

Ohio Department of Transportation  
21<sup>st</sup> Century Transportation Task Force  
Maximizing Public Investment Committee  
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## Abstract

This testimony suggests the Ohio Turnpike Commission be permitted to acquire, restore, improve, and administer government agency-owned, threatened, and abandoned rail lines as a supplementary means to help alleviate the capacity, congestion, and energy crises throughout Ohio and the Midwest.

## Transportation Business and Governance Models Overview

Ohio Department of Transportation, County Roadway Engineers, et al.:

ODOT's and other government agencies' business and governance models are to own roadway right of way, infrastructures, and facilities and make them openly accessible to all qualified users while refraining from engaging in competitive carriage service against private carriers. The federal gasoline tax funds a major part of their budgets, while the balance is subsidized by federal and state budgets. ODOT and other public roadway providers do not pay real or personal property taxes on the rights of way or infrastructures, and are consist-neutral except for special consists and hazmat restrictions. Some municipal and regional transit agencies operate public monopoly commuter bus service on public roadways and are largely subsidized, while for-hire and private carrier bus operators compete equally over the roadways.

Former ODOT Director Gordon Proctor stated in two presentations that ODOT would not become additionally involved in private railroading. What non-earmarked loans and grants ODOT has made available for public, private, and Public Private Partnership rail projects have been insignificant to properly fund them. It did contribute some funding for Norfolk Southern Rwy's VA-WV-OH Heartland Corridor improvement project, and may also contribute to CSX's National Gateway project.

In his 3-14-2007 testimony to the Ohio Senate Highways & Transportation Committee, ODOT Director James G. Beasley stated "ODOT has seen a 40% increase in construction prices in just the past four years. Other transportation modes are experiencing similar price increases.

Trucking:

Trucking carriers are considered competitive "for-hire" and "private" carriers, and not monopolized "common" carriers since they do not own and operate their own roadways. UPS CEO Michael Askew once said at a University of Michigan Business School venture capital conference that UPS would never own and administer its own roadways.

However truckers have never paid for their fair share of the wear and tear they have caused on public roadways, and together passenger vehicle operators and the state and federal budgets subsidize the balance.

Although trucking is preferred for "Just-In-Time" supply chain deliveries, roadway congestion and increasing fuel costs are now forcing companies to slow their speeds to conserve fuel, and some traffic is shifting to rail for medium and short haul deliveries. The industry is struggling with driver turnover, and hazmat consist operators are exiting the market due to increased insurance costs.

Ohio Turnpike Commission:

In 1949 OTC issued \$326M of tax-free revenue bonds (equivalent to \$2.779B in 2007) to finance construction of the Ohio Turnpike's I-76/I-80/I-90 Project #1. OTC has been subsidized by the State with a small percentage of the state gas tax and by a joint test program with ODOT to shift more trucks from roadways to the Turnpike, but has never been subsidized by the federal government. OTC currently assesses users based upon ton-mile tolls and is consist-neutral except for special loads and hazmat restrictions. It provides openly accessible roadway to all qualified users without engaging in carriage service, and is real and personal property tax-free.

According to its 2006 CAFR, OTC had debt ratings from Standard & Poor's of AA, Fitch of AA, and Moody's of Aa3, making it one of the best-rated turnpikes worldwide. The debt rating scales from Standard & Poor's, Fitch, and Moody's are as follows-

S&P's: AAA, AA+, AA, AA-, A+, A, A-, BBB+, BBB, BBB-, BB+, BB, BB-, B+, B, B-

Fitch: AAA, AA, A, BBB, BB, B; CCC, CC, C, DDD, DD, D (+ & - may be added to each rating other than AAA or below CCC)

Moody's: Aaa, Aaa1, Aaa2, Aaa3, Aa, Aa1, Aa2, Aa3, A, A1, A2, A3, Baa, Baa1, Baa2, Baa3, Ba, Ba1, Ba2, Ba3, B, B1, B2, B3

Former Ohio Secretary of State Kenneth Blackwell and former Ohio Rail Development Commission Executive Director James Seney unsuccessfully attempted to have the turnpike privatized and use the long term lease proceeds largely to subsidize unrelated projects, and some for ORDC rail projects. Turnpike suitors Macquarie Bank of Australia at that

time had debt ratings from S&P of A, Moody's of A2, and Fitch of A+, while Cintra of Spain had no ratings at all.

