

GAO

Report to the Chairman, Committee on  
Commerce, Science, and Transportation,  
U.S. Senate

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December 2004

# INTERCITY PASSENGER RAIL

## Issues Associated with the Recent Settlement between Amtrak and the Consortium of Bombardier and Alstom



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### Abbreviations

Amtrak	National Railroad Passenger Corporation
DOT	Department of Transportation
FRA	Federal Railroad Administration
NecMSC	Northeast Corridor Management Service Corporation

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United States Government Accountability Office  
Washington, D.C. 20548

December 1, 2004

The Honorable John McCain  
Chairman, Committee on Commerce,  
Science, and Transportation  
United States Senate

Dear Mr. Chairman:

As part of the Acela high-speed rail program, the National Railroad Passenger Corporation (Amtrak) executed contracts in 1996 with train manufacturers Bombardier and Alstom to build 20 high-speed trains—called trainsets—and 15 electric high-horsepower locomotives; construct three maintenance facilities; and provide maintenance services for the Acela trainsets. The trainsets, locomotives, and facilities contracts totaled \$730 million.<sup>1</sup> Bombardier and Alstom, referred to as the Consortium, created the Northeast Corridor Management Service Corporation (NecMSC) to manage the facilities and maintain the trainsets, including supervising Amtrak maintenance employees. Amtrak pays NecMSC for its management and maintenance services.

Concerns about the quality of the Consortium's work and Amtrak's withholding of \$70 million in payments resulted in the parties suing each other, each seeking damages of \$200 million. After entering into negotiations at the end of 2002, officials from the Consortium and Amtrak signed a settlement agreement in March 2004. In general, under the settlement, the Consortium must complete modifications to the trainsets and locomotives, achieve established performance requirements, provide training to Amtrak staff, and provide and extend warranties. In addition, Amtrak agreed to release up to \$42.5 million of the \$70 million previously withheld to the Consortium and will assume facility management and trainset maintenance responsibilities as soon as 2006, rather than in 2013 as originally planned, if the Consortium satisfactorily completes its commitments under the settlement agreement.<sup>2</sup>

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<sup>1</sup>The cost of the Management Services Contract is not included in the total contract cost.

<sup>2</sup>Before the settlement date, Amtrak had paid \$661 million of the \$730 million to the Consortium that was agreed to in the contracts.

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Amtrak has received substantial federal funding in the last several years, and there is considerable congressional interest in Amtrak's financial performance—particularly in the Acela route in the Northeast Corridor, since it generates more revenue for Amtrak than all of its other routes combined. Beginning in fiscal year 2003, the Congress authorized the Secretary of Transportation, through the Federal Railroad Administration (FRA), to provide oversight of Amtrak's use of federal funds and required that Amtrak submit a business plan to the Secretary and the Congress prior to receiving funds.<sup>3</sup> Because of the importance of the settlement agreement to the Acela program and the continued interest of the Congress in Amtrak's financial performance, you asked us to review the settlement, specifically to (1) delineate the costs Amtrak incurred to prepare for and settle its lawsuit with the Consortium and the estimated costs Amtrak avoided by settling rather than pursuing further litigation, (2) determine the responsibilities of Amtrak and the Consortium under the settlement and the associated benefits and future costs, and (3) identify key challenges related to the settlement and the actions Amtrak and the Consortium are taking to address these challenges.

To assess Amtrak's settlement costs, we reviewed and analyzed Amtrak financial documents, verified the consistency and completeness of these data, interviewed Amtrak officials, and determined that the information was sufficiently reliable for our purposes. To assess Amtrak and Consortium settlement responsibilities, benefits, and future costs, we reviewed and analyzed the original contracts, lawsuits, settlement agreement, and other information, and we interviewed Amtrak, Consortium, and NecMSC officials. To assess the challenges related to Amtrak assuming responsibility for high-speed trainset management and maintenance, we reviewed and analyzed management responsibilities, maintenance responsibilities, and settlement obligations as delineated in the settlement and other agency documents. We supplemented this information by interviewing Amtrak, Consortium, NecMSC, and FRA officials.

On September 17, 2004, we briefed your staff on the results of our work to date. Appendix II contains a modified version of the materials we presented at that time.

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<sup>3</sup>Amtrak received \$1.2 billion in federal funds in fiscal year 2004. Amtrak has requested \$1.8 billion for fiscal year 2005, which includes \$100 million for repayment of a loan received by Amtrak in July 2002.

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We conducted our work from June 2004 through November 2004 in accordance with generally accepted government auditing standards.

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## Results in Brief

Amtrak incurred additional costs to prepare for and settle with the Consortium, but it also avoided potentially costly litigation expenses. As a result of the settlement, Amtrak released a portion of the \$70 million it had previously withheld to the Consortium. To prepare for the settlement, Amtrak estimates it spent more than \$1 million on external legal counsel, consulting, and mediation services.<sup>4</sup> Amtrak does not track its internal legal costs, though one official estimates that seven employees were primarily involved in negotiating the settlement. Although Amtrak incurred costs related to the settlement, according to Amtrak officials, it avoided at least \$20 million in future litigation costs by settling rather than pursuing its suit in court.

As a result of the settlement, both Amtrak and the Consortium have new responsibilities with regard to the trainsets, and each has derived benefits and potential costs. Both Amtrak and the Consortium must fulfill certain responsibilities in order to correct trainset problems and to transfer facility management and trainset maintenance operations from the Consortium to Amtrak by the conditional transition date of October 1, 2006. Before the transition date, Amtrak is required to create a transition plan as part of the settlement agreement, hire staff for facilities management and trainset maintenance, and determine a parts procurement plan for the trainsets. For its part, the Consortium is required to complete modifications to the trainsets and locomotives; train Amtrak staff; meet performance requirements for speed, comfort, and reliability; transfer technical information and third-party contract rights to Amtrak; and provide trainset parts information, permits, and licenses. After the transition date, Amtrak will conditionally assume facility management and trainset maintenance responsibilities, but the Consortium will be required to provide technical support and information technology updates, and honor warranty obligations. An important benefit of the settlement is the improved working relationship between Amtrak and the Consortium. According to Amtrak and Bombardier officials, all parties are now cooperating to address trainset problems and to complete management and maintenance responsibilities necessary for the transition to occur. Amtrak may incur

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<sup>4</sup>Amtrak officials told us that this estimate includes costs for other activities related to the dispute.

