



Amtrak Commuter Rail Service: The High Cost of Amtrak's Operations

OVERSIGHT AND INVESTIGATIONS STAFF REPORT

**Prepared for Chairman John L. Mica
Committee on Transportation and Infrastructure
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Table of Contents

I.	Executive Summary.....	4
II.	Key Findings.....	5
III.	Background.....	7
IV.	Competitive Procurements for Commuter Rail Operations.....	10
V.	Amtrak’s Efforts to Stifle Competition.....	17
VI.	State-Supported Routes and PRIIA Section 209.....	19
VII.	Recommendations.....	20

Attachments:

Commuter Rail Competition One Pagers

Listing of U.S. Commuter Railroads Operating Entities

I. Executive Summary

This report examines the process and benefits of competitive contracting for commuter rail operations. It reviews the current number of active commuter rail operations contracts obtained through competitive processes, as well as the National Railroad Passenger Corporation's (Amtrak) role in this industry, and its effectiveness in competing with private rail operators. To address these issues, Committee staff questioned and obtained information from every commuter rail agency that has competed out commuter rail operations. Furthermore, Committee staff interviewed major commuter rail providers as well as State transportation personnel.

Recent years have seen an increase in commuter rail ridership and the number of routes in operation. From 2005 to 2010, ridership on commuter rail lines has increased more than 10 percent, or approximately 42 million passenger trips.¹ In 2010, the Nation's commuter rail transportation system provided nearly 460 million passenger trips.² With rising demand for service, it is critically important for commuter rail agencies to continue to look for ways to improve service while reducing costs. As a result, commuter rail agencies are looking to competitive contracting for commuter rail operations as a way to provide the highest level of service at the lowest costs.

Major Report Findings:

- Even with high federal subsidies, Amtrak loses when competing with private operators;
- Amtrak spent millions of dollars on failed bids in response to commuter rail agency Requests for Proposals;
- Commuter rail agencies save \$107.8 million or 11.5% by awarding contracts to private operators;
- Amtrak attempts to stifle competition with frivolous litigation and interfering with the transition to private operators; and
- Amtrak used approximately \$2.1 million in government funds to sue a private rail operator.

Major Report Recommendations:

- Amtrak should immediately cease expansion of commuter rail operations
- States should consider competing out State-supported intercity routes
- Amtrak should immediately cease the use of federal funds to sue private entities

¹ Compare Am. Pub. Transp. Ass'n, Public Transportation Fact Book, at 73 (58th ed. 2007) (2007 Fact Book) (setting forth 2005 ridership numbers for each commuter rail agency) with Am. Pub. Transp. Ass'n, 2012 Public Transportation Fact Book, at Appendix B: Transit Agency and Urbanized Area Operating Statistics 107 (63d ed. 2012) (2012 Fact Book) (setting forth 2010 ridership numbers for each commuter rail agency).

² 2012 Fact Book, *supra* note 1, at App. B 107.

This analysis was conducted by Majority staff of the House Committee on Transportation and Infrastructure. Members of the Committee continue to conduct general oversight activities of Amtrak, especially as it pertains to waste, fraud, and mismanagement.

Key Findings

1. Amtrak's inability to adapt its nationwide model for intercity passenger rail to commuter rail regional markets has led to its failure to secure a single commuter rail operations contract over the past ten years.
2. Since 2010, Amtrak's revenue from commuter rail service has decreased \$59 million from \$152 million to approximately \$93 million.

Major Amtrak Commuter Rail Failures

3. The decision to compete out commuter rail operations rather than contract directly with Amtrak will save these six transit agencies \$107.8 million over the life of these contracts. This resulted in a net savings of 11.5 percent.
 - a. Massachusetts Bay Transportation Authority – 2002 Competition: After 17 years of continued operation of MBTA's commuter service, Amtrak withdrew from the competition and forfeited its single largest commuter rail contract.
 - b. North County Transit District Coaster Service – 2005 Competition: After 10 years of operating the Coaster service between San Diego and Oceanside, California, Amtrak lost a competitive operating and maintenance contract, scoring lower in every evaluation category with a higher total cost.
 - c. New Mexico Rail Runner Express Service – 2005 Competition: Amtrak's ineffective proposal had an average annual cost that was \$1.25 million greater than Herzog.
 - d. Florida Tri-Rail – 2007 Competition: Amtrak's proposal scored lower than Veolia for every evaluation criteria, including bid price that was 67% higher or \$65.5 million more than Veolia's.
 - e. Virginia Railway Express (VRE) – 2009 Competition: Amtrak failed to win the competition despite a complete understanding of the facilities, customers, agency's desires, and costs of operations.

- f. Surprisingly, Amtrak's proposal included a \$2.2 million dollar mobilization fee for a service it was already operating. Keolis' winning proposal included a mobilization fee of only \$1.7 million
 - g. California Caltrain – 2010 Competition: After Amtrak's nearly 20 year incumbency and a comprehensive understanding of Caltrain's service needs and operational demands, Amtrak's proposal scored 13 points lower than Herzog's at a cost of more than \$1 million dollars more annually.
4. Amtrak spent millions of dollars on failed bids in response to commuter rail agency Requests for Proposals.

Amtrak's Efforts to Stifle Competition

- 5. Amtrak spent more than \$2.1 million in a failed legal attempt to sue Veolia and disgorge Veolia of its profits from the operation of the Florida Tri-Rail commuter service.
- 6. Amtrak's frivolous lawsuit against Veolia forced the private operator to spend nearly \$3 million dollars to defend itself from Amtrak's federally subsidized pockets.
- 7. After Amtrak's failed bid to operate the Virginia Railway Express (VRE) in 2009, it reportedly interfered with the transition to the winning bidder, Keolis, so much so that VRE officials began exploring legal action that could be taken against Amtrak.
- 8. Amtrak's union allegedly told its workers they would be fired by Amtrak and blacklisted if they took a job with Keolis to operate Keolis's trains on the line.
- 9. Amtrak refused to allow VRE engineers to ride with Amtrak crews to learn the route.

State-Supported Routes and PRIIA Section 209

- 10. Upon implementation of section 209 of PRIIA, States could potentially save, in aggregate, an estimated \$91.3 million annually if they choose to compete out the operational services on the Amtrak State-supported intercity routes.
- 11. The potential savings of an estimated \$91.3 million would cover much of the \$120 million increase in costs that will be borne by these 19 States when section 209 of PRIIA is fully implemented in October 2013.

II. Background

Commuter rail service is primarily designed to address a high volume of passengers requiring daily travel to and from work in city centers, operating in metropolitan and suburban areas and usually having morning and evening peak period operations. Commuter rail systems can be a cost effective transportation alternative for longer commutes to downtown from outlying suburbs, where the costs associated with congestion, fuel and parking are greater.

