U.S. Department of Transportation
Office of the Secretary of Transportation

General Counsel

400 Seventh St., S.W.
Washington, D.C. 20590

April 4, 2007

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C.

Re: Rail Capacity and Infrastructure Requirements
Ex Parte No. 671

Dear Secretary Williams:

Pursuant to the Notice in the above-referenced docket served March 6, 2007, enclosed herewith is the testimony of the Under Secretary for Policy, Mr. Jeffrey N. Shane, on behalf of the United States Department of Transportation.

Respectfully submitted,

Paul Samuel Smith
Senior Trial Attorney

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400 Seventh Street, S.W.
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Enclosure

Statement of
The Honorable Jeffrey N. Shane
Under Secretary for Policy
U.S. Department of Transportation

Before the
Surface Transportation Board

April 11, 2007

Chairman Nottingham, Vice Chairman Buttrey, and Board Member Mulvey, it is my pleasure today to represent Secretary of Transportation Mary Peters to discuss rail traffic forecasts, rail capacity constraints, and the infrastructure investment needed to maintain reliable and efficient freight rail service.

Today, I will talk about the economic cost of insufficient capacity and resulting congestion, how the problem only worsens if freight and transportation demand forecasts are accurate, how railroads have up until now been meeting demand growth with strategic investments, and how more will be needed to meet capacity requirements.

But first, I want to highlight the success of railroad deregulation as a backdrop to where we are today. The Staggers Act was the most important in a series of major railroad reform and deregulatory legislation. Now, twenty-seven years later, it is clear to the Department that this legislation has been profoundly successful. Prior to Staggers, nine major railroads were in bankruptcy or receivership, rail market share was declining in the face of steadily rising rates and poor service, and the rail plant was in a sorry state. Today, the major railroads are financially healthy, the industry's infrastructure has been modernized, productivity is high, and shippers have enjoyed the benefits of lower average rates.

At the same time, the railroad industry, like the entire transportation sector, faces new challenges not dreamt of in 1980. These are the challenges of success: surging demand for freight transportation, reflecting our growing economy, strains the existing infrastructure overall. Increased highway congestion, higher fuel prices, and concern about the environment all indicate that the rail industry will be asked to do more in the future. The Staggers Act was meant to make the industry viable, and it has done that. Now we need to go on to meet the challenges that this industry faces in a new century.

INTRODUCTION

Transportation efficiency, long a strategic U.S. asset, is decreasing

The capacity of our freight highway and rail network has not kept pace with the growing demand for freight transportation. These inefficiencies add additional and unnecessary cost to every sector of our economy through delays in goods movement and unreliable delivery times.

For rail, since 1990, the network measured in miles-of-road owned has not expanded – indeed, it has decreased by almost 20 percent – but revenue ton-miles increased by 64 percent. While much of the system needed paring back due to redundancy and unused and light density lines, traffic on the remaining portion is moving over heavily traveled corridors. This has resulted in a reduction in system average train speed by nearly 20 percent, accompanied by network congestion and deterioration in service reliability. In 2005, for example, train velocity (train-miles per train-hour) fell to 18.6, the lowest level in 16 years (see Chart 4 on page 7). There are some preliminary signs of a reversal in 2006.

We have enjoyed the luxury of a resilient transportation system for a great many years, but those days are largely over. Rob Ritchie, CEO of Canadian Pacific Railway, characterized the situation: "The North American railroads' network holiday is over – the rail industry is finally running enough freight trains to consume the capacity of the network."

Insufficient capacity is expensive

Constrained transportation capacity imposes a cost we all pay. It adds extra cost to virtually all goods and services produced in the economy. The resulting congestion adds to direct transportation cost and also forces companies to carry larger inventories and invest in increased warehouse space – making U.S. businesses less competitive here and abroad. Transportation congestion reduces productivity, increases levels of harmful emissions, and reduces safety. We estimate that, taken together, these overall costs of congestion add up to nearly $200 billion per year. While most of this cost is related to highway congestion, this figure also includes billions of dollars in costs of congestion on the Nation's rail network.

