DEPARTMENT OF TRANSPORTATION | NEWS

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STATEMENT BY CLAUDE S. BRINEGAR, SECRETARY OF TRANSPORTATION, BEFORE THE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE REGARDING H.R. 9142, OCTOBER 10, 1973.

Mr. Chairman and Members of the Committee.

I appreciate the opportunity to appear before you briefly today on the very important matter of the proposed legislative solution to the Northeast rail crisis. We have previously testified before your Surface Transportation Subcommittee and also provided written comments on some of our specific concerns regarding H.R. 9142. But our recent analysis of this Bill has convinced us that two proposed provisions have especially serious possible consequences that are perhaps not fully recognized.

First, there is the provision that the rail and other properties that are to be acquired by the new corporation must be transferred by what amounts to a process of Federal condemnation, with the final value being determined by a court which will then (to quote from Sec. 502(c)) "enter a judgment. . .against the corporation for the amount of the deficiency to be paid. . . ." This approach is completely unacceptable, for two reasons:

1. It will likely lead the courts to set a higher value on the bankrupt assets than is warranted by the circumstances.
2. It will almost certainly lead the courts to order that the payment for the assets be either in readily marketable bonds (which means government guarantees) or, even worse, in cash. Equity stock, as contemplated in H.R. 9142, is unlikely to be acceptable in settlement of a taking by condemnation. We will file a brief with the Committee citing the Supreme Court and other cases that cause us to reach this conclusion.

Both of these events--an overstating of the assets and a payment in bonds or cash--will either sink the new company before it starts or else force the taxpayers to essentially "swallow" the bonds or the cash payments that go to the creditors. Since we're looking at a potential price in excess of $2 billion, this is not an acceptable alternative to the taxpayer or to the Administration.

Neither could the new corporation afford to service such bonds or raise this cash. Its only hope of long-term survival is by issuing equity stock in return for title to its assets and then sell bonds, with appropriate government guarantees if necessary, to raise needed start-up cash and capital for catch-up maintenance and expansion. Our analyses of various other railroads' capital structures suggest that an initial stock equity value of something in the order of $1.5 billion is reasonable. With such an equity it's then reasonable to support $600-$800 million in debt. Our approach is based on a negotiated agreement between the creditors and the new corporation. We are confident that if the statute insists on such a negotiated settlement, a way can be found to accomplish it. Only through such an agreement can the necessary "equity" stock exchange be made.

Since the agreement must be brought back to Congress for approval, it is obvious that Congress will have a final say in the various terms and conditions that are worked out.

The second point in H.R. 9142 that greatly concerns us is its approach to the labor problem. Title VIII-Employee Protection--is a 10 page section that covers, in precise detail, what must happen. I am told that this language will shortly be replaced by a new rail-labor agreement that is even more precise and probably twice as long. This new agreement was negotiated by some rail managements and the labor leaders just as if they were hammering out a contract--contract that, unfortunately, may have to be largely financed by the taxpayers. But, unfortunately, it is contemplated that this detailed labor agreement will become part of Federal law by writing it in as part of H.R. 9142.

We recognize and accept that there is a Federal role in helping settle the rail labor problem, including the providing of financial assistance to displaced workers. However, we object quite strongly to the approach in H.R. 9142 for two reasons:

1. A detailed labor contract must not be legislated into existence. It will "freeze" into statute all sorts of details that should be worked out in open environment by the labor and management representatives who must live with the results. Congress should concentrate on general principles of labor protection, leaving the details to be worked out later. These general principles could be handled in a few paragraphs. Such an approach, for example, was followed in establishing the National Rail Passenger Service Corporation ("AMTRAK").

2. The proposed labor-management agreement is liable to be more costly than generally realized. We believe that the number that has been discussed by some of the interested parties of $200 million is considerably on the low side.

To summarize our labor position: We recommend that the legislation (1) concentrate on the necessary general principles of labor protection, (2) the details then be

negotiated, based on those general principles, by the parties who must live with the outcome, and (3) that the agreements be "priced out" and brought back to Congress for approval of the financing arrangements that are necessary. This approach clearly treats labor fairly for it gives them strong negotiating power and, since they have the final say as to whether or not they will work, what amounts to a veto right.

Thank you.