



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

The Inspector General

Office of Inspector General  
Washington, DC 20590

April 8, 2010

The Honorable Patty Murray  
Chairman  
Subcommittee on Transportation,  
Housing and Urban Development, and  
Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable John W. Olver  
Chairman  
Subcommittee on Transportation,  
Housing and Urban Development, and  
Related Agencies  
Committee on Appropriations  
United States House of Representatives  
Washington, DC 20515

The Honorable Christopher “Kit” Bond  
Ranking Member  
Subcommittee on Transportation,  
Housing and Urban Development, and  
Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

The Honorable Tom Latham  
Ranking Member  
Subcommittee on Transportation,  
Housing and Urban Development, and  
Related Agencies  
Committee on Appropriations  
United States House of Representatives  
Washington, DC 20515

Dear Chairmen Murray and Olver and Ranking Members Bond and Latham:

The enclosed briefing responds to the FY 2009 Omnibus Appropriations Act mandate that requires the Department of Transportation's Office of Inspector General to report to the Committees on Appropriations on any and all user fees paid by Amtrak to freight railroads, irrespective of funding source, for access to the right-of-way and any incentive payments paid related to on-time performance.

During fiscal year (FY) 2009, Amtrak paid \$115.4 million in track usage payments to owning freight railroads to access their rights-of-way. These track usage payments accounted for roughly 3.3 percent of Amtrak's total operating costs for FY 2009 and increased by approximately 16 percent over FY 2008. This growth in track usage payments is primarily due to increases in incentive payments to owning freight railroads because of significant improvements in the on-time performance of Amtrak's passenger rail service.

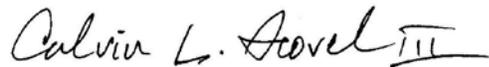
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While Amtrak does make track usage payments to owning freight railroads, it **does not** pay an "**access fee**" for such use. The Railroad Passenger Service Act of 1970 grants Amtrak priority access to freight railroads' rights-of-ways and requires that Amtrak compensate owning freight railroads only for the *incremental cost* (rather than a *negotiated market cost*) associated with accommodating intercity passenger services over their tracks.

Some of the information contained in the enclosed briefing is business confidential and protected from public disclosure under 5 U.S.C. 552. The public release of this business confidential information could compromise Amtrak's negotiating leverage with freight railroads and lead to increases in Amtrak's operating costs. Therefore, none of the business confidential information contained in the enclosed briefing should be released publicly without obtaining prior consent from Amtrak.

If you have any further questions concerning this letter or the enclosed briefing, please contact me at (202) 366-1959 or Mitchell Behm, Assistant Inspector General Designate for Amtrak, High Speed Rail and Economic Analysis, at (202) 366-1995.

Sincerely,

A handwritten signature in cursive script that reads "Calvin L. Scovel III". The signature is written in black ink and is positioned above the typed name.

Calvin L. Scovel III  
Inspector General

Enclosure

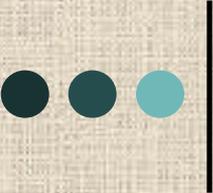


# Amtrak Access Fees

Department of Transportation  
Office of Inspector General

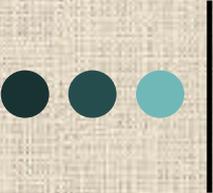
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Page 9 of this presentation contains confidential business information withheld from public disclosure under 5 U.S.C. 552  
Information on page 9 of this presentation should not be publicly disclosed



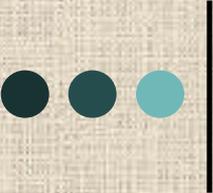
# Congressional Mandate

- Pursuant to the FY 2009 Omnibus Appropriations Act the Department of Transportation's Office of Inspector General (OIG) was mandated to report to the Committees on Appropriations on any and all user fees paid by Amtrak to freight railroads, irrespective of funding source, for access to the right of way and any incentive payments paid related to on time performance



