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UNITED STATES GENERAL ACCOUNTING OFFICE
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STATEMENT OF
HERBERT MCLURE, ASSOCIATE DIRECTOR
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

ON

[COST-SHARING ALTERNATIVES FOR NORTHEAST CORRIDOR
RAIL FREIGHT AND PASSENGER SERVICE]

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR INVITING US TO DISCUSS THE ISSUE OF
COST-SHARING ALTERNATIVES FOR NORTHEAST CORRIDOR RAIL
FREIGHT AND PASSENGER SERVICE.

MY TESTIMONY TODAY WILL DISCUSS WHO IS INVOLVED IN THE
DISPUTE OVER COST SHARING IN THE NORTHEAST CORRIDOR, WHAT
THE DISPUTE IS ABOUT, THE DOLLAR AMOUNTS IN DISPUTE, OUR
PROPOSALS FOR CLARIFYING APPLICABLE LAW, WHETHER THERE
IS A "BEST" COST-SHARING METHODOLOGY, AND OUR PROPOSALS
FOR ACTIONS THE CONGRESS COULD TAKE TO HELP SETTLE THE
DISPUTE.

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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. AMTRAK 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. CONRAIL 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 THIS USE OF THE CORRIDOR.

WHAT IS THE DISPUTE ABOUT?

THE THREE USERS--AMTRAK, THE COMMUTER AUTHORITIES, AND CONRAIL--JOINTLY INCUR SOME OPERATING AND MAINTENANCE COSTS WHICH ARE NOT DIRECTLY ATTRIBUTABLE TO A SPECIFIC USER. SUCH JOINT COSTS ARE OFTEN TERMED BASE COSTS, OR FIXED COSTS. THEY INCLUDE OVERHEAD, TRACK MAINTENANCE THAT DOES NOT VARY WITH THE TYPE OR AMOUNT OF TRACK USE, STATION MAINTENANCE AND CERTAIN OPERATING PERSONNEL THAT 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 NATURALLY WISHES TO PAY AS LITTLE AS POSSIBLE, THE USERS DISAGREE ON HOW THE CORRIDOR 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 IN SIMILAR CIRCUMSTANCES. 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 ARE WHAT 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".

WHAT ARE THE DOLLAR AMOUNTS INVOLVED?

THE DIFFERENCE BETWEEN AMTRAK'S POSITION ON HOW CORRIDOR COSTS SHOULD BE SHARED, AND THE COMBINED POSITIONS OF CONRAIL AND THE THREE COMMUTER AUTHORITIES IS ABOUT \$32 MILLION FOR FISCAL YEAR 1979. 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 \$.4 MILLION FOR THE MARYLAND DEPARTMENT OF TRANSPORTATION.

SCHEDULE 2 ILLUSTRATES THE IMPACT OF THE DISPUTE ON THE INVOLVED PARTIES BY COMPARING THE DISPUTED AMOUNTS WITH EACH PARTY'S ANNUAL REVENUES, LOSSES, AND SUBSIDIES.

THE \$12.9 MILLION OF COMMUTER COSTS IN DISPUTE REPRESENT 10 PERCENT OF THE COMMUTER AUTHORITIES' ESTIMATED LOSSES FOR THE YEAR ENDED JUNE 30, 1979. 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 OF DISPUTED COSTS PROJECTED THROUGH MARCH 1981, \$65 MILLION, 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 FEDERAL FUNDING. 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. 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. NOTE THAT 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 (SEE SCHEDULE 1). 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. CONRAIL TOLD US THEY COULD NOT DISTINGUISH 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 EXPENSES.

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 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 (4R ACT) USES VAGUE, UNDEFINED TERMS TO DESCRIBE HOW NORTHEAST CORRIDOR COSTS ARE TO SHARED AMONG USERS. THE REGIONAL RAIL REORGANIZATION ACT OF 1973 (3R ACT) ALSO USES UNDEFINED TERMS TO DESCRIBE HOW CONRAIL IS TO BE REIMBURSED BY COMMUTER AUTHORITIES, AND REQUIRES THAT ICC'S RAIL SERVICES PLANNING OFFICE (RSPO) ISSUE COST-SHARING STANDARDS FOR THIS PURPOSE. BOTH THE 3R AND

4R ACTS PROHIBIT "CROSS SUBSIDIZATION", BUT NEITHER ACT DEFINES THIS TERM.