Major complaints against OTC have included a perceived promise to convert the turnpike to toll-free operations once the revenue bonds were paid off, but the idea failed to address annual maintenance and administration costs and would have wrecked their credit rating for future projects. OTC toll rates have been criticized for being too high even though it assesses lower rates than Indiana's or Pennsylvania's turnpikes. There has also been little opposition to the credit rating agencies demanding an increase of OTC's Debt Service Coverage Ratio to 150%-200% to preserve their high ratings. During its ODOT Maximizing Public Investment Committee meeting, OTC Executive Director George Distel said it like other turnpikes and DOTs was experiencing recent declines in volumes, and hinted some might have shifted to rail.

#### Railroads:

Large "Class I" private railroads have traditionally owned and operated their own rights-of-way, infrastructures, and facilities; are common carriers (monopolies); privately financed (that is also taxed); market-, operations-, and service-regulated; and have their real and personal property taxed in Ohio as "public utilities".

M&As of railroad companies with line segments in Ohio have occurred frequently over time. The largest merger affecting the Northeast and Midwest US was the Pennsylvania Railroad and the New York Central RR that formed the Penn Central Transportation Co. during the late 1960s. After its bankruptcy only a few years later, Congress reformed PCTC into Conrail, and also included in the Erie Lackawanna RR with main lines across Ohio and from Youngstown-Cleveland. Conrail was later split up among CSX and Norfolk Southern. Canadian National Rwy had purchased the Detroit, Toledo & Ironton RR operating between those Michigan and Ohio cities, but liquidated and spun off portions of it in Ohio as it retreated back to Michigan, and more recently acquired the Bessemer & Lake Erie RR to gain access into Pittsburgh.

Smaller Class II and III railroads have acquired unwanted lines rationalized by the Class I's, and received them oftentimes in significant need of maintenance. Class II/III's have owned, leased, or have been the designated franchisee operators for rights of way, infrastructures, or facilities. Holding companies have aggregated numerous Class II/III operators but are listing them as independent subsidiaries to avoid being classified as Class I's. For a number of years the Class II Wheeling & Lake Erie Rwy Co. that was initially independent then was M&A'd into what eventually became Norfolk Southern, and later was largely spun off by NS as a reincarnated W&LE. The Ohio Central RR system - an owner, lease, and/or operator of numerous lines in Ohio and Pennsylvania - is now a takeover target by the Genesee & Wyoming RR.

Railroads may dictate third party use and access terms and conditions to their private networks ("trackage rights"), and generally do not permit shippers or receivers to operate their own trains upon their networks. Railroads may charge different rates for different types of consists they carry. Class I railroads have historically rejected financing assistance from federal and state governments fearing strings including open access mandates; however as the Maximizing Public Investment Committee has heard they are now arguing public financial assistance for their private capital expenditure programs will help alleviate highway truck traffic and subsequent maintenance and capital expenditures. Class II/III railroads have often accepted public funding as in numerous cases they cannot secure regular commercial loans at market interest rates.

#### Passenger Rail:

State rail transit agencies are the public equivalent of private freight railroad companies for passenger commuter service, and are usually federally and state subsidized. They typically own and operate rights of way, infrastructures, and facilities separate from the freight railroads' networks (with an example exception being Metra that operates on some private railroad lines in the Chicago region). Amtrak and some excursion train operators in Ohio obtain trackage rights from railroads to operate their own passenger trains. Amtrak and commuter systems are heavily subsidized while excursion operations are typically small private enterprise or non-profit ventures.