Commuter rail agencies provide transportation to millions of people nationwide. There are currently 26 commuter rail agencies across the country providing service for nearly 460 million riders in 2010.³ Commuter rail service is typically operated directly by a public transit agency or is contracted to a private rail operator. Amtrak is one of the operators that provide contract commuter rail service.

The National Railroad Passenger Corporation

The Rail Passenger Service Act of 1970 (P.L. 91-518) created the National Railroad Passenger Corporation (Amtrak) and charged it with the responsibility for providing intercity passenger rail transportation on a basic route system designated by the Department of Transportation. Before Amtrak's creation, freight rail companies were required by federal law to operate passenger rail services. Amtrak was created as a federally chartered corporation, with the Federal government holding all of Amtrak's preferred stock and freight railroads or their successors holding 100 percent of the Corporation's common stock.⁴ Amtrak's Board is appointed by the President and confirmed by the Senate, and Amtrak is operated as a for-profit company, rather than a public authority.⁵

Amtrak was designed to serve long-distance passenger travel needs. However, it has expanded its operations to include State-supported routes -- where States cover the cost of Amtrak operations -- and commuter rail operations, under contract to a public transit agency.

In 2010, Amtrak was responsible for the following commuter service operations:

- California Caltrain - Operations;
- California Metrolink - Operations;
- Washington Sounder - Equipment Maintenance;
- Connecticut Shore Line East - Operations;
- Maryland MARC - Penn Line Operations;
- Virginia Railway Express (VRE) - Operations and Maintenance; and
- South Florida Tri-Rail – Dispatching.⁶

³ 2012 Fact Book, *supra* note 1, at App. B 107.

⁴ Nat'l R.R. Passenger Corp., Annual Report Fiscal Year 2011, at 81-82 (2011).

⁵ See 49 U.S.C. §§24301, 24302.

⁶ Nat'l R.R. Passenger Corp., The U.S. Commuter Rail Market, at 2 (Aug. 29, 2012) (on file with author).

These seven contracts had estimated annual revenue of \$152 million.⁷ However, by 2012, Amtrak's failed attempts to re-secure service contracts with the California Caltrain and VRE had reduced its revenue from commuter service to approximately \$93 million.⁸

Growth in Commuter Service Operations

Since 2005, seven new commuter rail agencies have initiated service. During the same period, commuter rail ridership has grown from approximately 417 million in 2005⁹ to nearly 460 million in 2010,¹⁰ an increase of 10 percent or approximately 42 million passenger trips. The following chart illustrates the commuter rail systems that have initiated service since 2005.

Listing of U.S. Commuter Railroads Operating Entities Opened Since 2005 ¹¹			
Commuter Rail System	Operating Entity	Year Opened	2010 Ridership*
New Mexico: Rail Runner Express (Albuquerque)	Contract operations by Herzog	2006	1,240.5
Tennessee: Music City Star (Nashville)	Contract operations by Nashville and Eastern Railroad	2006	204.7
Utah: FrontRunner (Salt Lake City)	Direct operations by Utah Transit Authority	2008	1,389.9
Minnesota: Northstar (Minneapolis)	Contract operations by BNSF	2009	710.4
Oregon: Tri-Met (Portland suburbs, Beaverton to Wilsonville)	Contract operations by Portland and Western Railroad	2009	306.2
Texas: Austin Capital Metro Rail (Austin)	Contract operations by Herzog	2010	120.8
Texas: Denton County Transportation Authority A-Train (Dallas to Denton)	Contract operations by Herzog	2011	0.0**

*Ridership in Thousands

**Due to the recent opening of the service, no ridership numbers are available yet.

⁷ *Id.*, at 2.

⁸ *Id.*

⁹ 2007 Fact Book, *supra* note 1, at 73.

¹⁰ 2012 Fact Book, *supra* note 1, at App. B 107.

¹¹ *Id.*, at Appendix A: Historical Tables 38, Appendix B 107.

Contract Services for Commuter Rail Operations

Currently there are 26 commuter railroads nationwide and 19 of these contract some elements of their services.¹² The remaining seven have chosen to directly operate their own service. Eleven commuter railroads that have contracted services have competitively bid operations. The following is a list of the commuter routes that have competitively procured services for operations:

Commuter Route	Current Contract Operator
*Maryland Area Regional Commuter (MARC)	Amtrak on the Penn Line; CSX on the Camden & Brunswick Lines ¹³
California: Altamont Commuter Express -ACE	Contract operations by Herzog ¹⁴
**California: Caltrain	Contract operations by Herzog ¹⁵
California: North County Transit District Coaster - NCTD	Contract operations by Herzog ¹⁶
Florida: Tri-Rail	Contract operations by Veolia ¹⁷
**Massachusetts: Massachusetts Bay Transportation Authority - MBTA	Contract operations by Massachusetts Bay Railroad Company, a consortium of Veolia and Bombardier ¹⁸
New Mexico: Rail Runner Express	Contract operations by Herzog ¹⁹
Texas: Austin Capital Metro Rail	Contract operations by Herzog ²⁰
Texas: Denton County Transportation Authority A-Train	Contract operations by Herzog ²¹
Texas: Trinity Railway Express - TRE	Contract operations by Herzog ²²
**Virginia: Virginia Railway Express - VRE	Contract operations by Keolis ²³

*The MARC Operation for the Camden and Brunswick Lines are currently out for contract

**Line previously operated by Amtrak

Public transportation agencies, hit hard by the Nation's struggling economy, high fuel prices, and lower local funding, are looking for ways to reduce costs while maintaining high service

¹² 2012 Fact Book, *supra* note 1, at App. B 107.

¹³ Interview with Amtrak staff in Washington, D.C. (Aug. 29, 2012).

¹⁴ Telephone interview with San Joaquin Regional Rail Comm'n staff (June 27, 2012).

¹⁵ Telephone interview with Caltrain staff (Sep. 4, 2012).

¹⁶ Telephone interview with North County Transit District staff (June 22, 2012).

¹⁷ Telephone interview with South Florida Regional Transp. Auth. staff (June 15, 2012).

¹⁸ Telephone interview with Massachusetts Bay Transp. Auth. staff (Aug. 13, 2012).

¹⁹ Telephone interview with New Mexico Rail Runner Express staff (June 26, 2012).

²⁰ Telephone interview with Capital Metropolitan Transp. Auth. staff (June 21, 2012).

²¹ Telephone interview with Dallas Area Rapid Transit staff (June 27, 2012) (Denton County Transportation Authority's A-Train went into service in 2011 and through inter-local agreements, was able to modify the Trinity Railway Express contract with Herzog to include operations for the A-Train).

²² Telephone interview with Dallas Area Rapid Transit staff (June 27, 2012).

²³ Telephone interview with Virginia Railway Express staff (June 19, 2012).

levels. This has resulted in an increase in competitive procurements for commuter rail service operations.