THE 4R ACT DIRECTS THAT CHARGES TO USERS OF THE NORTH-EAST CORRIDOR SHOULD BE "EQUITABLE AND FAIR" AND THAT "CROSS-SUBSIDIZATION" AMONG INTERCITY, COMMUTER OR FREIGHT RAIL SERVICE SHOULD NOT OCCUR. 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 SAYING 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 ICC'S RAIL SERVICES PLANNING OFFICE (RSPO) TO DEVELOP STANDARDS FOR COMPUTING SUBSIDIES FOR CONRAIL COMMUTER SERVICE. THE SUBSIDIES ARE TO BE BASED ON THE "NET AVOIDABLE COST" OF PROVIDING COMMUTER SERVICE PLUS A REASONABLE RETURN ON THE VALUE OF RAIL PROPERTIES USED IN PROVIDING THE SERVICE. THE 3R ACT DIRECTS THAT THE STANDARDS AVOID CROSS SUBSIDIZATION AMONG COMMUTER, INTERCITY, AND FREIGHT RAIL SERVICES, BUT DOES NOT DEFINE "CROSS SUBSIDIZATION". THE 3R ACT ALSO DIRECTS THAT RSPO DETERMINE "AVOIDABLE" COSTS AND A "REASONABLE" RETURN.

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. IN OUR OPINION THE STANDARDS ARE STILL NOT CLEARCUT GUIDES FOR COST ALLOCATION.

THE RSPO STANDARDS DO NOT APPLY TO AMTRAK BUT DO APPLY TO CONRAIL AND THE COMMUTER AUTHORITIES WHERE 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 SHARE COSTS WITH THE COMMUTER AUTHORITIES FOR WHICH IT OPERATES COMMUTER RAIL SERVICE. 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 SET UP THE RAILROAD ACCOUNTING PRINCIPLES BOARD TO ESTABLISH COST ACCOUNTING PRINCIPLES FOR THE RAILROAD INDUSTRY, BUT THE BOARD IS NOT EXPECTED TO ISSUE THESE PRINCIPLES FOR SEVERAL YEARS AND THUS WILL NOT BE USEFUL IN THE RESOLVING THE NORTHEAST CORRIDOR DISPUTE.

WE BELIEVE THE CONGRESS SHOULD REVISE THE APPLICABLE STATUTES SO AS TO CLEARLY INDICATE THE FEDERAL POLICY REGARDING COST SHARING IN THE NORTHEAST CORRIDOR. SPECIFICALLY, THE CONGRESS SHOULD DECIDE HOW THE VARIOUS USERS SHOULD SHARE THE JOINT OPERATING AND MAINTENANCE COSTS FOR THE NORTHEAST CORRIDOR RAIL SYSTEM. THE CONGRESS ALSO SHOULD CLARIFY THE INTENDED MEANING OF THE TERM "CROSS SUBSIDIZATION" AS USED IN THE 3R AND 4R ACTS 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 COSTS OF THE CORRIDOR. WE REVIEWED COST-SHARING ARRANGEMENTS AMONG PRIVATE SECTOR FREIGHT RAILROADS, AND COST-SHARING METHODOLOGIES USED BY 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. SIMILARLY, 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.

THE CONGRESS SHOULD HELP TO SETTLE THE DISPUTE

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 PERMITS A MAXIMUM OF DISCRETION TO THE PARTIES WHO ARE AFFECTED MOST DIRECTLY. HOWEVER, THIS PRINCIPLE ASSUMES THAT THE APPLICABLE FEDERAL LAWS AND REGULATIONS AND THE UNDERLYING INTENT OF THE CONGRESS ARE CLEAR AND CONSISTENT. THIS IS NOT THE CASE IN THE NORTHEAST CORRIDOR COST DISPUTE. ON THE CONTRARY, THE APPLICABLE STATUTES AND REGULATIONS 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 IMPACT ADVERSELY ON 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 THE CONGRESS SHOULD 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 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 AND REGULATIONS 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 POLICY REGARDING COST SHARING IN THE CORRIDOR. SUCH LEGISLATION SHOULD CLARIFY THE MEANING OF THE TERM "CROSS SUBSIDIZATION" IF THIS TERM IS RETAINED IN THE AMENDED STATUTES.