Amtrak must be forgiven for its poorly established business and governance model created during the Penn Central-era rail crisis when most Class I carriers discontinued their own passenger services, and now is largely restricted as an unwelcome and troublesome guest upon freight railroads' networks (which could be contested successfully by freight railroads since the US Supreme Court recently ruled the government could not force wholesale telecommunication carriers to share their private networks with third party carriers). However Amtrak's mindset has been more like the private railroads' in that they do not want to separate their own rights of way, infrastructures, and certain facilities from the operation of their trains, in essence preferring a public or quasi-public monopoly/transit agency business and governance model.

#### Ohio Rail Development Commission:

ORDC's apparent PPP business and governance model is primarily to rescue and restore marginal, threatened, and abandoned rail lines, then when deemed "successful" return them to private sector railroad companies and use the sales/lease proceeds to continue the process. ORDC refrains from "railroading" - their interpretation meaning most likely state-owned rights of way, infrastructures, and certain

facilities, and engaging in carriage service against private sector carriers.

ORDC issues subprime loans and grants to approved project recipients and seeks other state and federal grants and financing, but discourages issuing public revenue bonds. Mr. Seney once said if ORDC did not have sufficient funding for its projects, it would just ask the Ohio General Assembly for more funding. ORDC can only fund a small fraction of the rights of way, infrastructures, facilities, safety and other programs needing funds, and even then not adequately under its designated PPP business and governance model. While ODOT was able to ask the General Assembly for ~\$600M to make up for its 2006 shortfall, ORDC as a lower level commission receives only a few \$M annually without equivalent political clout.

Marginal Class II/III railroads are the usual funding recipients as again few if any commercial banks are generally willing to accept their risks, but solvent and profitable Class I's are increasingly receiving those ORDC subsidies too both directly and indirectly by net leasing some of their line segments to the smaller carriers, and having them acquire public loans and grants.

The proper use of these funds can be called into question, but as the state supreme court recently ruled private companies receiving public funds cannot be audited so without strict oversight there is no reliable way to know if the funds are being spent for their intended purposes other than taking these companies at their word and what they report to ORDC. The Public Utilities Commission of Ohio has ceased collecting certain railroad operations data as the Ohio Revised Code requires it to do, citing U.S. Surface Transportation Board superceding powers, to which STB counsel has disputed, thus proper governance over railroads remains in limbo.

### Rail Industry Problems

The constant growth over time of the State's roads and highways in terms of routes and capacities is general knowledge. ODOT, OTC, and other government agencies tasked with roadway provision attempt to provide as many routes as possible, maximize network capacities, and permit open access universal service to every point along those routes. Agencies have rarely abandoned significant roadway mileage or reduced capacities unless they were subsequently replaced with adjacent improved roadways. These agencies therefore assist improving local and state economies while contributing to the national economy.

A significant portion of freight and passenger highway traffic that exists today is due to the railroads' past route rationalizations and consolidations policies. Much of that displaced traffic demonstrably went to the highways, thereby arbitrarily increasing loads and costs for their maintenance, upgrading, and network expansion.

A number of maps documenting railroad network changes over time are included for analysis. Ohio's theoretical maximum rail network buildout over time is compiled in [Ohio Max 600 Letter.pdf](#), and its remaining network c.2004 is [Ohio 600 400 Now Letter.pdf](#). ODOT GIS has provided a similar map [ODOT Active Abandoned Rail Map 5-2008.PDF](#). The New York Central's network in 1960 vs. 2007 is compared in [TM NYC System Maps 1960-2007.pdf](#) (Courtesy Trains Magazine), and the Pennsylvania Railroad's network in 1965 vs. 2005 is [TM PRR System Maps 1965-2005.pdf](#) (Courtesy Trains Magazine). Note PRR's and NYC's networks were rationalized to an extent even prior to 1965.