## Background – Amtrak

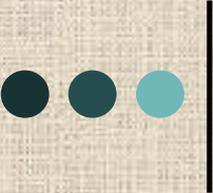
- Prior to the Rail Passenger Service Act of 1970 (RPSA), freight railroads were required by federal law to provide intercity passenger rail service. However, this service tended to be highly unprofitable and contributed to a deterioration in their financial condition
- The RPSA created Amtrak to provide intercity passenger rail service, relieving freight railroads from the financial burden
  - The RPSA grants Amtrak **priority access** to tracks owned by freight railroads
- Roughly 70% of the miles travelled by Amtrak trains are on tracks owned by Class I freight railroads including:
  - CSX Transportation
  - Burlington Northern Santa Fe Railway
  - Norfolk Southern
  - Union Pacific Railroad Company
  - Canadian National Railway Company
  - Canadian Pacific Railway



# What are Freight Access Fees?

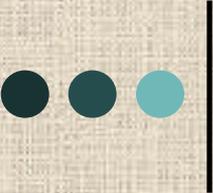
- Class I freight railroads own a majority of existing railroad tracks in the United States. Consequently, other rail operators must negotiate a fee to compensate freight railroads for access to their rights-of-way.<sup>1</sup> The resulting payments are often referred to as “Freight Access Fees”
- Amtrak **does not** pay “*freight access fees*” for using freight railroad tracks
- As outlined in Title 49 of the RPSA—Amtrak is required only to compensate the owning freight railroads for the **incremental costs** associated with accommodating intercity passenger service over their lines

<sup>1</sup> Rights-of-way include the fixed infrastructure required for train operations, including tracks and signals



# Amtrak's Track Usage Payments

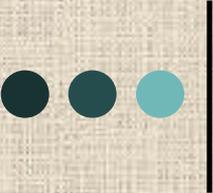
- The RPSA allows the incremental costs associated with Amtrak's usage of freight railroad tracks to include payment for:
  - Incremental maintenance costs resulting from Amtrak's use of freight railroad tracks;
  - Payments for incremental services provided by freight railroads to Amtrak;
    - Cost of developing and maintaining tracks and other facilities for Amtrak's exclusive use , and
    - Payroll and related expenses
  - Incentive payments to compensate freight railroads for higher quality of service; and
  - Offsetting penalties for poor on-time performance
- Amtrak's track usage payments are made on the basis of contractually negotiated rates that generally attempt to optimize the tradeoff between the incremental maintenance cost component and the incentive payment component, which vary by freight railroad



# Incremental Maintenance Costs

- Historically, two different methodologies have been used to calculate incremental maintenance costs:
  - Speed Factor Gross Ton (SFGT) – promoted allocation on the basis of activity (i.e. train traffic)
  - Weighted System Average Cost (WSAC) – Took it a step further and accounted for the impact of the weight of a train on track wear and tear
- In 1995, the Interstate Commerce Commission, predecessor to the Surface Transportation Board,<sup>2</sup> ruled that the WSAC was the preferred methodology for determining incremental maintenance costs because it took into account more of the relevant factors that can influence track damage
- The STB only gets involved with negotiations between Amtrak and freight railroads when they cannot mutually agree on the basis for determining incremental maintenance costs

<sup>2</sup> The STB is an economic regulatory agency that is tasked, among other things, with resolving rate and service related disputes between and among freight railroads and Amtrak. Although the STB is administratively affiliated with the Department of Transportation it is decisionally independent