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additional future costs related to the settlement. For example, it is obligated to release remaining funds withheld to the Consortium (up to the \$42.5 million) if the Consortium meets certain requirements such as completing the specified trainset modifications by the October 1, 2006, transition date. Amtrak's internal costs will increase when it assumes trainset maintenance responsibilities; however, since it will no longer have to pay a contractor to manage its trainset maintenance function, it is unclear whether Amtrak will realize a net savings or incur a cost increase from this transition.

A successful transition depends on whether Amtrak and the Consortium can address the numerous challenges to meet their settlement responsibilities. For example, the Consortium must complete an extensive list of modifications, some of which are complex, and also meet performance requirements for reliability, speed, and comfort before Amtrak will assume maintenance responsibilities. Certain modifications may not be completed by October 1, 2006, and Amtrak has concerns that other modifications may affect service reliability. In addition, Amtrak must secure a workforce with the technical expertise needed to maintain the trainsets; develop a cost-effective supply chain for trainset parts; provide sustained, adequate funding for trainset maintenance; and effectively integrate the maintenance of high-speed trainsets into its current organization. Although Amtrak and the Consortium are taking actions to address these challenges, Amtrak does not have a comprehensive implementation plan that provides a "blueprint" of important steps, milestones, contingency plans, funding strategies, and other measures necessary to successfully complete the transition.

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## Conclusions

Achieving a successful transition is critical to Amtrak's financial well-being, given that the Acela program is such a significant source of its revenue. Because of the importance of the Acela program to Amtrak, it is critical that Amtrak effectively address each of the key challenges it faces. To date, however, Amtrak has not prepared a comprehensive implementation plan that addresses each of the key challenges related to the settlement in a structured and well-planned way. Such a plan would also serve as a basis for monitoring the progress of actions under way and holding the parties accountable for achieving desired results. The absence of such a plan could jeopardize the successful implementation of the settlement, which in turn could negatively affect Amtrak's financial performance. We believe FRA, as part of its existing oversight responsibilities of Amtrak, should see that a

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comprehensive plan is completed and closely monitor the settlement's implementation to ensure that results are being achieved as planned.

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## Recommendations for Executive Action

To help ensure a successful implementation of the settlement agreement, we are making the following two recommendations. First, we recommend that the President of Amtrak, working with Amtrak's Board of Directors, develop a comprehensive implementation plan. This implementation plan should address the key challenges and include important milestones for achieving each of the critical tasks associated with the key elements of the settlement, a risk analysis showing the potential impacts if tasks and milestones are not achieved, methods to accurately evaluate and measure progress, contingency plans should tasks and milestones not be met, and funding strategies to support new maintenance responsibilities. The plan should be included in any business plan later submitted to the Secretary of Transportation.

Second, the Secretary of Transportation should direct the Acting Administrator of FRA to review and monitor Amtrak's implementation of its comprehensive plan for implementing the settlement agreement as part of FRA's overall responsibilities to oversee Amtrak's activities.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Transportation (DOT), Amtrak, Bombardier, and Alstom for their review and comment. DOT generally concurred with the report and its recommendation to DOT. Alstom made no comments on the report.

Both Bombardier and Amtrak noted in their comments that the Acela trainsets are not yet required to meet the 17,500 miles between service failures performance requirement—a point we acknowledge. Yet, there appears to be a difference between the two as far as the criteria for meeting this requirement. Bombardier stated that its reliability growth plan requires that the trainsets achieve an average of 17,500 miles between service failures in May 2005. According to Bombardier, the trainsets are presently achieving a higher level of reliability than they predicted. Bombardier also stated that the Consortium must prove to Amtrak that the trainsets are capable of meeting the minimum performance requirement for a reasonable period of time during a 24-month demonstration period. On the other hand, Amtrak stated that the reliability standard is calculated on a 6-month rolling average and must be sustained over a 24-month period.

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Amtrak believes that it and the Consortium do not differ in their understanding of the performance requirement. However, we have had several meetings with both parties on this issue, and it appears there is a considerable difference in interpretation. We believe that reconciling this difference is important to the success of the transition and that it should be specifically clarified in writing to ensure both parties have the same understanding.

Amtrak provided its comments in a letter from its President and Chief Executive Officer (see app. I). In general, Amtrak took strong issue with our report's conclusion that Amtrak does not have a comprehensive plan that provides a blueprint for important steps, milestones, contingency plans, and other measures to successfully complete the transition. Amtrak believes that after execution of the settlement agreement in March 2004, Amtrak developed and implemented a comprehensive process to monitor and enforce the Consortium's compliance with the terms of the settlement, and to ensure the successful transition of high-speed trainset maintenance to Amtrak. Amtrak feels there are plans and procedures in place to address issues associated with items such as budget and funding requirements, securing and training a competent workforce, and procuring parts and supplies.

We agree that Amtrak has developed a substantial amount of information about the transition and recognize that meetings are being held both internally within Amtrak and externally with Consortium representatives. We also acknowledge that Amtrak has compiled a critical path schedule for monitoring the status and completion of open technical issues. However, while these are important elements of transition planning, they do not represent a comprehensive plan for managing and implementing the settlement. Such a plan should include such things as milestones for achieving critical tasks, a risk analysis showing the potential impacts if tasks and milestones are not achieved, accountability measures and contingency plans should tasks and milestones not be met, and funding strategies to support new maintenance responsibilities. Officials from Amtrak's Inspector General's office told us that they also would like to see a more detailed and comprehensive transition plan as a way to better coordinate all efforts necessary to monitor progress and implement a successful transition. As we reported earlier this year, comprehensive plans are important in order to effectively manage large projects, such as

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implementing this settlement.<sup>5</sup> A comprehensive plan is also necessary given the critical importance of the Acela program to Amtrak's business. We believe it is imperative that Amtrak's Board of Directors and others have such a plan to successfully monitor implementation of the settlement, to assess the impact on the corporation should transition efforts experience difficulties, and maintain accountability for transition of the Acela maintenance function to Amtrak.

Amtrak also noted in its comments that its estimate of its costs to manage the trainset maintenance function in-house will be no greater than the current cost of paying NecMSC to perform maintenance work, based on its estimates of protections built into the settlement. However, as Amtrak acknowledges, there is uncertainty on this issue, and we believe that specific aspects of this issue have yet to be resolved. For example, the cost to complete major overhauls to the trainsets is largely unknown, as efforts continue to identify the full scope of work to be completed and those who will perform the work. As a result, we believe our report correctly describes the uncertainties that exist in this area.