FREIGHT DEMAND

Until recently, freight growth and surge demand were met by improved productivity and excess capacity

Competition from trucking soared with the growth of the Interstate system, significantly reducing rail market share. At the same time, until 1980 rigid regulation kept carriers from streamlining and restructuring. The Staggers Act in 1980 provided railroads the flexibility they needed to compete in an ever more dynamic transportation environment by allowing the use of differential pricing and contracts in setting rates. To the surprise of many, rate flexibility led to an average decline in real (inflation-adjusted) rail rates of 1.3 percent per year between 1990 and 2003. At the same time, the Staggers Act allowed the rail industry to concentrate on paring its system to accommodate relatively stagnant traffic; new capacity was added only where there was proven growth.

Even though the physical system was shrinking, record productivity gains allowed the railroads to carry much more traffic. From 1987 to 1999, railroad productivity grew by nearly 48 percent, while traffic measured in ton-miles grew by nearly 52 percent. (In comparison, the US manufacturing sector as a whole increased productivity by only 16.1

percent during the same period.) Tons originated grew by over 25 percent, with coal, chemicals, metal products, and motor vehicles and equipment leading the way. Rail intermodal shipments, measured in units shipped, grew by 73 percent. The locomotive fleet grew by only one percent, but new units are now able to haul more trailing tons; lighter and larger freight cars now carry heavier payloads. Overall, the industry has been able to improve productivity on every part of the system. Investments to enhance productivity ultimately reduce transportation costs and benefit consumers.

All freight demand forecasts predict diminishing capacity

At its root, congestion is a byproduct of a vibrant economy and the demands it imposes on transportation infrastructure. In 2006, the Nation's real Gross Domestic Product grew 3.3 percent, above the historical average. The Department's Bureau of Transportation Statistics' Transportation Services Index (TSI) shows that freight transportation demand remains strong. Since the economy began its recovery in 2001, the Freight TSI has grown by 11 percent, and the overall trend is expected to continue. Global Insight, Inc., an economic forecasting firm, projects growth in tons for rail for the next five years at 12.6 percent, while trucking tonnage is expected to grow by 13.8 percent. Similarly, the Federal Highway Administration's Office of Freight Operations forecasts that overall demand for freight transportation will grow 43 percent by the year 2020.[1] The rail freight system's traffic growth is forecast at 35 percent if highway traffic growth is unconstrained by congestion, and substantially more if highway congestion or public policy drives more freight from roads to rail.

Congestion on our highways, at our seaports, and at major border gateways with Canada and Mexico already imposes costly delays on the movement of freight. Current global trade, particularly with Asia, is straining our seaports and shifting truck and rail patterns and routes to inland consumption areas. The freight forecasts that I've just cited carry with them the prospect of more frequent disruptions if solutions are not implemented.

Even now, events that once would have had little effect now cause major disruptions throughout the rail network, because there is no reserve capacity. Our experience in 2005 was a good example. West Coast storms interrupted shipments from California ports to the east, and forced eastern carriers to hold traffic moving west; the result was filled yards and a clogged rail system. In the Powder River Basin, necessary track work and severe winter weather slowed delivery of coal to utilities.

Increased demand for rail freight transportation also affects efforts to provide commuter rail services in urban areas. Commuter rail operations that operate over lightly used track may be relatively easy to implement. However, on main railroad lines, where traffic is steadily increasing, new or expanded commuter operations may require additional investment in capacity, to accommodate both passenger and freight needs.

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[1] Freight Analysis Framework growth rates from 2005 to 2020.

MEETING DEMAND – INFRASTRUCTURE, TECHNOLOGY, AND OPERATIONS

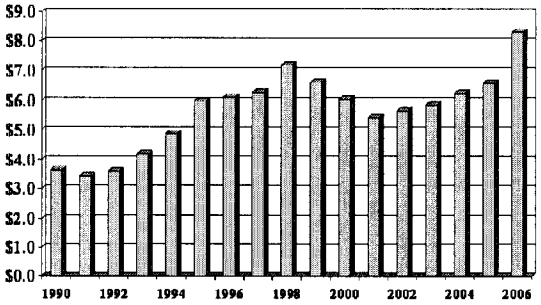
Railroads are investing in additional capacity

Freight railroading is among the most capital-intensive of industries. The railroad industry's capital expenditures from 1990 through 2006 totaled nearly $100 billion. The industry reports that, as a general rule, 15 to 20 percent of that investment for any given year goes to capacity expansion. This includes investments to double- and triple-track strategic sections, improvements to yards, new locomotives, rolling stock, and investment in new technologies, all designed to improve operations and respond to customer demands. The remaining 85 percent goes to maintaining the system in its current condition. Additionally, during this same period, another $175 billion was expensed for maintenance-of-way and maintenance-of-equipment.

