act, §304(c)(2)(A), 45 U.S.C. §744(c)(2)(A).

2/3R Act, §205(d)(6), 49 U.S.C. §10362(b)(6).

final system plan and which avoid cross subsidization among commuter, intercity, and freight rail service* * *." (Emphasis added.) 1/

The 4R Act also provided for carrying out the Northeast Corridor Improvement Project. It authorized Amtrak to acquire the necessary properties and to make arrangements with Conrail, commuter agencies, and others for freight and commuter services in the Northeast Corridor.

"* * * on such terms and conditions as are necessary to reimbursement for costs on an equitable and fair basis, except that cross subsidization among intercity, commuter, or rail freight services is prohibited." (Emphasis added.) 2/

Under the scheme set up by these various laws, properties were conveyed to Conrail which, in turn, transferred to Amtrak certain rail properties in the Northeast Corridor, retaining operating easements for its freight service and for its operation of subsidized commuter passenger service. Amtrak continues its intercity passenger service in the corridor. A dispute over cost sharing among the users of the corridor developed.

The applicable law governing the issue of how costs are to be shared by the users of the Northeast Corridor is vague because the meaning of "cross subsidization" is not defined in any pertinent statute. While it seems clear that the prohibition of cross subsidization requires that users bear costs attributable to them, it is not at all clear who is to bear fixed common costs (base costs)--i.e. costs, such as upkeep of drainage systems and repair of vandalized tracks, which are not attributable to any single user and will be incurred regardless of usage. As the U.S. Court of Appeals for the Third Circuit recently pointed out, the prohibition of cross subsidization could be reasonably interpreted to mean one of two things regarding fixed common costs. 3/ It could be interpreted to mean that fixed common costs should be allocated among the users or it could be interpreted to mean that

1/3R Act, §205(d)(5)(A), as added by the 4R Act, §309, 45 U.S.C. §10362(b)(5)(A).

2/4R Act, §701(a)(6), 45 U.S.C. §851(a)(6).

3/Southeastern Pennsylvania Transportation Authority v. Interstate Commerce Commission, Rail Services Planning Office, Nos. 78-2345 and 80-1237 (3d. Cir., March 12, 1981).

the former position, one could argue that if one service were required to pay all fixed common costs, it would be subsidizing the other users since the other users would not be paying costs they would otherwise have to assume. In support of the latter position--i.e., that one service (dominant user) bear all fixed costs--one could argue that the service paying those costs would not be subsidizing the others since it would not be paying any more than it would have to pay if it were the only user.

While the RSPO standards, which provide for fixed common costs to be paid by the dominant user, are applicable in disputes between Conrail and the commuter agencies, they are not applicable in resolving disputes that involve Amtrak. The Rail Passenger Service Act provides that the Interstate Commerce Commission can decide on the proper amount of compensation in the event of a failure of parties to agree on agreements for provision of commuter rail or rail freight services over tracks, rights-of-way, and other facilities acquired by Amtrak. The Commission's determination is to be consistent with "equitable and fair compensation principles" and "shall not permit cross subsidization among intercity, commuter, and rail freight services." 1/

1/Rail Passenger Service Act of 1970, §402(a), 45 U.S.C. §562(a).

COST-SHARING ARRANGEMENTS
AND METHODOLOGIES

The following is a description of cost-sharing arrangements and methodologies used by freight railroads, Amtrak trains, commuter rail operations outside the Northeast Corridor, and Canadian passenger trains. Also described are how costs are shared and cost allocation studies for the Federal airport and airway, highway, and waterway systems.

FREIGHT RAILROADS

In the United States, freight railroads negotiate joint facility or trackage right agreements in order to use the facilities or tracks of another freight railroad. These agreements generally fully allocate maintenance and operating expenses among users on the basis of usage, and add a return on investment.

Freight railroad officials told us that maintenance and operating costs incurred for the shared track segments and/or facilities are added up and divided between the owning railroad and tenant railroad(s) on a percentage-of-use basis. This use basis could be the number of cars, trains, tons, car miles, or train miles each railroad operated over the involved trackage or in and out of the shared facility.

In addition to fully allocating maintenance and operating expenses, trackage right agreements provide for sharing taxes plus a return on investment to the owning road. Taxes and return on investment are either shared on the same basis as maintenance and operating expenses or shared equally by the owning and tenant railroad(s)--that is, split 50-50.

Rather than totaling up monthly operating and maintenance costs, some railroads charge tenant roads a flat rate per car, car mile, train, or train mile. The flat rate is a negotiated estimate of the maintenance and operating expenses, taxes, and return on investment for the trackage and/or facility covered in the agreement. The flat rate typically escalates yearly on the basis of the Association of American Railroads' index of prices and wages. Some of the railroads contacted preferred the flat rate agreement because of the ease in billing, the reduced costs associated with accumulating monthly data, rising accounting costs, and the reduced potential for disputing itemized costs and charges.

