Written Statement of Commissioner Matthew K. Rose

National Surface
TRANSPORTATION POLICY
AND REVENUE STUDY COMMISSION

Before the Senate Committee on Commerce, Science and Transportation

for a hearing on the report entitled "Transportation for Tomorrow:

Report of the National Surface Transportation Policy and Revenue Study

Commission"

Tuesday, April 22, 2008

BNSF Railway Company
500 New Jersey Avenue, NW, Suite 550
Washington, DC 20001
Telephone: 202-347-8662

Written Statement
Commissioner Matthew K. Rose
Hearing before the Senate Committee on Commerce, Science and Transportation on the report entitled, "Transportation for Tomorrow: Report of the National Surface Transportation Policy and Revenue Study Commission
April 22, 2008

Good morning Chairman Inouye, Ranking Member Stevens and Members of the Committee. I want to thank you for the opportunity to appear before you today to discuss the National Surface Transportation Policy and Revenue Study Commission's report and findings.

At the outset, I would like to say that it has been an honor to serve on this Commission, and I was privileged to work with my fellow Commissioners, each of whom brought a unique perspective to our work and from which I learned a great deal. I would also like to thank Department of Transportation Secretary Mary Peters, former Transportation Secretary Norm Mineta and acting Transportation Secretary Maria Cino for their collective leadership in chairing the Commission. I can tell you that considering the expertise and strongly held views of the Commissioners, leading this group was no small task.

My own perspective, of course, is shaped by my long career in the freight logistics business, and I should make it clear that I speak only for myself, as a Commissioner, and not for the railroad industry as a whole. The Commission's deliberations addressed a number of issues about which a railroad CEO naturally has some skepticism – such as expanding the highway system, a larger passenger rail program and a federal freight program partially funded by a user fee. Thus, it was important to me that the Commission's recommendations, especially those for achieving freight and passenger mobility goals, were effective and not made at the expense of stakeholders in America's freight system. I believe the Commission generally has succeeded in this regard and that the Commission's proposals on these subjects should be carefully considered by Congress as it develops a comprehensive transportation program aimed at sustainably preserving mobility and economic growth.

Regardless of whether some or all of the Commission's recommendations are enacted by Congress, I believe this report is an unqualified success in demonstrating to Congress -- and the drivers and consumers who elect them -- that freight mobility is essential to jobs, global competitiveness and quality of life.

When the Commission began its deliberations and receiving the views of the public almost two years ago, it was clear to me that key transportation, economic development and academic experts understand how critical freight transportation is to the U.S. economy. Witness after witness from every part of the country underscored the importance of decongesting and expanding freight networks. Frankly, I was a little surprised and pleased at how the importance of freight mobility is increasingly appreciated outside of the logistics community.

Thus, goods movement became a fundamental element of the Commission's work. The Commission made policy and programmatic recommendations to promote efficient freight networks, in contrast to the nearly exclusive focus on passenger mobility in all of the preceding comprehensive surface transportation laws. In fairness, things are different today than they were even at the time of enactment of the last surface transportation bill. The Commission found that we are at a freight capacity tipping point. For all modes, freight capacity is tight, reflected in both higher costs to the supply chain and consumers and in the environmental impacts associated with congestion and increased volumes.

One of the most important byproducts of this report is the Cambridge Systematics/AAR Study, which benchmarks current U.S. freight rail capacity in key corridors and projects needed to expand capacity into the future, based on freight volume growth levels presumed by the

Commission. Such a study has never been done before; it was not necessary. Now, however, the economy is a reflection of the freight rail network, and policy makers should have a better understanding of what that means, the consequences of inaction and be given recommendations for a path forward.

As many of you on the dais know, I invariably ask elected officials to weigh policy proposals against whether implementation will result in more freight capacity, or less. The Cambridge Study tells us how much more freight rail capacity the country needs if we want to continue to realize the economic and environmental benefits of an efficient national freight rail network. Understanding future freight rail capacity needs will also help policy makers evaluate whether public policy proposals – on passenger rail, public-private partnerships, economic and other regulation – help achieve needed freight rail capacity expansion, the vast majority of which has been, and will continue to be, privately funded and maintained by the railroads.