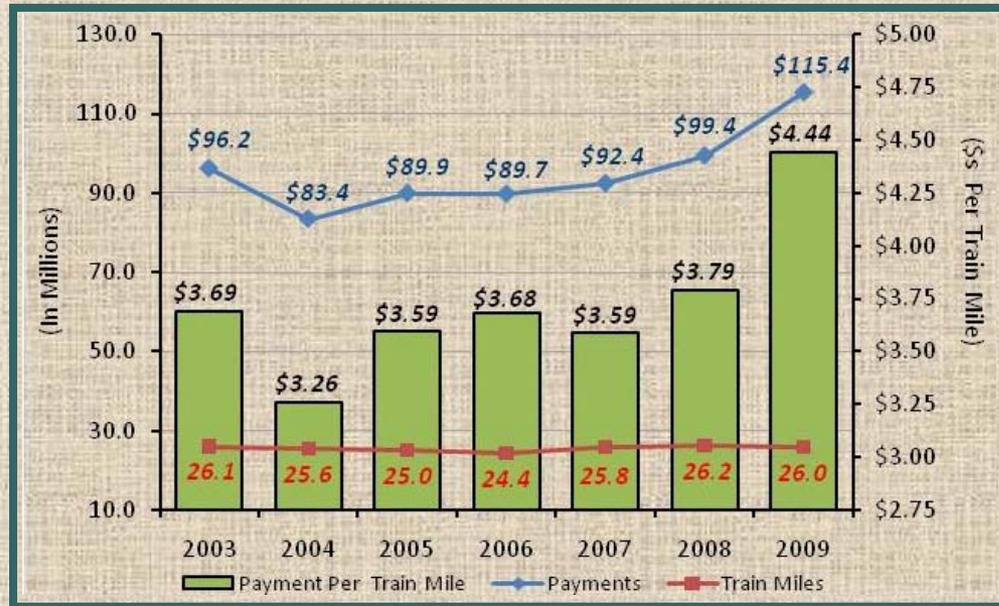


# Scope and Methodology

- To conduct this review, OIG interviewed key Amtrak officials. OIG requested track usage statistics and payment data for the last seven fiscal years (FY 2003 through FY 2009) by freight railroad and major payment categories:
  - Incremental maintenance costs
  - Incentive payments and offsetting penalties
  - Payments for incremental services
- OIG planned to document the aggregate track usage payments made by Amtrak to each of the owning Class I freight railroads and the underlying rate per train mile broken out by aforementioned payment categories
- However, Amtrak considers this information as confidential since any public knowledge of this information could significantly compromise Amtrak's negotiating leverage with the freight railroads
- To accommodate Amtrak's request for confidentiality, the scope of our review was limited an evaluation of Amtrak's aggregated track usage and payment data

# Amtrak's Track Usage Payments

Figure 1: Amtrak's Track Usage Payments<sup>3</sup> (System-wide Activity: FY 2003 through 2009)



Source: Amtrak

- Amtrak's track usage payments have ranged between \$83.4 million and \$115.4 million between FY 2003 and FY 2009, which equates to roughly \$3.26 to \$4.44 per train mile over the same period
- The increase in FY 2009 track usage payments and payment per train mile stems from a significant improvement in Amtrak's on-time-performance
  - In FY 2009, track usage payments accounted for only 3.3% of Amtrak's total operating costs

<sup>3</sup> Note:- Amtrak's track usage payments obtained from its audited financial statements

# Status of Amtrak's Operating Agreements

- The basis for calculating Amtrak's track usage payments are defined in operating agreements (OA) with owning freight railroads
- At the end of the minimum term of an OA, either party has the right to give advance notice of their intent to terminate or renegotiate the OA giving rise to the possibility of increases in track usage payments and consequently Amtrak's overall operating costs

- Amtrak's OA with the

(b)(4)

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- The minimum terms on Amtrak's OAs with

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- The minimum term on Amtrak's operating agreement with

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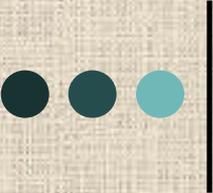
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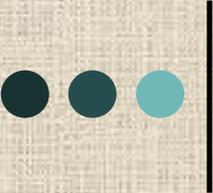
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## Conclusion

- Amtrak has certain statutory rights that are not afforded to other passenger rail operators (i.e. commuter rail operators) such as:
  - Priority access to freight railroad rights-of-way
  - Payment of incremental costs, rather than a market based “**Freight Access Fee**”, associated with their use of freight railroad tracks
- Unlike Amtrak, other passenger rail operators must negotiate and then compensate owning freight railroads at an unrestrained agreed upon market rate, for access to their rights-of-way
- A comparison of the track usage fees paid by Amtrak to other passenger rail operators could yield unreliable results, especially in the current statutory environment



# Issues for Consideration

- As of the end of FY 2008, 14 states contracted with Amtrak for supplemental train operations in an effort to:
  - Provide additional frequencies on existing Amtrak routes; and
  - Extend the reach of passenger rail services within their state or region
- Unlike Amtrak, other passenger rail operators are required to pay an access fee rather than an incremental cost based fee to access owning freight railroads' rights-of-way, which may result in higher operating costs
- With the current Administration's increasing emphasis on intercity and high speed passenger rail service, Amtrak's statutory protections give it a competitive advantage over other passenger rail operators