The following charts give an indication of railroad spending, how spending has kept up with growth, and how much is available for investment.

Chart 1 shows railroad capital expenditures between 1990 and today. In the early part of the decade, when the rail industry was shedding capacity, spending levels were $3.5 to $4 billion. With the mergers from 1995 through 2000, spending levels grew to the $6-7 billion range. As the economy began its growth in 2001, capital expenditures steadily increased from their low point of $5.4 billion to over $8 billion last year.

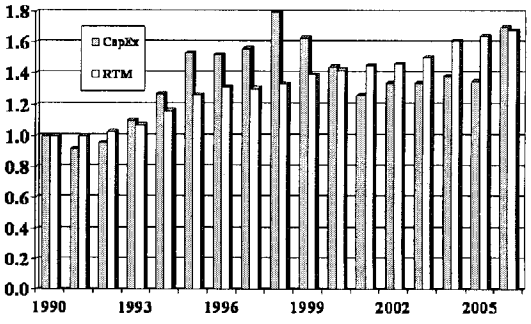
Chart 1
Class I Railroads
Capital Expenditures
(Dollars in Billions)



Source: Assn. Of American Railroads, "Railroad Facts," various for historic results
2006 investment level from AAR press release

As Chart 2 shows, growth in capital expenditures generally outpaced growth in revenue ton-miles until 2001, when it began to fall behind the surge in traffic growth. This trend continued until last year.

Chart 2
Index of Capital Expenditures* and
Index of Revenue Ton-Miles
Each Indexed to 1990

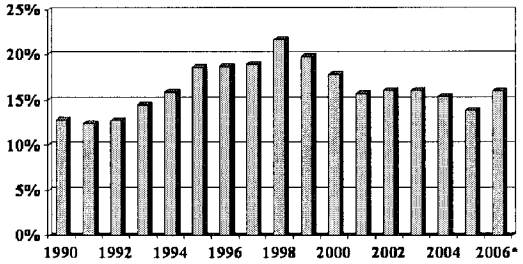


Source: Assn. Of American Railroads, "Railroad Facts."
*Capital Expenditures are in constant 1990 dollars (using PPI commodity data series)
**All measures in 2006 are preliminary

Chart 3 compares capital expenditures to operating revenue, showing the percentage of revenue that railroads have invested in maintaining and expanding their systems. The spike from 1995 to 2000 reflects merger activity, but overall the chart shows that railroads can

consistently invest at least 15 percent of their operating revenues.

Chart 3
Class I Railroads
Ratio of Capital Expenditures to Operating Revenues



Source: Assn. Of American Railroads, "Railroad Facts."
*2006 preliminary data from railroad SEC filings.

In addition to annual growth in capital spending from increasing revenues, the industry appears to have the financial resources to raise additional capital for capacity expansion. According to industrial sector data compiled by New York University's Leonard Stern School of Business, the U.S. railroads'[2] debt ratio [defined as (long term debt)/(long term debt + shareholders equity)] has improved by a little over 25 percent in recent years, moving from 41 percent in 2000 to 30 percent in 2004. (Out of 100 industry sectors in this database, ranked from most to least debt, railroads consistently ranked 23, meaning that only 22 other sectors had worse ratios.) Using AAR data, if the analysis is confined to the seven Class I railroads, it appears the industry has the capability of assuming up to $4 billion in additional debt.

Railroad investments must meet the test of the marketplace

As the discussion above makes clear, the industry's capital expense budget, while large compared to other sectors, is not unlimited. Railroads judge a project by testing its expected internal rate of return against a pre-set hurdle rate. Projects with the highest returns are funded first, followed in order by others until available investment capital is exhausted. Carriers must be confident that the investment will be justified by traffic levels or cost-saving operational improvements. Even projects with high rates of return may not be funded if there are other, better uses for the money.

Moreover, a railroad contemplating an investment in expanded capacity must consider that it will be adding a fixed charge to its balance sheet. The railroad must therefore be confident that demand will be high enough over the lifetime of the investment to pay the fixed charges on that investment through good times and bad times alike. In this respect, the investment decision for a railroad is fundamentally different from the investment decisions for publicly funded infrastructure like highways. A state contemplating a highway investment has a wide range of private motorists and commercial highway users from which it can recover the costs of its highway investment, while a railroad has a relatively limited number of shippers from which it can recoup the costs of its rail investment. For a railroad, the risk that it cannot hold rates high enough to recover its investment is much more real than the risk that a state will not generate enough fuel tax revenue to recover the cost of a highway investment. Our economy's investment decisions for highways and rail, therefore, are biased in favor of highway investments.