Amtrak said in its comments that it does not believe that developing an effective supply chain to provide maintenance was a significant challenge because of long-standing relationships with suppliers and the protections provided under the settlement. We acknowledge that as a result of the settlement, Amtrak may benefit from new contracts with providers used for its conventional service and may be able to maintain or build on existing supplier relationships for an effective supply chain. However, we believe that this effort is a challenge in that Amtrak must successfully complete numerous tasks and an extensive cost analysis in conjunction with selecting a parts procurement plan by January 2006. For example, if it chooses the inventory option, Amtrak will need to hire additional staff to manage the parts procurement process and incorporate the inventory into its existing system, which, according to Amtrak procurement officials, can be a complicated task. Also, in a recent meeting with officials from Amtrak's Office of the Inspector General, they told us that part of the supply chain process—an audit of parts prices—is already behind schedule. As a result, we continue to believe that our assessment of the difficulty of dealing with its supply chain will remain a challenge.

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<sup>5</sup>GAO, *Intercity Passenger Rail: Amtrak's Management of Northeast Corridor Improvements Demonstrates Need for Applying Best Practices*, [GAO-04-94](#) (Washington, D.C.: Feb. 27, 2004).

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Finally, as part of its comments, Amtrak requested that we redact certain sections of our report that it considered to be proprietary. To address this comment, we consulted with Amtrak, Bombardier, and Alstom and developed this report that deletes or modifies information they considered to be proprietary. After reviewing a draft of this report, each organization confirmed that it did not contain proprietary information.

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We are sending copies of this report to congressional committees with responsibilities for intercity passenger rail issues, the President of Amtrak, the Secretary of Transportation, the Acting Administrator of the Federal Railroad Administration, the Director of the Office of Management and Budget, and representatives of Bombardier and Alstom. We will also make copies available at no charge on the GAO Web site at <http://www.gao.gov>. If you have any questions about this report, please contact me at (202) 512-8984 or by e-mail at [heckerj@gao.gov](mailto:heckerj@gao.gov), or Randall B. Williamson, Assistant Director, at (206) 287-4860 or by e-mail at [williamsonr@gao.gov](mailto:williamsonr@gao.gov). Other key contributors to this report were Edda Emmanuelli-Perez, Kara Finnegan Irving, Bert Japikse, Rick Jorgenson, Tyler Kruzich, Denise McCabe, and SaraAnn Moessbauer.

Sincerely yours,

A handwritten signature in black ink that reads "JayEtta Z. Hecker". The signature is fluid and cursive, with a long horizontal stroke at the end.

JayEtta Z. Hecker  
Director, Physical Infrastructure

# Comments from the National Railroad Passenger Corporation

NATIONAL RAILROAD PASSENGER CORPORATION  
60 Massachusetts Avenue, NE, Washington, DC 20002



Via Facsimile and Hand Deliver

September 24, 2004

Mr. Randy Williamson  
Assistant Director, Physical Infrastructure Team  
United States General Accounting Office  
701 5<sup>th</sup> Avenue Suite 2700  
Seattle, WA 98104

Ms. Kara Finnegan  
Analyst  
United States General Accounting Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Williamson & Ms. Finnegan:

Amtrak appreciates the opportunity to review GAO's Draft Review of the Settlement between Amtrak and the Consortium of Bombardier and Alstom. Amtrak's specific comments and observations concerning the Draft are included in Attachment A to this letter. In addition to these comments, I must state upfront that Amtrak takes strong issue with the Draft's conclusion that "[a]lthough Amtrak and the Consortium are taking actions to address these challenges [associated with the transition of maintenance services to Amtrak], Amtrak does not have a comprehensive implementation plan that provides a 'blueprint' of important steps, milestones, contingency plans, and other measures necessary to successfully complete the transition." See page 4 of Draft letter to Senator McCain. In fact, after execution of the Settlement Agreement in March 2004, Amtrak developed and implemented a comprehensive process to monitor and enforce the Consortium's compliance with the terms of the Settlement, and to ensure the successful transition of the maintenance of the high-speed trainsets from the Consortium to Amtrak. This process includes regularly scheduled meetings both internal to Amtrak and with the Consortium, detailed schedules and other documents to track and monitor milestones, and plans for recovery in the event of delays in the transition. Plans and procedures are in place to address issues concerning budget and funding requirements, securing and training a technically competent workforce, procuring parts and supplies, and enforcing the Consortium's ongoing technical support and warranty obligations. Specific details of the process Amtrak has implemented are set forth in Attachment A.

While the numerous elements of this process have not been collected under the cover of one, separate document, this fact does not mean that Amtrak does not have in place a comprehensive and integrated plan to ensure successful completion of the transition and other terms of the Settlement Agreement. It is possible that GAO's staff assigned to this project did not have an opportunity to review, or did not fully understand, all of the procedures and

Appendix I  
Comments from the National Railroad  
Passenger Corporation

Randy Williamson & Kara Finnegan  
September 24, 2004  
Page 2



documents associated with this process. At your request, we are prepared to remedy any omissions or confusion in this regard.

Finally, while Amtrak appreciates GAO's preference to issue unrestricted reports, Amtrak continues to believe that it is not appropriate to release to the public certain details of the Settlement Agreement. Specifically, the following parts of the Draft should be redacted from public release: Draft Letter to Senator McCain, Section entitled "Results in Brief" pages 2 – 4; Draft Report, pages 6-8 (entire text on referenced pages); Draft Report, page 11, sub-bullet under third bullet ("Amtrak has paid NecMSC . . ."); Draft Report, pages 14, 16 – 18, 20 – 26 (entire text on referenced pages).

Please advise if you have any questions concerning Amtrak's comments or if we can be of additional assistance to the GAO on this project.

Sincerely,

  
David L. Gunn  
President and Chief Executive Officer

cc: A. Serfaty  
J. McHugh  
W. Crosbie

Attachment

Attachment A

Amtrak comments to GAO Draft Review of the Settlement between Amtrak and the Consortium of Bombardier and Alstom

1. Draft Letter to Senator McCain, page 1, second sentence of paragraph 2 states that “In December 2003, officials from the Consortium and Amtrak entered into negotiations . . .”

In fact, the parties began settlement discussions at the end of 2002 and were engaged in mediation with a third-party mediator throughout most of 2003. Settlement discussions then continued without the assistance of the mediator until settlement was reached in March 2004. The Report should be modified accordingly.

2. Draft Letter to Senator McCain, page 2, third sentence of Section entitled “Results in Brief” states that “To prepare for settlement, Amtrak spent about [amount deleted] on external legal counsel, consulting and mediation services.”

This figure constitutes a very rough approximation of the “high-end” of expenses incurred by Amtrak related to settlement and may include other activities related to the litigation that was ongoing at the same time that the parties were engaged in settlement/mediation actions. The actual number is likely less than this conservative estimate.