Regarding rail line capacities, the maps [TM 6-2006 pp42-43.pdf](#) and [TM 1-2006 pp54-55.pdf](#) (Courtesy Trains Magazine) are comparisons of US rail line routes with multiple tracks for 1950 and 2006 respectively. Rail network throughput comparisons are shown in maps [TM 3-2003 60-61.pdf](#) (Courtesy Trains Magazine) with Penn Central's 1974 tonnages vs. Conrail's 1998 tonnages, [CR Tonnage Map 5-1982.pdf](#) showing Conrail's 1982 tonnages, and [TM 2-2007 pp52-53.pdf](#) (Courtesy Trains Magazine) showing the tonnages across the US for 1980 and 2005.

The Ohio maps show the loss of approximately 50% of the intrastate routes over time, and almost all of the interurban and trolley networks. The NYC and PRR maps show the disposition of these two past industry leaders' line segments that can be correlated with their intra-Ohio lines on the Ohio maps. The rail line capacity maps show the routes that have lost multiple tracks. Note especially the inset map in [TM 6-2006 pp42-43.pdf](#) (Courtesy Trains Magazine) that shows the remains of NYC's and PRR's four- and five-track main lines from New York City-Cleveland-Chicago and Philadelphia-Pittsburgh respectively. The tonnage maps show how traffic has been consolidated over time onto the remaining rail network. Not shown on the railroad maps are the declining network speeds in terms of permissible and actual speeds, which over time have also slowed.

Traffic consolidation naturally invites congestion if there are no additional lines or if there is not enough capacity on the remaining lines. The maps together clearly show the remaining rail network suffers from downgraded and abandoned capacity vs. its better route distribution and track capacity from earlier days. Regional rail network capacity then was unquestionably far beyond adequate to address today's crises.

Transportation planners obviously would recommend those abandoned intercity/interstate rail routes be restored and existing routes' capacities be increased as a means to address the capacity and congestion crises. The problem however is the vast difference between roadways and railways in their business models, governance models, and financing as previously discussed, which planners have not to date attempted to correlate or compensate for properly, or proposed commensurate industry and government restructuring.

Starting from the decline in the peak amount of US trackage during the 1910-1920 decade through WWI, the Great Depression, WWII,

and the Interstate Highways project, the private railroads' business models have been to ration access to their networks and service, abandon hundreds of miles of "redundant" routes, and downgrade remaining lines in track numbers, speeds, and maintenance so they may increase "pricing power" over remaining producers and receivers. Their service abandonment justification in recorded testimony was producers and receivers would remain in place and use trucks, relocate to other remaining active rail lines, or go bankrupt, and while some did use trucking, other producers unanticipatedly relocated to the Southern US, then Mexico, and now overseas.

However the railroads badly misread the emerging economy and transportation technologies. While they were wholesale abandoning their lines, containerized intermodal traffic was beginning to surge, and lately were faced with congestion problems trying to expedite those high-valued shipments around slower bulk and general merchandise consists. Railroads have countered somewhat by increasing train frequencies and lengths, prioritizing high-valued traffic over lesser-valued and local service traffic, insisting upon minimum train car lots from shippers else face premium rates or loss of rail access, and slowing network speeds to improve throughputs. Still they are faced with congestion on top of the predicted doubling of traffic as they now realize a need to return to the maximum rail network extent.

The railroads should want to restore downsized trackage and abandoned routes to improve their operations, but incredibly their managements are caught in-between their Wall St. analysts and certain investors who are seemingly more interested in maximizing their profits via pricing power, the shippers and receivers, and the government which is advocating throughput, safety, and the welfare of producers and receivers, other economic sectors, and our socioeconomies.

A fringe group of analysts and investors inherently acts as gatekeepers between producers, users, and end users by controlling monopoly business model distribution sector utility and carrier holdings and advising against improvements and redundancies that would adversely affect their pricing powers. In a related example, CSX experienced a recent spate of accidents determined to be caused by deferred maintenance. The government mandated they invest \$6.4B in maintenance over four years, and CSX also bought back \$1B of its stock, increasing its debt. The three major debt rating agencies all reduced CSX's ratings to minimum investment grade levels, rendering CSX a theoretically unattractive investment and making it more expensive for them to borrow money even though they are fixing problems which ultimately would save them and their customers money.