Nevertheless, railroads are investing substantial amounts in projects that expand rail capacity. For example, The Burlington Northern Santa Fe has nearly completed double-

[2] Analysis comprised 18 selected U.S. railroads, which include more than the Class I's.

tracking its transcontinental route from California to Chicago. Union Pacific is double-tracking its Sunset Route, which serves the same markets. Both carriers are continuing to triple-track and in some cases even quadruple-track their Powder River Basin joint line, to improve the movement of low-sulfur coal to the nation's utilities. Last September, UP opened a new $83 million container/trailer terminal in Salt Lake City and has announced plans for a new $90 million intermodal terminal near San Antonio. Overall, BNSF plans to invest $2.75 billion in 2007, including $750 million in capacity expansion, while UP plans to invest $3.2 billion.

Similarly, other Class I's are expanding yards, double- and triple-tracking rights-of-way, and working out operational agreements that increase capacity. Last year, Norfolk Southern Railway (NS) and Kansas City Southern Railway (KCS) received regulatory approval for their joint venture to improve capacity along KCS's Meridian Speedway, a 320-mile line between Meridian, MS and Shreveport, LA. NS is investing $300 million in this project. Overall, NS is investing $1.34 billion in 2007, including $73 million in capacity expansion. CSX is adding capacity on its rail lines between Chicago and Florida, and between Albany and New York City, and expanding its Charlotte terminal. Overall, CSX plans to invest $1.4 billion in 2007, including about $250 million on capacity expansion projects. The industry hired 5,000 new employees last year and added about 800 locomotives. New rolling stock is also being added to handle the increase in business.

New technology will improve capacity

New terminals and expanded rights-of-way are not the only means to increase rail freight capacity. Investment in new technology also holds significant promise. Two of the most important opportunities available today are Positive Train Control (PTC) and Electronically Controlled Pneumatic (ECP) brakes. The industry and FRA have researched each extensively.

Under PTC, enhanced communications and real-time information reduce headways and improve train speeds and safety. The information provided by PTC will permit more effective management of train movements over the affected infrastructure. These improvements will eventually allow the carriers to move more freight over the system without adding track or equipment. Better train speeds improve a carrier's asset utilization. Consider that a 1 mph increase in average train speed can save large railroads an estimated $200 million a year. By moving freight a littler quicker over long distances with the same number of trains and crews, the effective number of workers and locomotives per mile falls, generating large efficiencies. PTC is not yet a reality across the general rail system. However, very substantial technical progress has been achieved, and now momentum appears to be increasing toward wide-scale implementation. On January 8, 2007, FRA announced approval of the first PTC system capable of automatically controlling train speed and movements to prevent certain accidents, including train collisions.

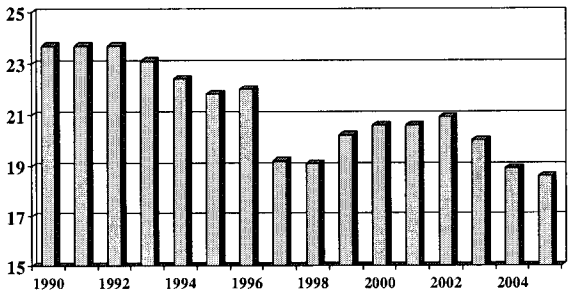
ECP brakes are the most dramatic breakthrough in train braking systems in over 100 years. By applying a train's brakes uniformly and virtually instantaneously on every rail

car throughout a train, they provide for vastly improved train control, improved network capacity, fuel and equipment maintenance savings, and enhanced safety. On March 29th of this year, FRA announced that it had approved the BNSF/NS joint waiver request for operating ECP brakes on their systems.

Each system requires substantial investment on the part of the railroads. Investment in either of these technologies offers additional choices to improve capacity. But as with any expenditures, railroads will require these investments to meet the rate-of-return test, based on real-world assumptions.