III. Competitive Procurement for Commuter Rail Operations

“...It is competition that is inherently better than monopoly. This driving force of our free-enterprise economy can be a most powerful lens to focus management attention on controlling costs: either match a competitor’s efficiency or lose customers.”

Rodney Fisk
President, Princeton New Jersey Railroad Company 1989²⁴

Competitive Procurement for Commuter Rail Operations

The Federal Transit Administration (FTA) requires that transit agencies that receive federal assistance “must conduct all procurements in a manner that provides full and open competition,” including contracts for commuter rail operations.²⁵ This mandate for competition ensures increased efficiencies and improved service levels, which result in reduced costs and a reduction in the amount of taxpayer subsidy required.

Procurement for commuter rail services provides opportunities for qualified private rail operators to compete for contracts offered by State and local agencies. Public transportation agencies interested in competitively procuring services for commuter rail operation develop their own contract criteria and usually award the bid to the proposal with the highest combined technical score and lowest contract price. Each competition has slightly different criteria weighting; however, technical evaluation categories typically include some or all of the following:

- Key management team experience
- A management plan
- System safety and security requirements
- Demonstrated equipment and facility maintenance experience
- Customer service.

The past ten years has seen a significant increase in the level of competition between the major private rail operators. However, Amtrak has not fared well as the frequency of competitions

“Whether measured in terms of quality of service, safety, or cost, Amtrak’s performance as an operator of commuter rail networks has been poor.”

- Charles D. Chieppo
Pioneer Institute Public
Policy Research

*cited from Charles D. Chieppo, *The Next MBTA Commuter Rail Contract* (Dec. 3, 2002)

²⁴ Rodney Fisk, Op-Ed., *Needed: Competition for Commuter Rail Lines*, N.Y. Times, June 18, 1989, at 12NJ 20.

²⁵ 49 U.S.C. §5325(a).

and the level of competitiveness with private operators has increased. Amtrak’s inability to adapt its nationwide model for intercity passenger rail to regional commuter rail markets has led to its failure to secure a single commuter rail operations contract over the past ten years. Over this time period Amtrak prepared offers for seven separate competitions, withdrawing from two prior to the final decision award.²⁶

Interviews with Amtrak and independent passenger rail operators indicate it is very expensive to prepare a responsive bid to a commuter rail agency RFP. Estimates of bid preparation costs range from hundreds of thousands of dollars to well-over a million dollars. The following chart is a list of all commuter rail competitions for operations service that Amtrak has participated in since 2002. In preparing bid proposals to respond to the competitions listed below, Amtrak wasted millions of taxpayer-subsidized dollars.

Commuter Rail Operations Competitions with Amtrak Participation Since 2002²⁷		
Commuter Agency	Year	Amtrak Result
Massachusetts Bay Transportation Authority - MBTA	2002	Withdrew during RFP Stage
California Metrolink	2004	Withdrew During BAFO*
California North County Transit District - Coaster Service	2005	Lost Competition
New Mexico Rail Runner	2005	Lost Competition
South Florida Regional Transportation Authority – Tri-Rail	2007	Lost Competition
Virginia Railway Express - VRE	2009	Lost Competition
California Caltrain	2010	Lost Competition

*BAFO – Best and Final Offer

Major Amtrak Commuter Rail Failures

The following are examples of six of the largest competitive defeats Amtrak has suffered over the past ten years:

Massachusetts Bay Transportation Authority (MBTA) -2002 Competition

The Massachusetts Bay Transportation Authority is the oldest and the fifth largest transportation network in the United States.²⁸ MBTA’s commuter rail service provided nearly 37 million passenger trips in 2010.²⁹ From 1986 to 2003 Amtrak was solely responsible for operating MBTA’s commuter rail service. At the time, this was Amtrak’s single largest commuter rail contract.³⁰ However, by 2002, frustrated by low service levels and the high costs of Amtrak

²⁶ Interview with Amtrak staff in Washington, D.C. (Aug. 29, 2012).

²⁷ *Id.*

²⁸ Mass. Bay Transp. Auth., Sustainability, http://www.mbta.com/about_the_mbta/environment/ (last visited Sep. 7, 2012).

²⁹ 2012 Fact Book, *supra* note 1, at App. B 107.

³⁰ Charles D. Chieppo, The Next MBTA Commuter Rail Contract (Dec. 3, 2002), available at http://www.pioneerinstitute.org/pdf/021203_chieppo.pdf (last visited Sep. 7, 2012).

operations, the MBTA began the procurement process to competitively bid the commuter rail service contract.

A Request for Proposals (RFP) was subsequently sent to Amtrak and three other companies that were considered qualified bidders. The RFP contained technical and cost proposals. Of the four companies that received RFPs, Amtrak was the only company to refuse to submit a proposal for the MBTA procurement. *After 17 years of continued operation on MBTA’s commuter service, Amtrak withdrew from the competition and forfeited its single largest commuter rail contract due to the lack of time and resources necessary to compete effectively.*³¹

North County Transit District Coaster Service – 2005 Competition

The Coaster commuter train runs north-south through San Diego County, serving eight stations between Oceanside and downtown San Diego. The system is managed by the North County Transit District (NCTD). The Coaster runs more than 20 trains on weekdays, with additional service on the weekends,³² totaling approximately 1.3 million passenger trips in 2010.³³ The Coaster began operations in 1995 and, until the competition in 2005, was operated by Amtrak. In 2005, NCTD undertook a competitive bid process, using the following criteria to evaluate the proposals:

- Technical Approach - 20%
- Maintenance & Operating Plans - 20%
- Qualifications & Experience -15%
- Innovation & Customer Service - 5%
- Cost - 40%.³⁴

The following chart illustrates the competitive bid proposals put forth by Amtrak and Herzog.³⁵

Private Rail Operator	Total Award Points	Bid Price
Herzog	90.8	\$49 million
Amtrak	82.6	\$53 million
Difference	-8.2	+\$4 million

**Total points awarded out of a possible 100.*

Despite Amtrak’s presumed advantages in experience on the service, which it had operated, until the competition, Amtrak still lost in each and every category of the evaluation, including “Qualifications & Experience.” In this category, Amtrak received a score of 10.3 and Herzog

³¹ *Id.*

³² North County Transit District COASTER, <http://www.gonctd.com/coaster> (last visited Sep. 6, 2012).

³³ 2012 Fact Book, *supra* note 1, at App. B 107.

³⁴ North County Transit District, Monitoring Committee Report, Award: Five-Year Base Term Plus a Potential Five-Year Option Contract for Operation, Maintenance of Equipment and Maintenance-of-Way for the COSTER Commuter Rail Service, at 35 (2005).