3. At various places in the Report, GAO, in describing the terms of the Settlement, states that Amtrak “paid” the Consortium [amount deleted]. See, for example, Draft Letter to Senator McCain, at page 2, second sentence of Section entitled “Results in Brief.”

A more accurate description of this term of the Settlement Agreement would be to say that Amtrak “released” to the Consortium [amount deleted] of the \$70 million of previously withheld funds.

4. Draft Report, page 10, first bullet item should be amended to reflect that the \$1.8 billion requested by Amtrak for FY 2005 includes \$100 million for repayment of the RRIF loan received by Amtrak in July 2002.
5. The Draft Report asserts that it is unknown “at this point whether Amtrak will save money or incur additional costs by managing trainset maintenance in-house rather than paying NecMSC to manage maintenance.” See Draft Report at page 18, third bullet item under section entitled “Unknown Costs.”

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**Appendix I**  
**Comments from the National Railroad**  
**Passenger Corporation**

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The Settlement Agreement establishes a baseline for the largest cost components – parts and labor - associated with Amtrak’s assumption of the maintenance responsibilities for the Trainsets. Specifically, under the Settlement Agreement, with respect to parts, Amtrak can choose either to proceed with the “parts only” option under the Management Services Agreement (which rates and costs are established by the terms of that contract) or, subject to audit verification, utilize the parts lists to be provided by the Consortium under the Settlement Agreement. With respect to the labor component, Amtrak has developed organizational charts that indicate that total staffing necessary for performance of the maintenance services will decrease after the transition is fully implemented. While there is always some degree of uncertainty, Amtrak estimates that based upon protections built into the Settlement Agreement, the costs of managing the maintenance in-house will be no greater than the costs of paying NecMSC to perform the work going forward.

6. The Draft Report lists as “Key Challenge” whether “Amtrak can develop an effective supply chain to meet trainset maintenance requirements.”

Amtrak would point to the many relationships it has developed with suppliers as part of its maintenance of the high horsepower locomotives manufactured by the Consortium as well as its 30 years of experience with suppliers for the remainder of its locomotive and passenger car fleet as strong evidence that this is not a significant hurdle to a successful transition. In any event, the “parts only” option, if Amtrak chooses it, provides Amtrak with the ability to secure parts necessary for maintaining and overhauling the Trainsets until 2013 at fixed prices. Thus, the Trainset maintenance requirements for the remainder of the term of the Management Services Agreement are protected by the Settlement Agreement. Amtrak recommends that this item be deleted from the list of “Key Challenges” or at least that it be modified based on its prior history with suppliers.

7. The Draft Report notes that the “Trainsets have not yet met the minimum reliability performance requirement of traveling an average of 17,500 miles between service failures.” See page 20 of Draft Report.

Amtrak would point out that this measure is intended as a 6-month rolling average whereas only 5 months of data have been available, to date.

8. The Draft Report also notes that “Amtrak and the Consortium have different interpretations of what is required to meet the [17,500] reliability performance requirements.”

Amtrak does not believe that this assertion is accurate. Experience to date indicates that the parties are in agreement with respect to this issue.

9. Amtrak takes issue with the Draft Report's assertion that it has not prepared a comprehensive plan to address all of the settlement challenges. It has, in fact, implemented a comprehensive and integrated process to monitor and enforce compliance with milestones required under the Settlement Agreement, to recover in the event of delays in meeting milestones, and to ensure an overall successful transition of maintenance responsibility to Amtrak. The following steps and documents provide evidence of this comprehensive plan.

a) **Trainsets, Locomotives & Facilities Open Technical Issues (Attachments A1, A2 & A3 to the Settlement Agreement)**

A status column has been added to these documents to identify and detail the actions performed on a bimonthly basis to resolve the relevant technical issue. Amtrak and the Consortium participate in a conference call every other Monday at 1:30 pm to review and discuss the progress of each issue. If any issue is beginning to fall behind schedule, a recovery plan is discussed and agreed upon to ensure that each issue is completed in a timely fashion. These documents are updated by the Consortium after each conference call to memorialize the actions agreed upon during the meeting.

b) **Heavy Repair Training (Attachment A1 to the Settlement Agreement)**

The training requirements defined in Attachment K of the Settlement Agreement have been added to this list. A status column has been added to this document detailing the actions performed on a bimonthly basis to prepare for the training classes. Amtrak and the Consortium have a conference call every other Monday at 1:30 pm (one Monday is the technical conference call, the next Monday is the training conference call) to review and discuss the progress of each issue. If any issue is beginning to fall behind schedule, a recovery plan is discussed and agreed upon to ensure that each issue is completed in a timely fashion. The document is updated by Amtrak after each conference call to identify the actions agreed upon during the meeting.

Efforts to address training requirements for the transition continue to evolve as necessary. For instance, since the GAO completed its investigation, the Consortium has presented its approach for the Trouble Shooting component of the training program. Amtrak is reviewing and will comment on the proposed program and is also conducting meetings at each facility to identify the appropriate audience for this training. In addition, Amtrak has recently hired a full-time HSR Training manager that is dedicated to HSR training, and anticipates adding 4 people to that group soon.

c) **Trainset and Locomotive Modification Matrix (Attachments A1 and A2 to the Settlement Agreement)**

A completion date column has been added to these documents identifying when each modification will be installed on the fleet. Amtrak and the Consortium have a conference call every other Monday at 1:30 pm to review and discuss the progress of each modification. This occurs immediately following the Open Technical Issues review. If any issue is beginning to fall behind schedule, a recovery plan is discussed and agreed upon to ensure that each issue is completed in a timely fashion. These documents are updated by the Consortium.

d) **CPM Schedules (Settlement Milestones, Attachment A1, A2 and A3)**

In addition to the above actions and meetings, the Consortium has developed separate CPM Schedules using Microsoft Project for the Open Technical Issues for the Trainsets, Locomotives and Facilities, the Trainset and Locomotive Modifications, Heavy Repair Training, Trainset and Locomotive Contract Deliverables, and the Transition that includes Attachment K Training and the Parts/Inventory requirements. Each of the CPM Schedules lists each milestone as well as the necessary action to complete each milestone in accordance with the Settlement Agreement. Amtrak and the Consortium review these schedules during monthly Progress Meetings. If any activity or milestone is beginning to fall behind schedule, a recovery plan is immediately discussed and agreed upon to try and keep each activity on schedule. The Consortium updates the schedules and provides Amtrak with electronic and hard copies one week prior to the schedule Progress Meeting.

e) **Monthly Progress Reports**

The Consortium provides Amtrak with Monthly Progress Reports that contain the status of all open issues. A Progress Meeting is held monthly between the Consortium and Amtrak to review this report as well as the CPM Schedules.

f) **Status of Settlement Agreement Issues**

A report summarizing the latest status of each Settlement Agreement issue is prepared by Amtrak on a monthly basis. This report is reviewed and discussed at the monthly Acela Executive Committee Oversight meetings which are attended by senior managers of Amtrak and the Consortium.

g) **Quarterly Steering Committee Meetings**

Senior executives from Amtrak, Bombardier and Alstom participate in quarterly meetings to address and resolve problems associated with progress and completion of the terms of the Settlement Agreement and the transition process.