The bottom line on any rail expansion is the requirement by investors for an adequate return on that investment. The industry appears to be making capacity-enhancing investments at a responsible pace, but is unlikely to invest to meet what it observes as surge demand. But even at this pace, there is still some question whether the industry can keep up with the growing levels of traffic. Chart 4 shows the decline in train speed since 1990 as an indicator of service levels and asset utilization.

Chart 4
Class I Railroads
Freight Train Speed



Source: Assn. Of American Railroads, "Analysis of Class I Railroads."
Measure of Freight Train-Miles per Freight Train-Hour

PUBLIC BENEFITS OF ADDITIONAL CAPACITY

There are often public benefits to expanding rail

Rail transportation can provide significant public benefits. For example, a single intermodal train leaving the Ports of LA/Long Beach represents 280 fewer trucks on the highways between Los Angeles and Chicago. In one day, 50 intermodal trains, the equivalent of 14,000 trucks, leave Los Angeles. Various studies show that rail is anywhere from three to ten times more energy-efficient than intercity trucking, an important consideration in times of rising fuel prices. Rail is also the safest way to transport freight over land. Substituting rail for long distance trucks reduces highway congestion, road maintenance costs, and truck VMT. Reductions in VMT reduce highway exposure and deaths.

Many individual rail and rail-related projects provide specific significant public benefits along with private benefits. The $2.43 billion Alameda Corridor project separated local streets and a heavily used rail line, eliminating grade crossings and reducing vehicular congestion. In addition to providing local benefits, the Corridor has eased congestion at the Ports of LA/Long Beach by facilitating faster intermodal service between the Southern California ports and receivers in the Midwest and East.

Brownsville, Texas recently completed a project begun in 1973 to relocate in-city rail yards and deactivate 79 of the city's 93 grade crossings. The project, which cost $52 million, provided smoother rail operations and took the majority of traffic from the Port of Brownsville out of the downtown business district.

Another successful project is the Norfolk Southern's Shellpot Bridge rebuilding in Wilmington, Delaware. The bridge's poor condition caused the previous owner, Conrail, to take the bridge, and consequently the line serving the east side of Wilmington, out of service. Freight moved through the city and rail service to industries on Wilmington's east side was degraded. The parties realized that rebuilding the bridge and reopening the line would improve efficiency and capacity for north/south freight traffic, lessening freight on a passenger route and providing economic benefits to Wilmington and Delaware. NS had limited capital to finance the $13 million project; however, the state used a combination of grants and loans to rehabilitate the bridge, with the loans to be repaid through a per-car user fee. The project has been a success; NS reports that the line has attracted new business, car counts are up, and available capacity at the Edgemoor Yard in Wilmington is now being used. And the state's investment will be fully repaid from the per-car user fees.

In none of these projects, nor in many others underway or on the drawing boards of transportation planners, were the returns to the rail carriers involved sufficient to justify funding the entire cost of the endeavor. Nor could the public bodies accomplish the projects by themselves. However, through successful collaboration and innovative uses of funds, both the public and private sectors benefited.

TODAY'S SOLUTIONS

Expanding rail capacity will require investment from several partners

The rail industry has been clear that it is committed to expanding capacity -- at a pace and a level justified by available capital and project-by-project rates of returns. But that investment, reasonable from a railroad perspective, may not be sufficient to respond to nationwide capacity and congestion issues. One view of this, from a state DOT perspective, can be found in the American Association of State Highway and Transportation Officials' 2003 *Freight-Rail Bottom Line Report.* That study estimated that the rail system would need to invest between $9 and $10 billion per year to maintain current traffic and accommodate a "fair share" of forecast growth. The study noted that the rail industry could be expected to cover $6 to $7 billion; the remainder had to come from other sources. Public/private partnerships, such as the Alameda Corridor project, Delaware's rehabilitation of Norfolk Southern's Shellpot Bridge, and the Brownsville rail relocation provide one approach to increasing capacity.

State and local public-private partnerships provide a logical, market-based approach to address the returns demanded by private capital and the public benefits needed by communities and governments. Each party to the partnership accepts the risks it can manage and the returns it must receive. It competes for use of capital to assure an efficient allocation process. In addition to the three noted above, examples of successful

public-private partnerships, financed through a variety of mechanisms, include:

The Alameda Corridor-East
This project is being undertaken in anticipation of the growth in train traffic into and out of the ports of LA/Long Beach. The project is designed to mitigate the effects of the growth of this traffic on urban streets and thoroughfares. Estimated to cost $950 million, the project to be completed in two phases will improve 39 at-grade crossings along a 35-mile corridor, making them safer and reducing the amount of time that motorists must wait. Railroad and public funding (including local contributions) has been secured through the completion of Phase 1.