Conrail estimates that operating costs would be about 15 cents a car mile if the Northeast Corridor were used only for rail freight. We looked at flat car mile rates and average costs per car mile for some major agreements at the freight railroads we visited. We reviewed the flat car mile rates charged in 23 agreements involving four railroads. They ranged from 10 to 26 cents a car mile, with only two agreements exceeding 20 cents a car mile. We also reviewed actual costs for 18 major agreements, at six railroads. The cost per car mile ranged from a low of 8 cents a car mile to a high of 32 cents a car mile with only two instances exceeding 20 cents a car mile. The 32 cents rate involves use of a joint freight terminal.

AMTRAK PAYMENTS TO FREIGHT RAILROADS
OUTSIDE THE NORTHEAST CORRIDOR

Amtrak pays freight railroads outside the Northeast Corridor incremental costs for use of their tracks and facilities and provision of services, under the provisions of the Rail Passenger Service Act of 1970. Thus, although Amtrak negotiates contracts with the freight railroads, there are statutory constraints on these negotiations.

Amtrak's contracts with 20 U.S. railroads allow it to run its intercity passenger trains on their properties. Initially, Amtrak negotiated contracts requiring payments for expenses incurred solely for the benefit of passenger services plus certain costs common to freight and passenger service that would be avoidable if passenger services were not provided. Since it was difficult to determine exactly which of these common costs were incurred because of passenger service, Amtrak agreed to pay the railroads an additional 5 percent of the total reimbursable costs under the contract. Amtrak still has its original agreements with 5 railroads, but it has negotiated amended agreements with 14 railroads providing for payment of incremental costs as well as for performance incentives. For one railroad, Amtrak has a special operating agreement involving only use of track.

COMMUTER RAIL OPERATIONS OUTSIDE
THE NORTHEAST CORRIDOR

Commuter rail authorities outside the Northeast Corridor pay freight railroads for providing commuter rail service. Cost allocation arrangements for these situations vary widely. In most cases cost-sharing agreements are negotiated between the commuter authorities and the freight railroads. In one case a freight railroad is reimbursed only for the excess of out-of-pocket costs over revenues for commuter operations. Nothing is received for track maintenance

costs. Officials from this freight railroad told us that they began to receive reimbursement for commuter operations only when they tried to abandon the commuter service. At the opposite extreme is the case of a commuter authority which is required by State law to pay fully distributed costs.

In the case of some commuter services operated by Conrail in the Northeast (not on Northeast Corridor tracks owned by Amtrak), the ICC's Rail Service Planning Office cost-sharing standards apply. In these instances, Conrail and the involved commuter authorities have negotiated contracts for off-corridor operations providing for one user to pay the base or fixed costs and the other user to pay avoidable costs. The RSPO standards direct the use of a speed factored gross ton formula to allocate track maintenance costs. This formula includes factors intended to adjust for speed and weight differences of trains, but is of questionable validity since it has not been validated by either statistical studies of past operating experience or an engineering analysis of track wear relationships.

CANADIAN PASSENGER TRAINS

In Canada, passenger trains are charged long-term variable costs by the freight railroads which operate them. This cost-sharing method was mandated by the Canadian Government. Detailed costing manuals, which are approved by the Canadian Government, have been developed by the railroads to define and allocate costs.

The official definition of variable cost is "the long-run marginal cost of output, being the cost of producing a permanent and quantitatively small change in the traffic flow of output, when all resource cost inputs are optimally adjusted to change." Canadian officials told us that about 75 to 85 percent of the freight railroads' costs are classified as variable.

Track and roadway maintenance costs are allocated using a statistical technique known as multiple regression analysis. This analysis has shown most track and roadway maintenance costs to be a function of gross-ton miles, yard and train switching minutes, and miles of roadway. Unit costs are computed for gross-ton miles and yard and train switching minutes and used to allocate costs to passenger trains. Track maintenance costs related to miles of roadway are considered fixed and thus not allocable to passenger trains. We also found that the Canadian Institute of Guided Ground Transport has developed an engineering and economic approach to cost analysis using wear modeling and engineering analysis

of track component life cycles. However, this approach is not currently being used to allocate cost by the Canadian railroads.

FEDERAL AIRPORT AND AIRWAY SYSTEM

Fees were legislatively mandated to help cover the costs of the Federal airport and airway system. Although several studies have been conducted by the Federal Aviation Administration (FAA) to determine how to equitably allocate costs among users, the Congress has not adopted any of the recommended cost-sharing methods.

In September 1973, the Department of Transportation submitted a study to the Congress which allocated total airport and airway system costs for the period 1965 through 1975 to users and compared allocated costs with use charge revenues. ^{1/} That study concluded that, while taxes collected from air carriers paid 95 percent of the allotted air carrier cost, taxes on general aviation paid less than 20 percent of its allocated costs. The study recommended full recovery of all costs allocated to users. It analyzed 10 cost allocation methods and chose the long-run marginal cost allocation method as the most satisfactory one. This method allocated system costs to users by finding the additional cost resulting from providing an extra unit of service to a class of user. Remaining residual costs are then allocated to users in the same proportion as the basic marginal proportions. The study found that the existing use fee structure recovered about half of the total system costs, and that the other half was being covered by general tax revenues.