**h) Transition Plan**

Amtrak has prepared a written Transition Plan that defines and summarizes the most significant activities that must be completed by Amtrak prior to Amtrak assuming the responsibility of maintaining the Trainsets. This Plan includes organization charts that show the gradual replacement over time of NecMSC staff with Amtrak staff. This Plan also includes a Primavera CPM Schedule detailing and linking each activity and milestone that must be completed during the transition period.

# Review of the Settlement between Amtrak and the Consortium of Bombardier and Alstom



## Review of the Settlement between Amtrak and the Consortium of Bombardier and Alstom



Source: www.trainweb.com

Briefing for the  
Senate Committee  
on Commerce,  
Science, and  
Transportation

September 17, 2004



- 
- Introduction
  - Objectives
  - Scope and methodology
  - Summary of findings
  - Background
  - Detailed findings for each objective
  - Conclusions
  - Recommendations for executive action



- In 1996, the National Railroad Passenger Corporation (Amtrak) executed contracts with a consortium of train manufacturers, Bombardier and Alstom, to build 20 high-speed trains, called trainsets and 15 electric high-horsepower locomotives; construct three maintenance facilities; and provide maintenance services for the trainsets.<sup>1</sup>
- Bombardier and Alstom (the Consortium) created the Northeast Corridor Management Service Corporation (NecMSC) to manage the facilities and maintain the trainsets, including supervising Amtrak maintenance employees.
- Because of concerns about the quality of the Consortium's work and Amtrak's withholding of payments, both parties filed suits. Amtrak and the Consortium reached a negotiated settlement in March 2004.
- In general, under the settlement,
  - Amtrak agreed to release a portion of the withheld funds to the Consortium and will assume facility management and trainset maintenance responsibilities as soon as 2006 rather than in 2013 as originally planned.
  - The Consortium must complete modifications to the trainsets and locomotives, achieve established performance standards, provide training to Amtrak staff, and provide and extend trainset warranties.

<sup>1</sup>Trainsets are part of Amtrak's Acela program and include two powercars and six passenger cars fixed together.



## Review Objectives

- Delineate the costs Amtrak incurred to prepare for and settle its lawsuit with the Consortium and the estimated costs Amtrak avoided by settling rather than pursuing further litigation;
- Determine the responsibilities of Amtrak and the Consortium under the settlement and the associated benefits and future costs; and
- Identify key challenges related to the settlement and the actions Amtrak and the Consortium are taking to address these challenges.



- Reviewed original contracts, litigation documents, the settlement document, and related Amtrak materials.
- Interviewed officials from Amtrak, Bombardier, Alstom, NecMSC, and the Federal Railroad Administration (FRA).
- Reviewed current plans and policies to coordinate the transition.
- Analyzed Amtrak's estimates of settlement costs incurred and estimates of costs saved by settling rather than pursuing litigation.
- Followed GAO data reliability standards and conducted our review according to generally accepted government auditing standards.
- Did not evaluate the validity of the original contracts or suits.



## Settlement Costs and Costs Avoided

- As a result of the settlement, Amtrak released a portion of the \$70 million previously withheld to the Consortium.<sup>2</sup>
- Amtrak estimates it incurred more than \$1 million in external costs to prepare for and reach a settlement.<sup>3</sup>
- According to Amtrak, reaching a settlement with the Consortium rather than proceeding with further litigation avoided at least an estimated \$20 million in additional litigation costs.

<sup>2</sup>Amtrak has also agreed to release an additional portion of previously withheld funds to the Consortium if certain conditions are met.

<sup>3</sup>Amtrak officials told us that this estimate includes costs for other activities related to the dispute.



## Responsibilities, Benefits, and Future Costs of the Settlement

- **Responsibilities before October 1, 2006**

- Amtrak is required to create a transition plan, hire staff to manage the facilities and maintain the trainsets, and determine a parts procurement plan for the trainsets.
- The Consortium is required to complete trainset and locomotive modifications; provide training to Amtrak staff; meet performance requirements for reliability, speed, and comfort; and transfer technical information and third-party contract rights to Amtrak.

- **Responsibilities after October 1, 2006**

- Amtrak will conditionally assume facility management and trainset maintenance responsibilities.
- The Consortium will be required to provide technical support, update information technology, and honor warranty obligations.



## Responsibilities, Benefits, and Future Costs of the Settlement

- **Settlement benefits**

- Amtrak and Consortium achieved an improved working relationship.
- Amtrak will gain maintenance control over the trainsets and obtain warranty extensions; Amtrak has secured financial recourse if settlement obligations are not met.
- The Consortium received a portion of previously withheld payments and will no longer have the contractual obligation to manage Amtrak employees if it fulfills the terms of the settlement agreement.

- **Future costs**

- Amtrak will release remaining funds withheld to the Consortium (up to the \$42.5 million) if certain requirements are met.
- Amtrak's internal costs will increase when it assumes trainset maintenance responsibilities; however, it will no longer have to pay NecMSC to manage its trainset maintenance function. Whether or not Amtrak will realize a net savings or incur a cost increase from this transition is unknown at this point.
- The Consortium may experience substantial costs to complete trainset modifications and to meet trainset performance requirements.



## Key Challenges and Actions Taken

- **Amtrak and the Consortium face numerous challenges as both parties strive to meet their settlement responsibilities. A successful transition depends on whether:**
  - The Consortium can complete complex modifications and meet specified performance requirements;
  - Amtrak can secure a workforce with the technical expertise needed to maintain the trainsets;
  - The Consortium and Amtrak can develop and implement training programs needed to maintain complex trainsets after the transition;
  - Amtrak can develop a cost-effective supply chain to meet trainset maintenance requirements;
  - The Consortium can provide required technical support and honor warranty obligations after the transition;
  - Amtrak can provide sustained, adequate funding for trainset maintenance and effectively integrate maintenance of high-speed trainsets into its current organization; and
  - Amtrak can prepare a comprehensive implementation plan that addresses all of the main settlement challenges and provides a “blueprint” of important steps, milestones, contingencies, and other measures necessary to successfully complete the transition.