Kansas City Flyovers
Kansas City has completed two projects that improve the flow of rail traffic through the area. These projects include the Sheffield Flyover, a 3-mile, $74 million project opened in 2000, and the Argentine Connection, a 2-mile, $60 million flyover opened in 2004. The Sheffield Project helped reduce delays for as many as 250 trains per day by eliminating at-grade intersections of several railroads. Similarly, the Argentine Project reduced delays for 80 trains per day through the Kansas City Terminal area. Each project was financed through special bonding authority, to be paid off through user fees. The projects improve rail flows and eliminate significant congestion on area roads and highways.

Public-private partnerships are not a panacea, however. The rail industry's willingness, and ability, to enter into them is constrained by available funds, the level of private benefits that would accrue, and competing projects with better internal rates of return.

There is a mix of programs available at the federal level to fund rail projects. There are two loan programs that can fund rail capacity expansion – the Railroad Rehabilitation and Infrastructure Financing (RRIF) and Transportation Infrastructure Finance and Innovation Act (TIFIA) programs; both require a revenue stream to repay the loan and a credit risk premium or equivalent collateral to compensate the government for the risk of non-repayment. While the credit risk premiums under the TIFIA program can be paid from federal funds, the risk premium under the RRIF program must be supplied from non-federal sources. Nevertheless, over half a billion dollars in loans has been guaranteed under the RRIF program since the first loan was approved in 2002. Some rail-oriented projects received funding under the new Projects of National and Regional Significance program initiated in SAFETEA-LU. Other opportunities include private activity bonds for intermodal terminals and federal highway funds (the Section 130 program) available to improve the safety of rail-highway grade crossings. On the state and local level, the public share of some projects has been provided through taxes, transportation and/or economic development funds and other financing mechanisms.

This mix of programs, and constrained private resources, may be why many of the more ambitious public/private projects developed in recent years to expand capacity and eliminate congestion have not yet gotten underway.

One notable example is the Chicago Regional Environmental and Transportation Efficiency Project (CREATE). CREATE is an agreement between six railroads, the City of Chicago and the State of Illinois to develop five rail corridors (including one primarily for passenger trains), construct 25 new grade separations, build six rail-to-rail "flyovers" to separate freight and passenger trains, and convert the St. Charles Air Line elevated railroad tracks to public use. This is an ambitious $1.5 billion project that would improve the flow of rail freight and passenger traffic through one of the most important – and congested – rail hubs in the country, and mitigate the adverse effects of increased traffic on the local community. The freight railroads agreed to commit $212 million, covering what they believe to be the operational benefits they would receive from the project. SAFETEA-LU provided another $100 million, substantially less than the federal funding that had been sought for the project.

A plan developed in Houston is aimed at rationalizing the maze of rail lines and terminals that serve the city's port and its extensive chemical industry. A major objective of the plan is to eliminate at-grade rail highway crossings and the congestion associated with them. It is my understanding that at this point no project financing commitments have been made by public agencies or railroads.

The Mid-Atlantic Rail Operations Study (MAROps) was a joint study by NS, CSX, and AMTRAK. The study identified infrastructure bottlenecks in five Mid-Atlantic States (New Jersey, Pennsylvania, Delaware, Maryland, and Virginia). Removing these rail constraints could attract more freight to this corridor, lessening truck congestion on I-95 and parallel routes. It delineated improvements in three time periods: near-term, mid-term and long-term. The total cost is estimated to be $6.2 billion. No funds have been committed.

Alternative Financing Options

On the highway side, private ownership and operation of toll roads is generating considerable interest – the recent acquisition of the Chicago Skyway and the Indiana Tollway by private firms are cases in point. For rail, an alternative approach may be the development of "third party" projects, where non-railroad private sector interests build and operate specific pieces of infrastructure, funding it through tolls or other user fees. This is similar to the approach that was adopted in the publicly-financed Shellpot Bridge and Kansas City flyover projects.