³⁵ *Id.*, at 36-37.

received a score of 13.³⁶ Indeed, Herzog won in every single technical scoring category, in addition to providing the lowest cost. Consequently, the NCTD awarded a five-year contract, with a five-year option, to Herzog. This particular competition demonstrates that private operators can offer lower costs in addition to better service components.³⁷

New Mexico Rail Runner Express Service – 2005 Competition

The Rail Runner Express is New Mexico’s commuter rail service that runs from Albuquerque to Santa Fe. The Rail Runner Express provided more than 1.2 million passenger trips in 2010.³⁸ Rail Runner Express commuter operations have been contracted out since the service was initiated.³⁹ Herzog was awarded the contract to operate service for the Rail Runner Express in 2005 (with options for up to 8 years).⁴⁰ The following illustrates the difference in bid proposals between Herzog and Amtrak.⁴¹

Private Rail Operator	Total Award Points	Bid Price
Herzog	463.25	\$10.7 million
Amtrak	401.25	\$13.2 million
Difference	-62	+\$2.5 million

The following five criteria were used to determine which proposal would be recommended for final selection:

- Project Understanding - 10 pts.
- Scope of Services – 25 pts.
- Previous Experience/References – 25 pts.
- Price – 40 pts.
- Oral Interview – 30 pts.⁴²

Amtrak’s proposal scored only 401.25 out of a possible 520 points, 62 points lower than Herzog, even though the price of Amtrak’s contract had an average annual cost that was \$1.25 million higher.⁴³

³⁶ *Id.*

³⁷ *Id.*, at 38 (“[Herzog] proved the most advantageous to [NCTD], not only in all technical areas, but in cost.”).

³⁸ 2012 Fact Book, *supra* note 1, at App. B 107.

³⁹ Telephone interview with New Mexico Rail Runner Express staff (June 26, 2012).

⁴⁰ *Id.*

⁴¹ Memorandum from Chris Blewett, Director Transport & Planning Services, Procurement Manager for the Mid-Region Council of Governments Procurement 2005-01, to Lawrence Rael, Executive Director, at 1-2 (May 12, 2005) (on file with author).

⁴² *Id.* (points were awarded by four evaluators with a total possible score of 520).

⁴³ *Id.*, at Attachment 3.

Florida Tri-Rail - 2007 Competition

The Tri-Rail is a commuter transportation system that provides commuter rail service from Miami to Ft. Lauderdale and Palm Beach. The South Florida Regional Transportation Authority (SFRTA) manages this critical transportation system. Tri-Rail's commuter rail service provided nearly 3.6 million passenger trips in 2010.⁴⁴ Tri-Rail operations have been contracted out since it initiated service in 1989.⁴⁵ The SFRTA awarded the most recent seven year competitive procurement to Veolia in 2007.⁴⁶ The following criteria were used to evaluate the proposals:

- Price – 15%
- Technical Approach – 25%
- Operating Plans – 25%
- Qualifications/Experience – 35%.⁴⁷

The chart below illustrates the difference in scoring and pricing for Veolia, who was awarded the contract, and Amtrak.⁴⁸

Private Rail Operator	Total Award Points*	Bid Price
Veolia	85.0	\$97.1 million
Amtrak	62.3	\$162.6 million
Difference	-22.7	+\$65.5 million

* Total points awarded out of a possible 100

The chart above highlights the significant difference in proposed service levels as well as operational costs for the two highest scoring bids. Amtrak failed bid scored lower than Veolia for every evaluation criteria, including an overall score that was 22.7 points lower.⁴⁹ Furthermore, Amtrak's bid price was 67% greater or \$65.5 million higher than Veolia's.⁵⁰ Frustrated with its loss of the contract, Amtrak sued Veolia in Federal District Court.⁵¹

⁴⁴ 2012 Fact Book, *supra* note 1, at App. B 107.

⁴⁵ Telephone interview with South Florida Regional Transp. Auth. staff (June 15, 2012).

⁴⁶ *Id.*

⁴⁷ Memorandum from Evaluation and Selection Comm. to Joseph Giulietti, Executive Director, South Florida Regional Transp. Auth. at 2 (March 9, 2007) (on file with author).

⁴⁸ South Florida Regional Transp. Auth., RFP No. 06-112 Commuter Rail Operations for SFRTA's Commuter Rail System Price Proposals for Veolia Transportation and Amtrak, at 3 (on file with author).

⁴⁹ Memorandum from Evaluation and Selection Comm. to Joseph Giulietti, Executive Director, South Florida Regional Transp. Auth., at 2 (March 9, 2007) (on file with author).

⁵⁰ *Id.*

⁵¹ *Nat'l R.R. Passenger Corp. v. Veolia Transp. Servs.*, Civ. Action No. 1:07-1263(RBW) (D.D.C. filed July 16, 2007).

Virginia Railway Express (VRE) - 2009 competition

VRE, which began operations in 1992, provides commuter rail service from the Northern Virginia’s suburbs to downtown Washington, D.C. VRE’s commuter rail service provided nearly 4 million passenger trips in 2010.⁵² Until the completion of the 2009 competition, Amtrak had been VRE’s only rail operator. The following criteria were used to evaluate the proposals:

- Management Plan – 15%
- Experience, Qualifications, Capabilities – 10%
- Safety and Security – 10%
- Equipment Maintenance – 15%
- Facility Maintenance/Environmental Services – 5%
- Train Operations – 15%
- Mobilization Plan -- 5%
- Cost Effectiveness/Value – 20%
- Certified Disadvantaged Business Enterprises –5%.⁵³

The following illustrates the difference in proposals between Keolis, who was awarded the five-year contract, plus two options of five years each, and Amtrak.⁵⁴

Private Rail Operator	Total Award Points*	Bid Price
Keolis	91	\$263.5 million
Amtrak	56.75	\$287.9 million
Difference	-34.25	+\$24.5 million**

*Total points awarded out of a possible 100

**Difference is rounded.

Amtrak failed to effectively compete for a service that it had operated since its initiation. Amtrak knew the facilities and the customers and had a complete understanding of the agency’s desires and costs of operations, yet it still failed to compete effectively. Amtrak was so confident in its ability to retain the VRE operations contract that its proposal included a \$2.2 million dollar mobilization fee for a service it was already operating.⁵⁵ Keolis’ winning proposal included a mobilization fee of only \$1.7 million.⁵⁶

⁵² 2012 Fact Book, *supra* note 1, at App. B 107.

⁵³ Virginia Railway Express, RFP No. 09-013 Operating and Maintenance Services for Commuter Rail Operations, Section 22 Evaluation Criteria, Contract Award and Execution 185-6 (on file with author).

⁵⁴ Virginia Railway Express, RFP No. 09-013 Operating and Maintenance Services for Commuter Rail Operations, Summary Matrix of Evaluation Scores (on file with author); .

⁵⁵ Virginia Railway Express, RFP No. 09-013, Operating and Maintenance Services for Commuter Rail Operations, Comparison of Proposals (on file with author).