Within the last few years CSX ceased abandoning long track segments and instead started net leasing them to Class II/III carriers. The smaller carriers were then wholly responsible for the lines' operations, capital improvements (from the neglect CSX usually left them in), lineside user retention and development, property taxes, insurance, and other regulations, and then trying to pay CSX

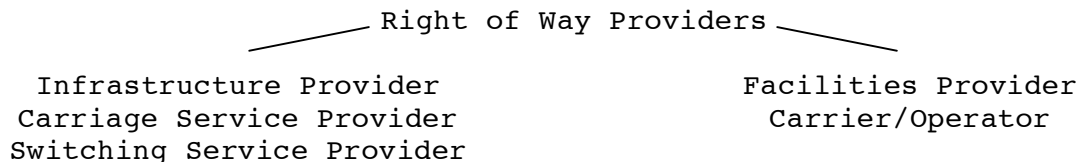
the monthly lease rates. CSX in effect remains only a landlord and leaves the responsibility of the track and operations on its property to the lessee. CSX then often requires that all local ("retail") traffic on the leased segments be forwarded to them and their "wholesale" network and no other carriers' networks even if that alternative routing is more efficient. A number of line segments in Ohio are currently operated under this arrangement, with ORDC asked by the Class II/III lessees to help finance their improvements.

Jim Cramer, host of CNBC's "Mad Money", last year advocated a bizarre rail industry restructuring -

"Now, here's a really sexy idea... The rails! All of the rails could be broken up... UNP (Union Pacific) is the largest landowner in America! NSC (Norfolk Southern) has got a lot of hidden assets. CSX does too. I think that the rails are a natural. I mean some of these CEOs are actually so pro-shareholder now."

([http://mادمoneyrecap.com/daily\\_recap\\_stoptrading\\_032307.htm](http://mادمoneyrecap.com/daily_recap_stoptrading_032307.htm))

Is Mr. Cramer suggesting rights of way, infrastructures, facilities, and/or carriage operations ownerships be spun off to separate private entities as if they did not want to perform those functions themselves? If so this could increase the layers of lessors, sublessors, franchisees, etc., with each party profiting from the one under it, as shown in this hypothetical hierarchy-



(Note that some carriers are now contracting out train car switching responsibilities.)

### Panhandle Rail Line

One rail line segment shown on the Pennsylvania Railroad system map is the Pittsburgh-St. Louis "Panhandle" route, a part of PRR's New York City-Philadelphia-Pittsburgh-St. Louis semi-transnational backbone route. During the initial construction between Pittsburgh-Columbus the line was insolvent as local traffic was unable to sustain it; however after completion it became profitable enough to double-track it, and during WWII the segment between those cities reportedly hosted the most traffic ever for any rail segment in the nation's history.

In an attempt to recover from deferred WWII-era network wear and tear, PRR constructed the then world-class Conway Yard on the Pittsburgh-Cleveland main line northwest of Pittsburgh and closed



Scully Yard adjacent to the Panhandle near downtown Pittsburgh, consolidating Scully classification traffic to Conway. PRR then re-routed most traffic from the Panhandle main line through Scully Yard's remaining line and abandoned the segment. Later Scully Yard was downgraded and its classification traffic too was shifted to Conway Yard, resulting in direct point-to-point Pittsburgh-Weirton/Stebenville/Mingo Jct. traffic being re-routed from Pittsburgh-Conway Yard-Rochester-Stuebenville/Mingo Jct. using lines adjacent to the Ohio River. Columbus-bound trains at Mingo Jct. had to inefficiently reverse direction and switch back over to the westbound Panhandle main line.