## Amtrak Financial Information

- Amtrak received \$1.2 billion in federal funds in fiscal year 2004. Amtrak has requested \$1.8 billion for fiscal year 2005.<sup>4</sup>
- Given the amount of federal funding that Amtrak receives, Congress authorized the Secretary of Transportation, specifically FRA, to provide oversight of Amtrak's federal funds.
  - FRA authorizes the release of annual federal funds to Amtrak.
  - Amtrak must submit a business plan to the Secretary and Congress prior to receiving federal funds.
- Amtrak's Acela program is the centerpiece of Amtrak's intercity passenger rail system.
  - As of May 2004, Amtrak's Acela program contributed \$47 million to the system for fiscal year 2004—more than all other routes combined.

<sup>4</sup>The fiscal year 2005 request includes \$100 million for repayment of a loan received by Amtrak in July 2002.



## Key Provisions of Contracts

- In 1996, Amtrak signed three contracts with the Consortium, obligating the Consortium to:<sup>5</sup>
  - Build 20 high-speed trainsets and 15 electric high-horsepower locomotives;
  - Build three new maintenance facilities; and
  - Provide trainset maintenance through 2013.
- The Consortium created NecMSC to provide maintenance services and manage Amtrak maintenance employees.<sup>6</sup>
  - NecMSC technicians provide troubleshooting and technical services and instruct Amtrak employees on how to perform needed maintenance.
  - The Consortium provides its own manufactured parts and those of third-parties to maintain the trainsets.
  - Currently, there are 105 NecMSC authorized positions and 258 Amtrak authorized positions maintaining the trainsets.
- Amtrak pays NecMSC for its maintenance and management services.
  - Amtrak has paid NecMSC a total of \$31 million as of April 2004.<sup>7</sup>

<sup>5</sup>The trainset/maintenance facilities and locomotives contracts totaled \$730 million.

<sup>6</sup>Amtrak maintenance employees are union members.

<sup>7</sup>This amount is adjusted for the liquidated damages assessed by Amtrak.



## Litigation

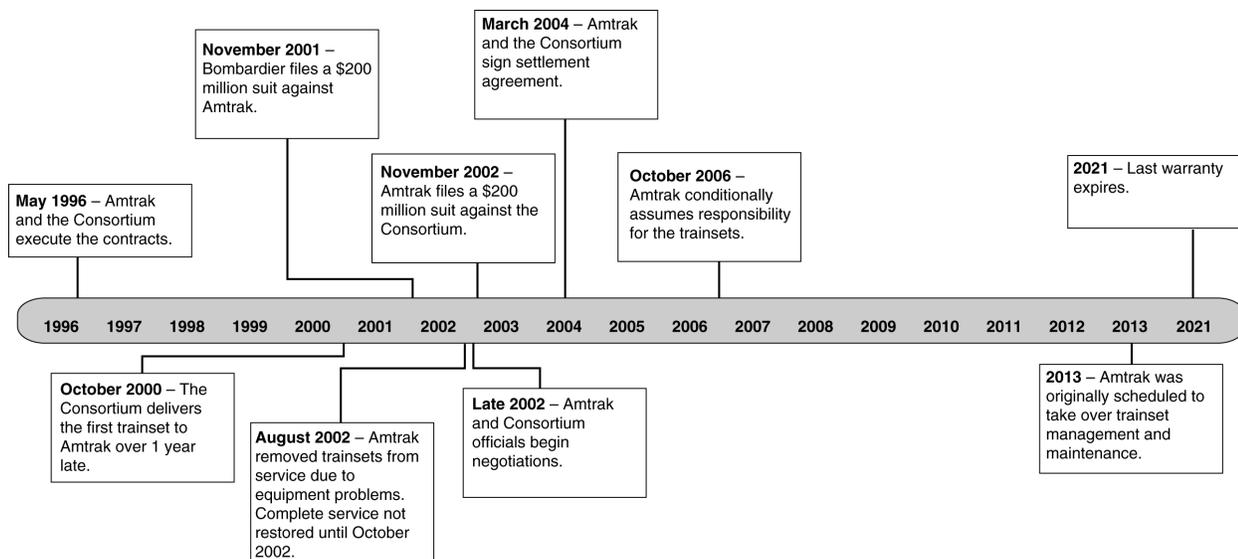
- In November 2001, Bombardier filed a suit alleging that Amtrak:
  - Improperly withheld payments;
  - Failed to provide accurate information on infrastructure conditions; and
  - Changed design specifications during contract performance.
- In November 2002, Amtrak filed a suit alleging that:
  - The Consortium failed to meet trainset performance requirements;
  - The Consortium's engineering was deficient, workmanship was poor, and program management and quality control were inadequate; and
  - The Consortium did not meet the contract delivery schedule.

**Appendix II  
Review of the Settlement between Amtrak  
and the Consortium of Bombardier and  
Alstom**



Background

**Timeline of Key Events**



Source: GAO.



## Settlement Costs and Costs Avoided

- **Amtrak released a portion of the \$70 million previously withheld to the Consortium.<sup>8</sup>**
- **Amtrak estimates it incurred more than \$1 million in external costs (outside counsel, mediation, and consulting and other services) to prepare for and reach a settlement with the Consortium.**
- **Amtrak does not track the costs for its staff to work on specific legal cases; therefore, internal cost information related to the settlement is not available.**
  - According to Amtrak officials, seven Amtrak staff were primarily involved in negotiating the settlement.
  - Amtrak officials do not consider the salaries of its full-time employees to be costs of the settlement.
- **According to Amtrak, reaching a settlement rather than proceeding with further litigation avoided at least an estimated \$20 million in additional litigation costs.<sup>9</sup>**

<sup>8</sup>As of the settlement agreement date, Amtrak had paid the Consortium about \$661 million of the \$730 million agreed to in the contracts. Amtrak has also agreed to release an additional portion of previously withheld funds to the Consortium if certain conditions are met.

<sup>9</sup>GAO did not independently verify this estimate. The estimate may be reasonable, however, in light of the magnitude of the damages claimed and the pre-discovery state of the litigation at the time of settlement.