⁵⁶ *Id.*

California Caltrain - 2010 Competition

Caltrain provides commuter rail service along the San Francisco Peninsula, through the South Bay to San Jose and Gilroy. The Peninsula Corridor Joint Powers Board (PCJPB) took over operations of the Caltrain system in 1992.⁵⁷ Caltrain transported roughly 10.6 million riders in 2010.⁵⁸ Amtrak served as Caltrain's rail operator from 1992 to 2010.

Struggling with budgetary constraints and looking to find ways to reduce costs and improve efficiencies, the PCJPB chose to compete out its commuter rail service operations in 2010. The following illustrates the difference in proposals between Transit America – Herzog, who was awarded the contract, and Amtrak.⁵⁹

Private Rail Operator	Total Award Points*	Bid Price
Transit America - Herzog	91.2	\$409.8 million
Amtrak	78.2	\$421.1 million
Difference	-13	+\$11.3 million**

*Total points awarded out of a possible 100

After nearly 20 years of Amtrak operations for the commuter rail service, Caltrain awarded the operations contract to Transit America, a division of Herzog for roughly five years with an additional five-year option.⁶⁰ Despite a twenty year incumbency with a complete understanding of Caltrain's service needs and operational demands, Amtrak's proposal scored 13 points lower than Herzog's at a cost of more than \$2 million dollars more annually.⁶¹

⁵⁷ San Mateo County Transit District, About Caltrain, <http://www.caltrain.com/about.html> (last visited Sep. 7, 2012).

⁵⁸ 2012 Fact Book, *supra* note 1, at App. B 107.

⁵⁹ Summary of Request for Proposals, Evaluation and Selection Process for Contract to Provide Rail Operations, Maintenance and Support Services for the Peninsula Corridor Joint Powers Board, Contract 10-PCJPB-S-025, at 5, 8 (Aug. 16, 2011) (on file with author).

⁶⁰ *Id.*, at 1.

⁶¹ *Id.*, at 5.

Summary

The six case studies above highlight the improved service levels and reduced costs of commuter rail operations when there is competition. It also highlights Amtrak's inability to effectively compete with private rail operators. One explanation for Amtrak's overpriced services is that agencies are paying not only for the services under contract, but also for overhead costs associated with Amtrak's nationwide operations. In other words, agencies partnering with Amtrak are literally buying in to its bloated bureaucracy. The use of innovative private rail operators versus Amtrak's monopoly mentality will save \$107.8 million in aggregate over the life of these commuter rail operating contracts,⁶² resulting in a net savings of more than 11.5 percent.⁶³

IV. Amtrak's Efforts to Stifle Competition

As documented above, the number of commuter rail systems has increased and so have the number of competitions to provide those services; Amtrak, however, has not effectively competed for those commuter rail contracts. After failing to win some of these competitive bids, Amtrak engaged in anti-competitive behavior that can only be described as an attempt to stifle competition among the burgeoning private operator market for passenger rail. Several recent examples of such actions are detailed below.

In the first instance, in January 2007 Amtrak lost a competitive bid to operate Tri-Rail to Veolia. Amtrak's bid price was \$162.6M compared to Veolia's bid price of \$97.1M; a difference of \$65.5M.⁶⁴ Furthermore, Amtrak's overall bid score was 62.3, while Veolia's bid score was 85.⁶⁵ Instead of filing an administrative bid protest in the State of Florida, Amtrak filed a complaint in the Federal District Court for the District of Columbia alleging Veolia wrongfully recruited and enticed members of Amtrak's staff to terminate their employment with Amtrak and take positions with Veolia if Veolia won the contract. Amtrak claimed this caused Amtrak to suffer harm and lose the Tri-Rail contract. The basis of Amtrak's allegations was the fact that Veolia included as part of their management team for the Tri-Rail system three individuals who, at the time, worked for Amtrak, though not in Florida. Ironically, Amtrak's

⁶² The estimated total savings was calculated by adding the total cost of Amtrak's bids for each of the five competitions listed above in which Amtrak participated and subtracting from that figure the total cost of each of the winning private operators' bids.

⁶³ The estimated percentage of savings was calculated by dividing the estimated total savings by the total costs of Amtrak's bids.

⁶⁴ South Florida Regional Transp. Auth., RFP No. 06-112 Commuter Rail Operations for SFRTA's Commuter Rail System Price Proposals for Veolia Transportation and Amtrak, at 3 (on file with author).

⁶⁵ *Nat'l R.R. Passenger Corp. v. Veolia Transp. Servs.*, 592 F. Supp. 2d 86, 91 (D.D.C. Jan. 8, 2009)

bid did exactly the same thing, including an individual employed by another private operator as part of Amtrak's management team.⁶⁶

After five years of litigation, the case went to trial. The jury found that Veolia's conduct was not the cause of Amtrak's failure to win the Tri-Rail contract and no damages were awarded to Amtrak.⁶⁷ Even after the jury returned its verdict, Amtrak continued to litigate its cause seeking to disgorge Veolia of its profits.⁶⁸ Indeed, Amtrak spent \$2.1 million on the litigation,⁶⁹ and forced Veolia to spend approximately \$3 million to defend itself,⁷⁰ an amount that represents a substantial portion of its profits from the contract. Given this fact and the history of Amtrak's inability to compete, it seems quite clear the litigation was intended to stifle competition in the industry.

Similarly, when Amtrak lost its bid to operate VRE in 2009, it reportedly interfered with the transition to the winning bidder, Keolis, so much so that VRE officials began exploring legal action that could be taken against Amtrak.⁷¹ Specifically, after losing its bid to Keolis by nearly \$24.5 million, Amtrak allegedly took several steps to interfere with the transition to Keolis as the operator. First, because train crews had to be certified by Amtrak to operate on Amtrak property in Union Station and elsewhere, Amtrak allegedly raised the certification requirements for crews from 85% to 88%.⁷² Second, Amtrak's union allegedly told its workers they would be fired by Amtrak and blacklisted if they took a job with Keolis to operate Keolis's trains on the line.⁷³ Finally, Amtrak refused to allow VRE engineers to ride with Amtrak crews to learn the route.⁷⁴ These efforts lead the VRE operations chairman at the time to claim that, "[T]hey [Amtrak] are trying to frustrate our efforts."⁷⁵ Clearly, Amtrak's efforts to interfere with the smooth transition to another operator could serve no other purpose but to stifle future competition in the commuter rail sector.

⁶⁶ *Nat'l R.R. Passenger Corp. v. Veolia Transp. Servs.*, 791 F. Supp. 2d 33, 40 (D.D.C. May 9, 2011).

⁶⁷ *Nat'l R.R. Passenger Corp. v. Veolia Transp. Servs.*, Civ. Action No. 1:07-1263(RBW) Memorandum Op. Denying Mot. For Judgment of Disgorgement, slip op. at 2 (D.D.C. filed Aug. 21, 2012).