Subsequent to the 1973 study, the executive branch made several attempts to obtain legislation revising use taxes. However, no congressional action was taken on the requested revisions.

FAA, in 1978, decided that a reexamination of user cost responsibility and use charge revenues was in order and performed the "Financing the Airport and Airway System Cost Allocation and Recovery Study." It recommended use of one of the following two cost allocation methods:

^{1/}"Airport and Airway Cost Allocation Study: Determination, Allocation, and Recovery of System Costs," hereafter referred to as the 1973 study.

- Requirements for minimum service method. This method identifies a portion of airport and airway system costs as costs incurred to implement the public policy of a common airport and airway system meeting the requirements of all users. The users are held responsible only for the minimum cost of those services they actually require. As total system costs are not fully allocated, residual costs are attributed to public policy and charged to the general public.
- New investment/marginal cost method. This method allocates airport and airway system costs directly to the user responsible for incurring them, where possible, and a combination of cost allocation methods is used in those cases where direct allocation is not possible.

Again, FAA found that costs were not being recovered by the current use fee, or tax structure, nor were costs being recovered proportional to use by the classes of service, particularly in the case of general aviation. As of fiscal year 1981, use taxes as established by the 1970 act have expired or changed to lower rates. The system is now being financed largely through general tax revenues.

FEDERAL-AID HIGHWAYS

With the Highway Revenue Act of 1956, the Congress established the Highway Trust Fund to finance its principal highway construction programs. This fund is supported by a set of taxes on users of the highways, the most important of which is the tax on motor fuels. When it established the fund, the Congress declared that the highway tax burden should be distributed equitably among the various classes of persons using these highways. This policy reflected congressional recognition that different kinds of vehicles affect (or benefit from) highway program costs unequally and thus should be taxed at different rates.

To assist the Congress in making highway tax decisions, the 1956 act also called for a cost allocation study. In this study, an attempt was made to assign the responsibility for highway costs among the various classes of users. The results of that study and a supplementary report, published by the Bureau of Public Roads in 1961 and 1965 and then updated by the Federal Highway Administration in 1969 and 1975, have been considered by the Congress when it has changed highway-user taxes. Although these cost allocation studies have influenced the choice and mix of highway taxes in

several instances, their results have never been the exclusive basis for legislative action.

The incremental cost method used in previous highway cost allocation studies seeks to assign each element of highway cost to the vehicles that occasion it. Using accepted design procedures, highway costs are divided into increments that meet the requirements of increasingly larger and heavier vehicles. The costs of providing roads adequate for basic vehicles (automobiles and light trucks) are allocated to all vehicles on the basis of road use; the costs of providing successive increments of roads adequate for larger and heavier vehicles are allocated only to these heavier vehicles, again, on the basis of road use. Thus, automobiles pay for only a portion of the first increment (typically well over half of the costs), but the heaviest class of vehicles pays a share of all increments. Road usage is typically measured by either vehicle miles or axle miles of travel.

In the Surface Transportation Assistance Act of the 1978, the Congress directed the Secretary of Transportation to conduct a highway cost allocation study and report to the Congress on it no later than January 15, 1982. Reasons for the new cost allocation study included a possible need for increased highway taxes, a shift of emphasis away from new construction and toward repair and rehabilitation, and out-of-date data. This study is currently in process.

WATERWAYS

Federal expenditures for waterways have largely been borne by the general public. However, a congressionally ordered cost allocation study is currently in process.

An August 1977 study ^{1/} reported that the Federal tonnage tax on visits to the U.S. port system by vessels engaged in the U.S. foreign trade recovers less than 5 percent of total Federal deep-draft navigation expenditures. The Inland Waterways Revenue Act of 1978 imposed a fuel tax on vessels in commercial waterway transportation starting in October 1981. Prior to this, use of the inland waterways had been free.

^{1/}"Deep-Draft Navigation User Charges: Recovery Options and Impact," Transportation Systems Center, Cambridge, Massachusetts, August 1977.

In evaluating the need for waterway projects, the Corps of Engineers allocates costs among project purposes. Three methods are used; the first is the cost allocation method preferred by the Corps:

- Separable cost/remaining benefits method. Each purpose is assigned its separable costs, i.e., the added costs of including the purpose in the project. The remaining common costs are then allocated in proportion to the remaining benefits, i.e., the benefits less the separable costs.
- Use of facilities method. The separable cost of each purpose is estimated. Separable costs are then deducted from total costs to determine joint costs. The joint costs are allocated on the basis of each purpose's use of a joint facility.
- Alternative justifiable expenditure method. Benefits and specific costs of each project are estimated, along with alternate costs to achieve the same benefits. Specific project costs are then deducted from total costs to determine joint costs. Joint costs are distributed among projects in direct proportion to the remainders left after specific costs are deducted from the lesser of benefits or alternate costs.

The Inland Waterways Revenue Act of 1978 directed the Secretaries of Transportation and Commerce to conduct a study to determine the extent to which the Federal Government should seek to recover some or all of Federal expenditures for inland waterways from users and how this should be done. This study has not yet been completed.

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