Objective 2: Responsibilities, Benefits, and  
 Future Costs

**Settlement Responsibilities**

	Before October 1, 2006	After October 1, 2006
<b>Amtrak</b>	<ul style="list-style-type: none"> <li>• Create transition plan</li> <li>• Hire staff to manage facilities and maintain trainsets</li> <li>• Decide how to procure trainset parts</li> </ul>	<ul style="list-style-type: none"> <li>• Manage maintenance facilities</li> <li>• Maintain trainsets</li> </ul>
<b>Consortium</b>	<ul style="list-style-type: none"> <li>• Complete trainset and locomotive modifications</li> <li>• Meet performance requirements for speed, reliability, and comfort</li> <li>• Train Amtrak staff</li> <li>• Transfer technical information</li> <li>• Renegotiate rights to third-party contracts</li> <li>• Provide parts information, permits, and licenses</li> </ul>	<ul style="list-style-type: none"> <li>• Provide technical services and information technology updates</li> <li>• Honor trainset warranties</li> </ul>

Source: GAO analysis of Amtrak data.



## Objective 2: Responsibilities, Benefits, and Future Costs

### Benefits of the Settlement

- **According to Amtrak and Bombardier officials, all parties are now cooperating to address trainset problems and to complete management and maintenance responsibilities necessary for the transition to occur.**
  - Amtrak and Consortium officials meet monthly to discuss progress on and issues related to the transition.
- **Amtrak will gain control of trainset maintenance and may achieve monetary savings on parts and maintenance.**
  - Amtrak may be able to save on trainset maintenance due to its current conventional operations rather than paying NecMSC to maintain the trainsets.
  - The opportunity exists for Amtrak to save on parts procurement if it renegotiates more favorable third-party contracts with parts providers used for its conventional service.
- **Amtrak will continue to be protected by extended trainset warranties and by the Consortium's obligations to provide technical support and parts.**
  - "Bumper-to-bumper" trainset warranties were extended on all trainsets until October 1, 2005, even though some had already expired.
  - Modifications to trainsets will be warranted for two years after they are completed satisfactorily.
  - The Consortium is required to provide technical support for up to two years after the transition.
  - The Consortium will provide or assist Amtrak in obtaining replacement parts for the life of the trainsets.



## Objective 2: Responsibilities, Benefits, and Future Costs

### Benefits of the Settlement

- **Amtrak has several methods of financial recourse if the Consortium does not meet obligations, including honoring warranties and completing trainset and locomotive modifications.**
  - Amtrak may draw down on letters of credit issued by the Consortium should the Consortium default and not complete required modifications or meet established performance requirements.
  - Amtrak can also seek damages through litigation and, if need be, collect against sureties under maintenance bonds.
  - If conflicts arise, Amtrak may take disputes to the dispute resolution board, the process for which was streamlined as a result of the settlement to expedite disputed issues.<sup>10</sup>
- **The Consortium/NecMSC will no longer have to manage Amtrak employees if it fulfills the terms of the settlement agreement.**
  - According to NecMSC and Amtrak officials, this arrangement has resulted in disputes over disciplining issues and has created an overall unsatisfactory working environment.
- **The Consortium received a portion of the funds previously withheld.**
- **If the Consortium completes all trainset modifications and meets reliability performance requirements, Amtrak will release the letters of credit it now holds.<sup>11</sup>**

<sup>10</sup>The dispute resolution board is made up three independent officials who meet to resolve issues between the parties.

<sup>11</sup>In addition, Amtrak will pay back to Alstom dollars drawn down from a previous letter of credit that has expired.



Objective 2: Responsibilities, Benefits, and  
Future Costs

## Costs of Future Settlement Responsibilities

- **Conditional Costs**

- Amtrak is also obligated to release an additional portion of previously withheld funds to the Consortium if the Consortium:
  - Completes specified trainset and locomotive modifications and provides heavy repair training;
  - Provides other training for overhaul maintenance and troubleshooting;
  - Achieves the reliability performance requirement of 20,000 miles between service failures; and
  - Fulfills all settlement obligations by October 1, 2006.

- **Unknown Costs**

- Starting as early as 2006 (rather than in 2013 as originally planned), Amtrak will be responsible for maintenance costs to ensure continued trainset performance, including parts procurement and overhaul maintenance.
- Amtrak will incur the costs of operating a new High Speed Rail Division it is creating to manage and maintain the trainsets.
- Amtrak may save money or incur additional costs by managing trainset maintenance in-house rather than paying NecMSC to manage maintenance.
- The Consortium may experience substantial costs to complete required modifications and to meet trainset performance requirements.



## Key Challenges and Actions Taken

- **Amtrak and the Consortium face numerous challenges as both parties strive to meet their settlement responsibilities. A successful transition depends on whether:**
  - The Consortium can complete complex modifications and meet specified performance requirements;
  - Amtrak can secure a workforce with the technical expertise needed to maintain the trainsets;
  - The Consortium and Amtrak can develop and implement training programs needed to maintain complex trainsets after the transition;
  - Amtrak can develop a cost-effective supply chain to meet trainset maintenance requirements;
  - The Consortium can provide required technical support and honor warranty obligations after the transition;
  - Amtrak can provide sustained, adequate funding for trainset maintenance and effectively integrate maintenance of high-speed trainsets into its current organization; and
  - Amtrak can prepare a comprehensive implementation plan that addresses all of the main settlement challenges and provides a “blueprint” of important steps, milestones, contingencies, and other measures necessary to successfully complete the transition.



Objective 3: Key Challenges and Actions  
Taken

## Achieving Trainset Modifications and Performance Requirements

- **The Consortium must complete an extensive list of modifications, some of which are complex, before Amtrak will assume maintenance responsibilities.**
  - The Consortium has established completion dates for each modification and the Consortium and Amtrak have monthly meetings to discuss progress.
  - As of August 2004, the Consortium had closed more than half of the items according to schedule.
  - Amtrak has identified certain modifications that may potentially not be completed by October 1, 2006, and has concerns that other modifications may affect service reliability.
- **Meeting several performance requirements is especially important.**
  - The trainsets have not yet met the minimum reliability performance requirement of traveling an average of 17,500 miles between service failures.
  - Amtrak and the Consortium have different interpretations of what is required to meet the reliability performance requirements.
  - The Consortium is responsible for ensuring that the trainsets continue to meet performance requirements for speed and comfort while completing modifications and overhauls.