This approach is being explored in the Trans Texas Corridor, a proposed 600-mile transportation corridor from the Mexican border to Dallas, paralleling I-35. Recently a partnership of two construction firms, Cintra of Spain and Zachry from San Antonio, won a bid to develop plans for the corridor segment paralleling I-35. The company is offering to build a toll road from San Antonio to Dallas and pay $1.2 billion to collect fees from it for up to 50 years. In addition to this project, Cintra-Zachry is offering to develop a high-speed freight rail line. The firm states that the project cost could be up to $6 billion. It would be financed through charges to shippers, but might also look to funding from the Texas Rail Relocation Fund or other federal and state programs.

BNSF, UP, and CSX are also participating in two intermodal rail transfer facility developments, the RidgePort Logistics Center in Will County, Illinois (BNSF), and the CenterPoint Intermodal Center (UP and CSX) in Crete, Illinois. Each of these will cost several hundred million dollars and use a mixture of Title 23 highway money and Private Activity Bond (PAB) authority from U.S. DOT to build rail-to-truck transfer facilities that will occupy hundreds of acres and provide millions of square feet of storage buildings. The Illinois Finance Authority will issue the tax-exempt PAB bonds to finance parts of the two projects. The two projects are being developed by two real estate investment trusts – Ridge Property Trust and CenterPoint (which is owned by the California Public Employees Retirement System).

These projects demonstrate that third party investors are clearly interested in supplementing transportation investment in the U.S., and that third-party ownership and funding is worth exploring for rail projects as well, particularly in congested urban areas. Rail terminals, in particular, offer a good prospect for capitalizing user fees.

The Surface Transportation Board's Contribution

In today's environment, the economic regulatory framework must ensure that needed capacity investments are not discouraged. Already, high levels of demand from shippers for rail services are exacerbating tensions between carriers and shippers, with some calling for more constraints on rail rates and revenues. Since 1980, the Surface Transportation Board has administered the Staggers Act to ensure a favorable climate for rail infrastructure investment. It is important that the regulatory framework continue to contribute to solving capacity problems rather than compounding them.

The Board has rightly focused on crafting a regulatory environment that balances the needs of the railroads for adequate revenues to invest in capacity to serve their customers with the needs of customers for protection from excessive rates that can arise when shippers are captive. The Board has updated and improved its 20-year-old guidelines governing procedures for deciding large railroad rate cases, and has worked to reduce litigation costs, create incentives for private settlement of disputes, and shorten the time required to develop and present these cases by placing reasonable restraints on the evidence and arguments submitted. The Board has also worked to reform its procedures and standards for resolving smaller rate disputes, and continues to consider suggestions for reducing the costs of resolving these cases.

Additionally, we must find a way to address community and environmental issues associated with rail capacity expansion. The current high level of railroad operations has led to numerous complaints about noise, blocked grade crossings and reduced safety. With many communities already sensitive to changes in railroad operations, major capacity expansion may face delays unless community issues are addressed. U.S. DOT's Federal Railroad Administration has tried to contribute to a resolution of these issues by issuing its Locomotive Horn final rule in 2005, which provides communities with the opportunity to reduce train horn noise by establishing quiet zones where enhanced grade-crossing safety techniques can make the sounding of train horns unnecessary. The Board's Section on Environmental Analysis has provided thorough analyses of these

issues in connection with applications for mergers and construction of new rail lines. It will be important to continue to address these issues so as to allow expansion of rail capacity to occur consistent with meeting community and environmental concerns. Communities often do not realize that railroads are not required to provide noise barriers and other environmental mitigation measures as they increase train traffic. Unlike highway expansions, there are usually no public funds available to mitigate rail impacts.

Finally, as third-party private sector finance becomes a more significant aspect of investment in rail capacity (including terminals and intermodal yards), it is important that the Board encourage these developments and not allow its procedures to become an obstacle to this form of investment.

CONCLUSION

Transportation congestion of both rail and highways is a significant national concern, constraining our economy and wasting resources. Demand for rail transportation is growing faster than additional capacity can be provided, leading to service problems as traffic increases. As private firms, railroads must choose expansion projects that best fit their business plans and available capital, limiting their ability to add capacity quickly. State and local public-private partnerships are a well-tested mechanism for funding rail projects with significant public benefits, but the public sector, like the rail industry, has limited available funds. We need to add other models, such as third-party investments, where appropriate. Finally, the Federal government needs to be wary of actions that would skew the market. We should not support mechanisms that foster speculative projects based on wishful thinking. Nor should we discourage needed investment or encourage disinvestment through an unbalanced regulatory policy.