DEPARTMENT OF TRANSPORTATION | NEWS

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1

STATEMENT BY CLAUDE S. BRINEGAR, SECRETARY OF TRANSPORTATION, BEFORE SENATE COMMERCE COMMITTEE, NOVEMBER 15, 1973

I appreciate this opportunity to appear before the Senate Commerce Committee to discuss the serious issues posed by the bankruptcies of Penn Central and various other Northeastern area railroads.

First, I'd like to offer a few general comments.

It is well recognized that most of the rail service provided by these bankrupt railroads is vital to the Nation's economy. I hope it is equally recognized that the eventual outcome of all our efforts must be that of finding a way to restructure these bankrupts into a new, viable private-sector railroad. This new railroad must be capable of providing adequate public service, just as the profitable railroads now do, and it must eventually be able to raise its own capital and manage its own affairs, as they do. The alternative is to build a sick, Federally-supported, regional rail operation that, in time, would cause a domino-like nationalization of the Nation's entire rail system. Needless to say, such an alternative must be avoided.

We recognize that the taxpayer has a role in helping with the social costs associated with the restructuring process that lies before us. But this role should be temporary and should be limited to the minimum needed to carry out the job. The private sector, which ultimately must assume responsibility for rail freight operations, must also be involved. It cannot be just another taxpayer burden.

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Though much legislative progress has been made in recent months, time is still of the essence. The Judge responsible for the Penn Central case is most assuredly watching what is going on here today. Further long dealys, or the avoidance of a permanent legislative solution to the deep-rooted Penn Central problems, could well trigger a decision on his part to order a shutdown of operations. Legislation providing for a workable long-term solution must be today's high priority objective.

Last week the House passed H.R. 9142. This extraordinarily complex piece of legislation -- it is nearly 80 pages long -- lays out a Northeast rail restructuring process that takes nearly two years to complete. Apart from some problems we have with parts of its legal draftsmanship, the general framework imbedded in H.R. 9142 is, in most respects, structurally sound. But we have one big difficulty with H.R. 9142. It's excessively costly to the taxpayers -- and unnecessarily so, in our opinion. In its present form I could not recommend it to the President.

Two major provisions of this Bill are responsible for these excessive costs:

First, there is the matter of the labor agreement.

We have recognized from the start the need to provide adequate job protection for those rail employees who lose their jobs, or who are required to move, or who are forced to take lesser-paying positions. We offered language to the House Committee providing for the proper general principles, with the understanding that the exact specifics would be hammered out in later collective bargaining between the truly involved parties -- the labor unions and the management of the restructured railroad. We also recognized that public funding of these protection costs -- within limits -- was necessary, for, after all, to saddle the new rail system with them could be to start on the road to another Penn Central disaster.

Unfortunately, H.R. 9142 does not follow our recommendations. Some 20 pages of the Bill are devoted to a detailed and complex labor agreement. This agreement was negotiated between the labor unions and two railroads who are not parties to the Northeast situation. This agreement contains a number of provisions that we find objectionable, and which we cover in our letter to the Committee of November 13. But our main problem is with the "open-endedness" of the protection provisions. All rail employees with five or more years of service are to be protected at present (and escalating) salary levels -- up to a maximum of $30,000 a year -- until they are 65. And they are to get this protection at taxpayer expense.

We believe that protection to age 65 is excessive -- we recommend six years, as in the AMTRAK settlement -- and that the upper limit is much too high. Surely, $20,000 a year is a reasonable upper limit in order to protect against undue hardship. (As a matter of interest, the Bill does impose a $20,000 limit on employees who are not members of labor unions.)

H.R. 9142 authorizes $250 million to handle the labor costs. In the floor debate there were statements that this is the upper limit. I only wish it were so. The fact is that until the restructuring is complete, and the new local labor assignments and work rules are agreed to, we cannot accurately estimate the upper limit. It's quite possible that this $250 million is only the taxpayers' downpayment. This mortgage could go on for a long, long time.

Our second major problem with H.R. 9142 is more technical and potentially very serious. The process by which the selected assets are to be transferred from the bankrupts to the new rail corporation is designed around the concept of a common stock-for-asset transfer, plus the possible use of a limited amount of FNRA bonds. The big worry is that the transaction would fall into the category of a Federal condemnation and thus lead to an eventual Court judgment requiring sizable amounts of Federal bonds or even cash to be paid to the creditors and possibly even to the shareholders. If this happened the total additional judgment could easily exceed $1 billion and could go as high as $3 billion. Such a windfall at the taxpayers' expense must, of course, be avoided. (I suspect that the near tripling in value of Penn Central stock since the House action of last Thursday is evidence that the speculators are starting to gamble on such a windfall.)

We hope to avoid any windfalls by carefully designing the acquisition process so that it falls clearly under the actions permitted by Section 77 of the bankruptcy laws. This is a highly technical legal matter and I will only say at this time that we believe that H.R. 9142 is inadequate in this respect and must be amended.

Finally, I have some brief comments on Senate Working Paper No. 1 of "Rail Services Act of 1973." It is our opinion that this draft is, in the way that it deals with the Northeast restructuring progress, better written than H.R. 9142. It represents a good starting point and we would like the opportunity to work with your Committee and its staff on some necessary technical changes.

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Since the labor section in this Working Paper is identical with that of H.R. 9142 we, of course, have the same objections to this section as were listed in discussing H.R. 9142.

One aspect of the Working Paper that we object to most strongly is its effort to go beyond the problems of Penn Central and to address several National rail issues, including the possibility of AMTRAK's acquiring the Northeast Corridor from Penn Central. Without passing judgment on the merits of these National issues, we strongly urge the Committee to deal with these issues in other legislation. Our job today is to focus our full attention on the Penn Central problems. Once they are under better control we can then turn to these important National issues.