PRR and NYC successors Penn Central and Conrail then embarked upon systemwide rationalization and consolidation plans to abandon their predecessor companies' "redundant" lines as indicated by the dashed lines in the PRR and NYC system maps, including portions of the Panhandle route. After one rather ordinary train wreck west of Steubenville, Conrail officials Richard Hasselman and Peter Lynch took the opportunity to begin abandoning the Pittsburgh-Columbus line by routing most Steubenville-Columbus trains from the Panhandle using a Pittsburgh-Alliance-Crestline-Columbus route, and later used a Pittsburgh-Cleveland-Columbus route as they wanted to abandon the Ft. Wayne Line's Alliance-Crestline-Chicago main line too. Conrail also removed one of the Panhandle's two main tracks leaving a few passing sidings and its then-world class signal system, and required all trains to come to complete stops at interchange points, further hampering efficient through operations. Panhandle annual tonnages that were a minimum of 50M tons (approximately 2M 25-ton trucks) quickly dropped to under 1M, and by 1991 were .1M (~4K trucks).

Techniques including removing switches, sidings, and spurs, and denying rail access to lineside users gave Conrail the contrived excuse that the Panhandle was not being used and was therefore an abandonment candidate. Conrail officials in ICC testimony downplayed the viability of the route and said traffic could be shifted to adjacent I-70 ([Betak 12-13-1988.pdf](#), [Hasselman 12-13-1988.pdf](#), [Duink 12-13-1988.pdf](#)). Mr. Hasselman also offered a number of \$Ms to State of Ohio transportation officials in an effort to have them grant the line's abandonment (testimony of Mr. Karl J. Gelfer of Columbus).

A group of state and local officials and other rail advocates engaged in a particularly nasty fight against the abandonment, and successfully forced the ICC to have Conrail convey the remaining Gould Tunnel (near Mingo Jct.)-Columbus "Panhandle Rail Line" segment to Caprail I, Inc. ([657-226.pdf](#)) for ~\$7.7M. Caprail I - the Ohio-based subsidiary of Bryn Mawr, PA-based Civic Finance Associates, Inc. - now net leases-to-own the PRL to ORDC ([Caprail I-ODOT Lease Agreement 4-15-1992.pdf](#)) for 20 years concluding in 2012 for ~\$14.4M, and ORDC in turn has net franchised its operation to the Class II Columbus & Ohio River RR Co. (a subsidiary of Coshocton, OH-based holding company Summit View Inc. and sister subsidiary of the Ohio Central RR Co.; approved draft operating agreement [ORDC-C&OR OA 7-2007.pdf](#)) for ~\$60K per month. ORDC collects the C&OR rent and guaranteed by the State

forwards those payments annually to Caprail I to defease the lease-to-own agreement.

C&OR grants discretionary trackage rights over the Panhandle to W&LE between Jewett-Bowerston (W&LE grants CSX Transportation trackage rights over its Benwood, WV- Jewett-Bowerston-Bellevue main line). Norfolk Southern Rwy operates one if not more trains per day on the Panhandle using C&OR trackage rights and/or trackage rights reserved from its Conrail acquisition. However C&OR has the right of first refusal to serve PRL shippers, and likewise may not permit Panhandle shippers to operate their own trains on the line.

C&OR has received property tax abatements from various counties and other state assistance for the first few years of its line operations. ORDC subsidies have financed basic repairs to maintain minimum speeds and safety ([ORDC PH Investments 1992-2004.pdf](#)). With the two new ethanol plants coming online and the interstate garbage trains soon dumping up to 10K tons daily at Apex Landfill north of Hopedale on ORDC's net leased Piney Fork Line, the PRL is not quite yet in the best shape to safely handle these hazmat shipments per recent regulations from US. Homeland Security and the US Federal Railroad Administration.

C&OR gains some revenues by using remaining PRL passing siding segments as for-profit long-term parking lots to store third parties' train cars. Misuse of these critical tracks reduces the PRL's route throughput capacity and hampers efficient operations.

C&OR illegally leased the PRL right of way to telecommunication companies for their buried intercity fiber optic lines - rights that legally belong to adjacent landowners and may have generated \$Ms in revenues for them. No State agency to date has been willing to investigate the case even though C&OR places the State in jeopardy of multi-\$M adjacent landowner class action lawsuits.