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 NEW CONGRESSIONAL GUIDANCE DISCUSSED ABOVE, UNLESS THE DISPUTING PARTIES ARRIVE AT A NEGOTIATED SETTLEMENT WITHIN A FIXED TIME.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT, THE FULL TEXT OF WHICH, TOGETHER WITH SCHEDULES PRESENTING ADDITIONAL INFORMATION, ARE SUBMITTED FOR INCLUSION IN THE RECORD.

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

	<u>Amtrak</u> <u>Proposal</u>	<u>Conrail</u> <u>Proposal</u>	<u>Difference</u>
	----- (millions) -----		
New Jersey Transit	\$23.0	\$13.5	\$9.5
SEPTA (including Delaware DOT)	10.0	7.0	3.0
Maryland DOT	<u>.5</u>	<u>.1</u>	<u>.4</u>
Subtotal	\$33.5	\$20.6	\$12.9
Conrail freight (car mile related)	<u>40.6</u>	<u>21.3</u>	<u>19.3</u>
Total	<u>\$74.1</u>	<u>\$41.9</u>	<u>\$32.2</u>

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</u> <u>b/</u>	<u>Revenues</u>	<u>Operating</u> <u>Loss</u>	<u>Federal</u> <u>Subsidy</u> <u>c/</u>	<u>State</u> <u>Subsidy</u>
----- (millions) -----					
Conrail freight car mile related	\$19.3	\$4,033.6 (<u>d/</u>)	\$178.2 (11%)	\$724.6 (3%)	not applicable
New Jersey Transit <u>e/</u>	9.5	42.9 (22%)	71.5 (13%)	37.0 <u>f/</u> (26%)	34.5 (28%)
SEPTA (including Delaware DOT)	3.0	34.1 (9%)	50.8 (6%)	19.4 (15%)	27.1 (11%)
Maryland DOT <u>e/</u>	<u>.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 ending September 30, 1979. Conrail amounts are for calendar year 1979. All other figures are for the year ending 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 for Amtrak and the commuter authorities. The Conrail Federal subsidy 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 Transit</u>	<u>SEPTA</u>	<u>Maryland DOT</u>	<u>Total for commuter</u>	<u>Freight operating</u>
	------(millions)-----				
Conrail payments to Amtrak	\$54.5	\$60.1	\$.7	\$115.3	\$108.6
Amtrak proposal <u>a/</u>	<u>68.7</u>	<u>28.5</u>	<u>.9</u>	<u>98.1</u>	<u>130.4</u>
Conrail over- payment to Amtrak	(<u>\$14.2</u>)	<u>\$31.6</u>	(<u>\$.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	\$.3	\$38.3	\$36.3
Amtrak proposal	<u>23.0</u>	<u>10.0</u>	<u>.5</u>	<u>33.5</u>	<u>40.6</u>
Conrail over- payment to Amtrak	(<u>\$3.0</u>)	<u>\$8.0</u>	(<u>\$.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	<u>\$331.0</u>	<u>\$361.0</u>	<u>\$4.0</u>	<u>\$696.0</u>
Amount Conrail billed commuter authorities for Amtrak costs	\$90.0	\$29.4	\$.8	\$120.2
Conrail payments to Amtrak for commuter service	<u>\$82.4</u>	<u>\$81.6</u>	<u>\$1.2</u>	<u>\$165.2</u>
Amount Conrail paid Amtrak over what it billed commuters	(\$7.6)	\$52.2	\$.4	\$45.0
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>
Conrail commuter service expenses not reimbursed	<u>\$35.3</u>	<u>\$81.3</u>	<u>\$.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	\$6.4
Long Island Railroad	6.2
Path	1.2
Delaware and Hudson (freight)	.2
MTA/CTA	.1
Baltimore and Ohio Railroad	<u>.1</u>
Total	<u>\$14.2</u>