⁶⁸ *Id.*

⁶⁹ Letter from Joseph McHugh, Vice President Government Affairs & Corporate Communication, Nat'l R.R. Passenger Corp., to John L. Mica, Chairman, Transportation and Infrastructure Committee, Spreadsheet Document Request (Aug. 28, 2012).

⁷⁰ Interview with Veolia Transit Services staff in Washington, D.C. (Aug. 14, 2012).

⁷¹ Jennifer Buske, "VRE considers suing Amtrak", WASH. POST, May 21, 2010; Uriah Kiser, "VRE to explore Amtrak lawsuit", insidenova.com, May 23, 2010.

⁷² Don Phillips, "An old-fashioned rail battle erupts in the nation's capital", Discovery News, August 26, 2010.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Uriah Kiser, "VRE to explore Amtrak lawsuit", insidenova.com, May 23, 2010.

VI. State-Supported Routes and PRIIA Section 209

One unit of the “national rail passenger system” is the “state-supported routes” which are defined as those short distance corridors of not more than 750 miles in length.⁷⁶ The State-supported routes are the sector of Amtrak’s passenger rail services that have seen the greatest growth over the past two decades. State-supported routes carried 5 million passengers in FY 1990 but in FY 2011, ridership was up to 14.7 million.⁷⁷ The total operating cost in FY 2011 of providing the State-supported routes was \$793.8 million.⁷⁸

Currently, 19 States contract with Amtrak for the operation of 27 State-supported routes. State and regional agencies pay most of the operating costs of these services not covered by farebox revenues. Indeed, 16 routes are fully supported by the States, 5 routes are partially supported by the States, and 6 routes currently receive no State support.⁷⁹ Continued operation of these State-supported routes is subject to annual contracts and State legislative appropriations.

Section 209 of the Passenger Rail Investment and Improvement Act (PRIIA) requires Amtrak, in consultation with the Federal Railroad Administration (FRA) and each relevant State, to develop and implement a single, nationwide standardized methodology for establishing and allocating the operating and capital costs among Amtrak and the States concerning the State-supported routes.⁸⁰ The cost allocation methodology had a deadline of October 2010, but Amtrak did not present the Final Policy it developed to all the States until August 2011.⁸¹ Because not all 19 States voluntarily adopted the Final Policy methodology, Amtrak, pursuant to section 209(c), submitted the methodology to the Surface Transportation Board for approval. The STB upheld the Final Policy methodology in March 2012, explaining that it ensures equal treatment in the provision of like services for all States and allocates to each route the costs incurred only for the benefit of that route and a proportional share of costs incurred for the common benefit of more than one route.⁸²

With the methodology for allocating costs now approved, it is scheduled to take effect in October 2013, meaning that States will be responsible for covering a majority of the costs for their State-supported routes. According to Amtrak, sixteen States will see an increase in the amount of support they must provide totaling more than \$120 million.⁸³ The methodology was developed in a menu approach, such that States can better control route costs by picking and choosing among Amtrak services. Because States will be taking on more financial responsibility for the State-supported routes, implementation of the methodology will allow

⁷⁶ 49 U.S.C § 24102(5)(D)

⁷⁷ Nat’l R.R. Passenger Corp., Monthly Performance Report for Sep. 2011, at A-3.5 (June 14, 2012).

⁷⁸ Nat’l R.R. Passenger Corp., Amtrak PRIIA Section 209 Review & Update, at 10 (June 12, 2012).

⁷⁹ *Id.*, at 2

⁸⁰ Passenger Rail Investment and Improvement Act, Pub. L. No. 110-432, 122 Stat. 4917-18.

⁸¹ *Id.*, at 6.

⁸² *Amtrak’s Pet. For Determination of PRIIA Section 209 Cost Methodology*, FD 35571 (STB served Mar. 13, 2012).

⁸³ Nat’l R.R. Passenger Corp., Amtrak PRIIA Section 209 Review & Update, at 13 (June 12, 2012).

each State to make informed decisions about who should provide aspects of their State-supported route services.

The 11.5 percent savings that transit agencies have realized through competitive procurement of commuter rail service when compared to Amtrak operations is confirmation of the cost savings associated with competition that includes private rail operators. This model of competition could be equally as cost effective when implemented by the States after the impact of section 209 of PRIIA is realized. **Upon implementation of section 209 of PRIIA, the States could potentially save an estimated \$91.3 million annually if they choose to compete out the operational services on the Amtrak run State-supported route.**⁸⁴ The potential savings of an estimated \$91.3 million would cover much of the \$120 million increase in costs realized by these 19 States through the implementation of section 209 of PRIIA.

VII. Recommendations

As the level of competition has increased Amtrak's ability to maintain its position as a commuter rail industry leader has faded. The last ten years has seen a significant decrease in Amtrak's revenue from commuter rail operations even though ridership is at record levels. It has become clear that Amtrak is unable to adapt and utilize its massive federal advantages in a fair manner to develop a model that regional transit agencies desire. As this report illustrates, it is time for Amtrak to stop wasting taxpayer resources competing with more dynamic, innovative and cost effective private rail operators. Amtrak must decide to set aside its desires to expand its commuter rail operations and improve the cost effectiveness and efficiency of its national passenger rail service.

1. Amtrak should immediately cease expansion of its commuter rail operations and focus on its congressionally mandated responsibilities and making the Northeast Corridor more cost efficient and effective.
2. All commuter rail agencies should consider the benefits of contracting out its operational services through a competitive bid process.
3. States should consider competing out the operational services on the State-supported routes upon implementation of section 209 of PRIIA.
4. Amtrak should not use its federal funds to file, litigate, or otherwise pursue in any Federal or State court any cause of action against a passenger rail service provider arising from a competitive bid process in which Amtrak and that passenger rail service provider both participated.

⁸⁴ The estimated savings to States for the costs of PRIIA section 209 implementation was calculated by multiplying the total increased costs for PRIIA section 209 (\$120 million) by 11.5%, the amount of savings that transit agencies have realized through competitive procurement of commuter rail service.

5. Amtrak should not interfere in the transition to a new passenger rail provider and should actively cooperate with the incoming passenger rail providers and the public commuter rail agencies throughout the transition.

About the Committee

The Transportation and Infrastructure Committee currently has jurisdiction over all modes of transportation: aviation, maritime and waterborne transportation, roads, bridges, mass transit, and railroads. The Committee also has jurisdiction over other aspects of our national infrastructure, such as clean water and wastewater management, the transport of resources by pipeline, flood damage reduction, economic development programs for rural and urban areas, disaster preparedness and response, the Civil Works program of the Army Corps of Engineers, and the various missions of the U.S. Coast Guard.