Objective 3: Key Challenges and Actions  
Taken

## Obtaining Technical Expertise for Maintenance

- **Amtrak must secure a workforce with the technical expertise needed to maintain the trainsets.**
  - Amtrak plans to create a new High Speed Rail Division to assume the management and maintenance responsibilities from NecMSC.
    - By October 1, 2006, the High Speed Rail Division will consist of 336 authorized positions, including supervisory positions and support positions in other departments.
    - By October 1, 2006, Amtrak plans to consolidate positions and have fewer positions than the combined NecMSC and Amtrak trainset maintenance workforce that exists today.
  - Amtrak plans to hire at least 50 percent of NecMSC's current staff so as to benefit from their technical expertise.
    - Amtrak is using commitment letters to recruit and retain these staff.
    - To expedite the transition, Amtrak plans to appoint staff to management positions rather than use standard hiring procedures.



Objective 3: Key Challenges and Actions  
Taken

## Developing and Implementing Training Programs

- **The Consortium and Amtrak must develop and implement training programs needed to maintain complex trainsets after the transition.**
  - The trainsets are technically complex and require considerable expertise to identify and make needed repairs and to troubleshoot difficult maintenance problems.
  - Amtrak plans to begin training efforts in early 2005, but this is contingent on several key steps, some of which have not yet been completed.
    - Amtrak and NecMSC have not yet finalized training programs, materials, and competency measures for heavy repair, overhaul, and troubleshooting training.
    - Amtrak has not yet identified union employees to participate in these training programs.<sup>12</sup>

<sup>12</sup>Amtrak plans to ask staff to volunteer to participate in some of these training programs. According to Amtrak officials, staff may be reluctant to participate in training due to its extensive nature and because employees will not receive additional compensation for their participation.



Objective 3: Key Challenges and Actions  
Taken

## Developing a Cost-Effective Supply Chain

- **Amtrak must develop a cost-effective supply chain to meet trainset maintenance requirements.**
  - Having needed parts in a timely manner is necessary to sustain trainset performance and ensure that the trainsets are available for revenue service.
  - As part of the settlement, Amtrak must decide how it will continue to procure trainset parts. It has two options:
    - Continue to buy all parts through the Consortium;<sup>13</sup> or
    - Buy the Consortium's inventory and negotiate its own contracts to buy parts.<sup>14</sup> Amtrak believes it can use its established relationships with suppliers to obtain parts.
  - Amtrak will need to integrate the Consortium's inventory into its existing system if it chooses the inventory option.
  - Although it has started, Amtrak has not yet completed an analysis to select a parts procurement option.

<sup>13</sup>Amtrak and the Consortium have already established prices for the parts.

<sup>14</sup>Amtrak's Inspector General will audit the Consortium's price list for parts before Amtrak makes its decision.



## Objective 3: Key Challenges and Actions Taken

### Providing Technical Support and Honoring Warranties

- **The Consortium must provide required technical support.**
  - The Consortium's continuing technical support, which ranges from assistance by phone as needed to long-term on-site support, may be necessary in varying degrees to maintain the complex trainsets after the transition occurs.
  - Currently, the Consortium is obligated to provide technical support for only two years after the transition, and if problems arise, Amtrak may need to negotiate extended technical support terms.
  - The Consortium has provided Amtrak with its own software necessary to support the trainset operating systems as required.
  - The Consortium has not yet provided all of the trainset operating software needed from third parties.
- **The Consortium must honor warranty obligations after the transition.**
  - The letters of credit maintained by the Consortium will not be released by Amtrak until all modifications are completed and reliability performance requirements are met.
  - The maintenance bonds issued by the Consortium ensure the faithful completion of modifications and warranty obligations.
  - The Consortium is responsible for other warranties—the last expires in 2021—and Amtrak may seek damages if disputes about the warranties arise.
  - Amtrak will continue to bear the risk of lost revenue if the trainsets are taken out of service.



Objective 3: Key Challenges and Actions  
Taken

## Sufficiently Funding Maintenance and Integrating Responsibilities

- **Amtrak must provide adequate and sustained funding for trainset maintenance.**
  - Amtrak has experienced problems in the past with delays in completing the maintenance necessary to provide its conventional service, and if these problems continue, they could affect trainset performance and availability for revenue service.
  - Amtrak has not determined the level of funding necessary to provide regular maintenance and overhauls to the trainsets.
  - According to an FRA official, it is unclear how the trainsets will age due to the abbreviated testing schedule, potentially affecting future maintenance costs.
- **Amtrak must successfully integrate new maintenance responsibilities into its current organization.**
  - When a new division is established, several items are critical for success, including strategic planning, communication, and performance management.
  - Amtrak has encountered difficulties in managing large scale projects in the past.



Objective 3: Key Challenges and Actions  
 Taken

**Preparing a Comprehensive Implementation Plan**

- **Although actions are under way to address the key challenges related to the settlement, Amtrak does not have a comprehensive implementation plan that:**
  - Fully addresses all key challenges; and
  - Provides a “blueprint” for effectively resolving these challenges, including important steps, milestones, contingency plans if milestones are not met, and measures for achieving results.
- **The scope of Amtrak’s current draft transition plan only addresses hiring and training staff to assume maintenance responsibilities.**

Challenges	Actions Under Way	Included in Draft Transition Plan
Trainset modifications and performance	✓	
Workforce with technical expertise	✓	✓
Training programs	✓	✓
Supply chain	✓	
Technical support and warranties	✓	
Adequate funding and organizational issues	✓	

Source: GAO analysis of Amtrak data.



## Conclusions

- Achieving a successful transition is critical to Amtrak's financial well-being, given that the Acela program is such a significant source of its revenue.
- Given the importance of the Acela program to Amtrak, Amtrak must effectively address each of the key challenges it faces.
- To date, however, Amtrak has not prepared a comprehensive implementation plan.
- Not addressing each of these key challenges in a structured and well-planned way could jeopardize the successful implementation of the settlement, which in turn could negatively affect Amtrak's financial performance.
- FRA, as part of its existing oversight responsibilities of Amtrak, should see that a comprehensive plan is completed and monitor the settlement's implementation to ensure that results are being achieved as planned.



## Recommendations for Executive Action

- To help ensure a successful implementation of the settlement agreement, the President of Amtrak, working with Amtrak's Board of Directors, should develop a comprehensive plan. This implementation plan should address the key challenges and include important milestones for each of the critical steps associated with the key elements of the settlement, a risk analysis showing the potential impacts if tasks and milestones are not achieved, contingency plans if milestones are not met, methods to accurately evaluate and measure progress, and a funding strategy for effectively accomplishing Amtrak's maintenance responsibilities.
- The Secretary of Transportation should direct the Acting Administrator of FRA to review and monitor Amtrak's implementation of its plan as part of FRA's overall responsibilities to oversee Amtrak's activities.

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