The Commission concluded that freight rail capacity needs to be expanded systematically over the next 15-, 30- and 50-years, and also determined that freight rail market share should be increased. Significantly, the Commission recognized that private investment is the key driver of freight rail network expansion. I know first-hand that if government regulation – economic, safety, security, environmental, labor – is not based in cost-benefit analysis and an understanding of the impact of implementation on re-investment, it will choke off private spending on expansion capital. Obviously, railroads are not the only private sector provider of transportation to whom this principle applies. Thus, the Commission found that rational regulatory policy is important to successfully promoting investment and productivity for all of the nation's private sector providers of transportation. This is one of the most important conceptual underpinnings of the report.

The Commission also recognized the value of tax incentives in spurring needed investment in capacity expansion. It recommended a federal investment tax credit as a way to expand rail network capacity. This has been proposed by the freight rail industry as a way to invest faster to meet market demand. The expansion tax credit, together with immediate expensing of the remaining 75% of capital investment, would reduce expansion project costs by approximately 30%. The net effect is that project return would increase by 3% to 4%, making the investment in expansion more likely and on an earlier timeline. It is enough of an incentive so that a good investment will be made earlier, but not excessive so as to spur a bad investment. The Commission's recommendation extends also to the maintenance tax credit needed by the short line industry.

Beyond tax policy, this Committee should also seriously consider the Commission's new freight mobility programmatic recommendations to the surface transportation programs. Specifically, the Commission recommended a freight program which is intended to afford broad flexibility to implement freight-related projects that are currently beyond the traditional modal authorizations. With regard to freight rail, the Commission recognized that there are projects that produce substantial public benefits but from which railroads would not benefit enough operationally to make the investment on their own. These projects might reduce vehicular congestion, transportation environmental impacts or even improve freight efficiency; however, there is a higher need for the railroad's finite investment dollar elsewhere. This proposed freight mobility program helps bridge the gap between the projects in which the railroads must invest to keep networks strong and expanding to meet market demand and projects that serve national, state and local freight mobility goals. Projects eligible for the freight mobility program would serve the public interest in improving mobility and eliminating chokepoints and their related environmental impacts.

The Commission envisioned eligible public-private partnership projects to include intermodal connectors, strategic national rail bridges where the cost of construction exceeds return on private invested capital, train control technology and assistance in corridor development. In addition, eligibility would include development of “green” intermodal facilities and operations, and on/near dock facilities, which can reduce vehicular congestion, emissions and noise and can improve safety.

Proposed projects would be the product of cooperation between freight railroads and the public sector – as they are now – but with the formality imposed by a National Freight Transportation Plan, which calls upon federal, state, local and private stakeholders to evaluate projects using cost-benefit analysis. This process also will formally implement the principles recognized by the Commission that public entities and private entities should pay for their respective benefits, that publicly-funded projects should not require non-economic private investment or service, and that public investment should not supplant, diminish or strand private investment.

The Commission made a recommendation that more funding from a variety of sources should help pay for the projects undertaken through this program. These include gas tax revenues, a portion of the existing Customs revenues, and potentially a freight fee and any carbon-related revenues that may result if Congress regulates green house gases. In addition, the Commission acknowledged that freight projects should receive funding from other programs – environmental, passenger rail, transit, metropolitan mobility – if they meet the goals of those programs.

I believe that, since trade is the key driver for these increasing volumes, Customs duties are an appropriate stream of revenue for funding a freight program. Customs duties, with established collection and administration, have the added benefit of not displacing freight between ports of entry. Dedicating 5% of current Customs duties for investment in freight projects would generate about $1.8 billion annually and $20 billion cumulatively through 2017. Dedicating 10% of current Customs revenues would yield $3.6 billion annually and $49 billion cumulatively through 2017.

The Commission was not specific about the form of any freight fee which Congress might authorize – such as a container fee, or waybill surcharge. However, it did correctly qualify that any fee considered by Congress should be designed to ensure that commerce is not burdened. At the same time, Congress should ensure that local and state proliferation of such fees are, in general, preempted. In addition, no mode of transportation or port of entry should be unduly advantaged or disadvantaged. A national freight fee is preferred to individual state fee initiatives that are now emerging in several states, which may inadvertently distort global trade flows and result in diverting congestion from one port region to another. A national fee is the best way of keeping a level playing field across national freight networks.

The Commission also found that a fee must be designed to ensure that the ultimate consumer bears the cost. This means that any freight fee is paid by the beneficial cargo owner, not transportation intermediaries such as steamship, trucking, or rail companies. An issue with fees assessed against carriers is their inability to pass these fees on in a competitive marketplace, which will result in reducing their ability to re-invest. Furthermore, the administrative burden to bill and collect a federal freight fee should not be put on the private sector.