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<http://transportation.house.gov/>



Committee on Transportation and Infrastructure

CALIFORNIA CALTRAIN

San Francisco, California



QUICK FACTS:

- Operations began in 1992
- Mileage: 77.4
- Termini: San Francisco to Gilroy, CA

RIDERSHIP

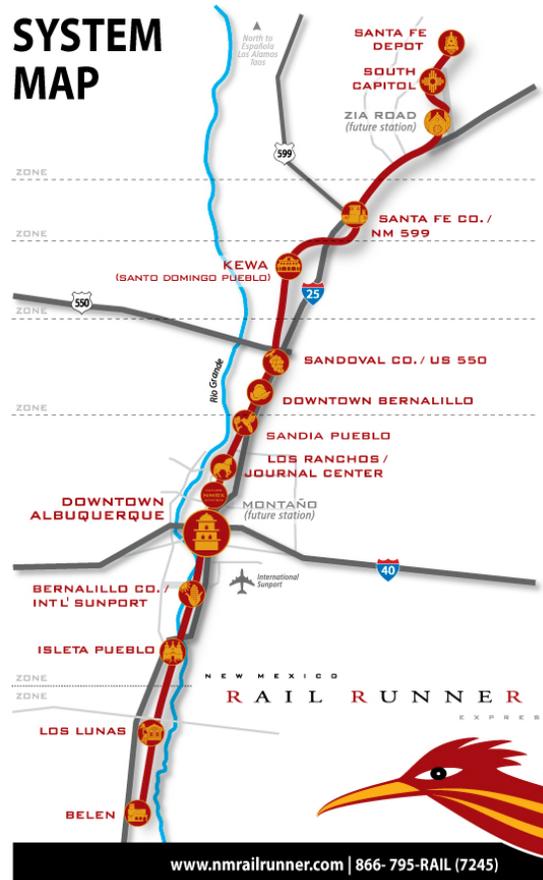
2005	2010	Growth	% Growth
8,120,900	10,611,700	2,490,800	+31%

BID COMPARISON

	Cost	Scores
Herzog	\$398.6M	91.2
Amtrak	\$421.1M	78.2

NEW MEXICO RAIL RUNNER EXPRESS

Albuquerque, New Mexico



QUICK FACTS:

- Operations began in 2006
- Mileage: 97 miles
- Termini: Santa Fe and Belin, NM

RIDERSHIP

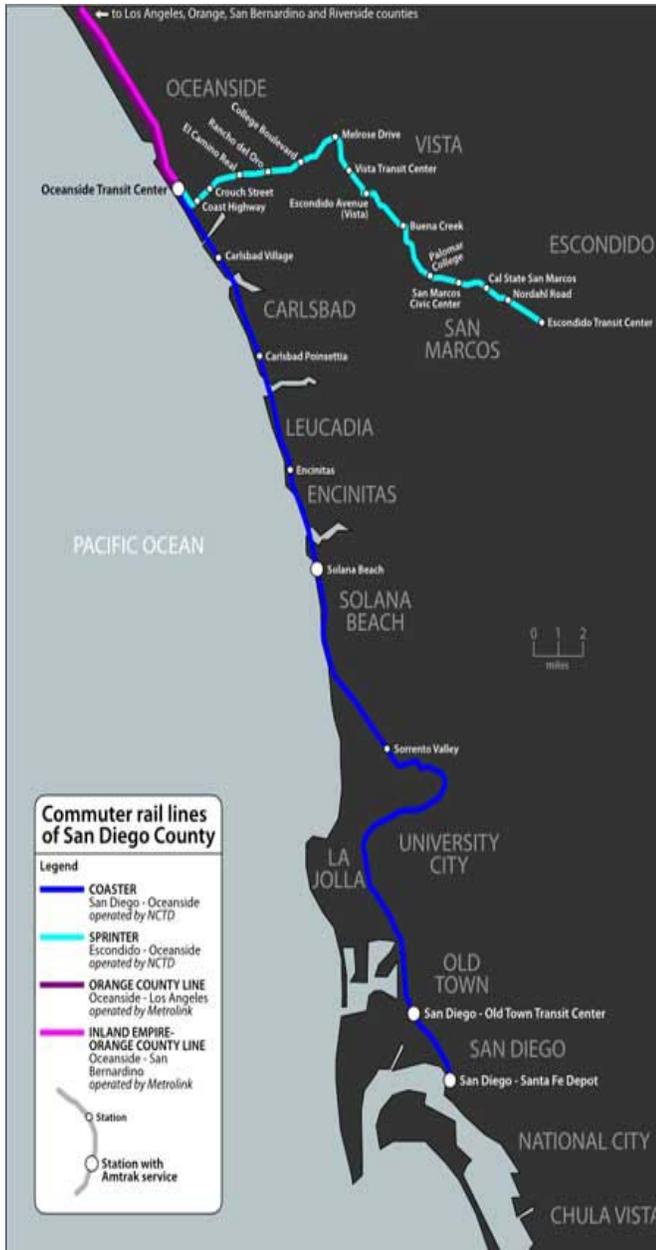
2005	2010	Growth
N/A	1,240,500	N/A

BID COMPARISON

	Cost	Scores
Herzog	\$10.7M	463.25
Amtrak	\$13.2M	401.25

NORTH COUNTY TRANSIT DISTRICT COASTER

San Diego, California



QUICK FACTS:

- Operations began in 1995
- Mileage: 41 miles
- Termini: Oceanside Transit Center and San Diego-Santa Fe Depot