The Commission recognized that the payers of such a fee must realize the benefit of improved freight flows resulting from projects funded by the freight program. This is a fundamental user fee principle. It is essential to recognize that any freight fee is the shipper's money – private funding – which should be invested in ways that result in increased freight velocity, capacity and additional reliability. It will take additional revenues from all sources – including gas taxes, Customs duties and potentially revenues from any greenhouse gas regulatory program – to better meet the public's mobility and environmental goals.

I expect that freight stakeholders and Congress will have a strong debate about specifics of a freight fee and whether a "freight trust fund" should be created to administer it. The rail industry has long been opposed to that concept because there is little "trust" that the funds would flow to projects that meet the goals of an integrated goods-movement strategy – versus the political earmarking process. The Commission called upon Congress to create an accountable and transparent programmatic linkage between an assessed freight fee and the selection and funding of projects that facilitate growing trade-driven freight volumes.

In my opinion, conditions placed by Congress around the use of the freight fee will be critical to whether freight stakeholders are able to come to agreement on such a proposal. To ensure the wisest use of resources, the Commission recommended the development of a National Freight Plan and a NASTRAC to ensure that only effective, high priority projects would receive funding. In the absence of some kind of strong program governance for funding freight projects, I could not support any freight fee and related freight trust fund.

Next, I would like to address the passenger rail recommendations of the Commissions findings and recommendations. I believe that it is self-evident that passenger rail has a place in

America's transportation future, given the energy and environmental challenges this country faces.

First and foremost, this country should raise its sights and view separated right of way, high speed passenger rail as a starting point, rather than an end point, of its passenger rail vision. Incrementalism – where more passenger rail is added to existing freight networks until capacity is full - will be frustrating and potentially counterproductive in light of growing freight volumes. This Committee should commit itself to a bold vision of high speed passenger rail in the next transportation bill.

However, the current reality is a system of joint use by freight and passenger rail. While the Commission envisions high speed rail, it also addressed the joint use model and, in so doing, was clear about the need to protect and expand the underlying freight network. Throughout the Commission's passenger rail discussions, it recognized that it is nonsensical to impede operations and expansion of freight rail, the most fuel- and cost-efficient and environmentally friendly means of moving growing volumes, thus driving freight to the nation's highways. That is an important externality in any cost-benefit analysis.

Specifically, the Commission upheld the principle that access by passenger providers to freight rail networks, where reasonable, must be negotiated at an arm's length with freight railroads, and the impact on present and future corridor capacity must be mitigated to ensure that rail freight capacity is not reduced, but enhanced. This recognizes that speed differences between passenger and freight trains and certain well-defined passenger service requirements must be taken into account and that there must be a fair assignment of costs based on the on-going cost of passenger services. These costs include the cost of upgrading and maintaining track, signals and structures to support joint freight and passenger operations, and the costs associated with sealed or grade separated joint use corridors. Finally, it goes without saying that all host railroads must be adequately and comprehensively protected through indemnification and insurance for all risks associated with passenger rail service. In short, the Commission's vision recognizes that in order to be a true transportation alternative for Americans, passenger rail cannot be achieved on the cheap, as it has been to date.

I would like to point out the other findings and recommendations in the report that have positive implications for freight mobility. The Commission made extensive recommendations for streamlining the project permitting process and specifically recognized that privately funded freight rail projects often face the same costly challenges and delays. In our discussions, the importance of preserving federal pre-emption in this regard was recognized. In addition, the Commission recommended an environmental stewardship program, which recognizes ways to improve the environmental impacts of freight operations. The recommendations envision tax incentives for deployment of cleaner locomotives, and funding for retrofitting locomotives with clean-burning technology.

I believe the Commission succeeded in this report in bringing the rail sector to the policy table in a way that has never been done before. The Commission recommends a more mode-neutral approach that allows policy makers to recognize freight rail's inherent cost effectiveness, fuel efficiency and environmental sustainability in program and project funding decisions. That's new, and it should help level the playing field between modes and result in greater benefits to drivers, communities and the environment.

In conclusion, it is a privilege to transmit the Commission's findings to you and formally conclude the work that Congress asked us to do. I am confident that the call to action which the Commission makes will be carefully evaluated by this committee, and that it will give careful attention to the freight mobility and passenger rail findings and recommendations of the Commission. I look forward to your deliberation of these findings, and those of others yet to come before you, as you prepare for what may be one of the most important reauthorization bills yet.