RIDERSHIP

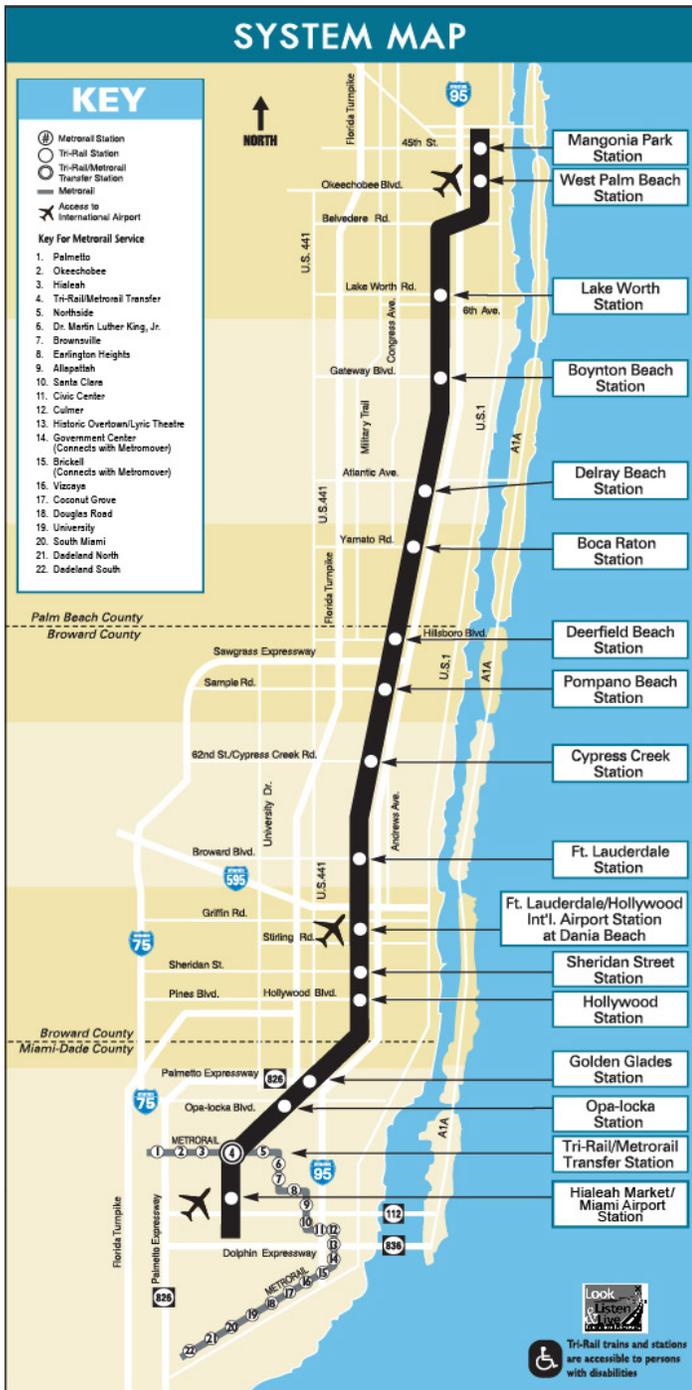
2005	2010	Growth	% Growth
1,432,500	1,271,600	-160,900	-11%

BID COMPARISON

	Cost	Scores
Herzog	\$49M	90.8
Amtrak	\$53M	82.6

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY (TRI-RAIL)

South Florida



QUICK FACTS:

- Operations began in 1989
- Mileage: 71 miles
- Termini: Mangonia Park and Miami Airport Station, FL

RIDERSHIP

2005	2010	Growth	% Growth
2,800,400	3,606,100	805,700	+29%

BID COMPARISON

	Cost	Scores
Veolia	\$97M	85.0
Amtrak	\$163M	62.3

VIRGINIA RAILWAY EXPRESS

Northern Virginia Metro Area



QUICK FACTS:

- Operations began in 1992
- Mileage: 90 miles
- Termini: Union Station, Washington, D.C., Manassas, VA and Fredericksburg, VA

RIDERSHIP

2005	2010	Growth	% Growth
3,654,300	4,016,600	362,300	10%

BID COMPARISON

	Cost	Scores
Keolis	\$263.5M	364
Amtrak	\$287.9M	227

Listing of U.S. Commuter Railroads Operating Entities

(in thousands)

Commuter Rail System	Operating Entity	Year Opened	2010 Ridership	2005 Ridership	Change
Alaska: Alaska Railroad	Directly operated by Alaska Railroad	1923	107.6	144.6	-37.0
California: Altamont Commuter Express -ACE (Stockton-San Jose)	Contract operations by Herzog	1998	655.5	640.6	14.9
California: Caltrain (San Francisco - San Jose)	Contract operations by Herzog	1992	10,611.7	8,120.9	2,490.8
California: MetroLink (Orange, Los Angeles, Riverside and San Bernadino Counties)	Contract operations by Amtrak	1992	12,005.8	10,693.3	1,312.5
California: North County Transit District Coaster - NCTD (San Diego)	Contract operations by Herzog	1995	1,271.6	1,432.5	-160.9
Connecticut: Shore Line East (New London to New Haven)	Contract operations by Amtrak	1990	557.6	407.4	150.2
Florida: Tri-Rail (South Florida)	Contract operations by Veolia	1989	3,606.1	2,800.4	805.7
Illinois: Metra (Chicago)	Combination -- Metra directly operates most lines, BNSF and UP operate Metra services on lines they own	1984	70,534.9	68,591.0	1,943.9
Indiana: Northern Indiana Commuter Transportation District - NICTD (Fort Wayne)	Directly operated by NICTD	1903	3,714.4	0.0	3,714.4
Maine: Northern New England Passenger Rail Authority -- Downeaster	Contract operations by Amtrak	2001	474.2	250.5	223.7
Maryland: Maryland Area Regional Commuter (MARC)	Combination -- Contract operations by Amtrak on Camden and Penn Lines; operations by CSX on Brunswick Line	1984	8,095.6	6,884.1	1,211.5
Massachusetts: Massachusetts Bay Transportation Authority - MBTA (Boston)	Contract operations by Massachusetts Bay Railroad Company, a consortium of Veolia and Bombardier	1964	36,909.9	37,890.2	-980.3
Minnesota: Northstar (Minneapolis)	Contract operations by BNSF	2009	710.4	0.0	710.4
New Jersey Transit	Directly operated by New Jersey Transit	1983	82,223.5	72,613.8	9,609.7
New Mexico: Rail Runner Express (Albuquerque)	Contract operations by Herzog	2006	1,240.5	0.0	1,240.5
New York: Metro North	Directly operated by Metro North	1983	80,699.5	74,267.2	6,432.3
New York: Long Island Rail Road - LIRR	Directly operated by LIRR	1834	98,373.2	95,519.0	2,854.2
Oregon: Tri-Met (Portland suburbs, Beaverton to Wilsonville)	Contract operations by Portland and Western Railroad	2009	306.2	0.0	306.2
Pennsylvania: SEPTA (Philadelphia)	Directly operated by SEPTA	1983	36,805.7	31,680.0	5,125.7
Tennessee: Music City Star (Nashville)	Contract operations by Nashville and Eastern Railroad	2006	204.7	0.0	204.7
Texas: Austin Capital Metro Rail (Austin)	Contract operations by Herzog	2010	120.8	0.0	120.8
Texas: Denton County Transportation Authority A-Train (Dallas to Denton)	Contract operations by Herzog	2011	0.0	0.0	0.0
Texas: Trinity Railway Express - TRE (Forth Worth-Dallas)	Contract operations by Herzog	1996	2,434.2	826.4	1,607.8
Utah: FrontRunner (Salt Lake City)	Directly operated by Utah Transit Authority	2008	1,389.9	0.0	1,389.9
Virginia: Virginia Railway Express - VRE (Northern Virginia)	Contract operations by Keolis	1992	4,016.6	3,654.3	362.3
Washington: Sound Transit (Seattle)	Contract operations by BNSF	1999	2,480.1	1,268.0	1,212.1
TOTAL:			459,550.2	417,684.2	41,866.0