ORDC is promoting long-term leases of the State-controlled PRL and other State-owned rail lines as a PPP means to finance future capital improvements for those lines. However on 12-28-2000 C&OR obtained a \$7.68M mortgage with unlisted collateral recorded in six of seven Panhandle county recorders offices surveyed, most likely using the PRL as collateral. How a private company that is merely the assigned operator of a state agency's real and personal property that itself is net leasing-to-own from a private financing company can secure a mortgage using their property as collateral without prior permission from either entity is unknown.

The State permitting its property to be used as collateral for a private mortgage much less permit it to be cross-subsidized by a holding company's other subsidiaries is quite risky should the private operator, especially marginal Class II/III carriers, experience any troubles. C&OR's sister subsidiary OCRR had a lien placed against it and its assets by the Ohio Bureau of Workers' Compensation over an accident they failed to compensate for, and shortly thereafter OCRR

settled and was released from the lien. The recent economic downturn and increasing energy prices are unexpectedly affecting the viability of numerous lineside shippers and customers up and down their supply chains.

Both C&OR and OCRR have been assessed increasingly lower real property taxes by the Ohio Dept. of Taxation since acquiring/operating their respective lines, costing lineside government agencies and schools \$Ms in tax revenues over time. C&OR and ORDC officials have verified in public meetings that ODT has been assessing railroads increasingly depreciated property tax rates for over a decade.

C&OR with general approval from ORDC restricts and discourages intercity, commuter, and tourism passenger rail service on the PRL to reduce risks associated with those trains from possibly "interfering" with C&OR's and other trains, particularly AEP coal trains destined to its Conesville power plant near Coshocton and an increasing number of NS through trains. Liability costs have also been cited as a reason passenger service is prohibitive for C&OR to provide or permit third party operations. ORDC's reliance upon the deficient subsidy business and governance model effectively prohibits capital improvements and adequate maintenance, keeping the PRL primarily utilized as a low speed, low capacity freight service branch line, thereby increasing right of way and infrastructure insurance costs. Until the abandoned segment between Pittsburgh-Weirton is restored and the whole Pittsburgh-Columbus corridor is upgraded in safety quality and capacity to permit intermingled freight and passenger trains as had for a century existed upon it before, Amtrak will not restore intercity passenger trains, Pittsburgh and Columbus regional transit operators PAT and COTA will not run commuter trains, and tourism operators not be permitted to run more than a few seasonal or annual trains if any at all.

Mr. Seney had since declared the rescue of the PRL to be a success under their PPP policy, even though C&OR was hauling only ~1M-2M tons annually, far from Conrail's minimum of 50M tons annually prior to their rationalization program, and the line remained marginal at best until AEP Conesville-bound coal began being shipped by rail in approximately 100 daily 100-ton car lots.

Thus ORDC intended to privatize the PRL initially to C&OR, but in 2000 rejected their initial \$10M (some reports said \$6M) offer for the line. Line scrap prices c.2005 were quoted by one railroad at \$1M/mile, equating to ~\$161M for the whole line. PRL co-suitor W&LE signed a petition to the STB requesting deregulated abandonment ability, and although C&OR did not sign on, the eventual assignee of the line would have acquired ~\$161M of potential scrap for ~\$10M with no real chance for public opposition had STB concurred with the railroads. [ORDC Panhandle Sale Proposal 8-30-2005.pdf](#) summarizes ORDC's position to privatize only the tracks. Scrap has now approximately doubled in price c.5-2008.

Another concerted effort by a group including Mr. Gilbert Reese of Newark, Licking Co. Port Authority Executive Director Rick Platt, Licking and Muskingum County Boards of Commissioners, Mr. James Ong of Dennison, myself, and other concerned individuals successfully stopped ORDC's privatization efforts twice. ORDC's staff and commissioners have since changed their opinion of the line and now recognize its importance to the regional economy. However they then proposed to buy out the net lease-to-own agreement early from Caprail I, although they apparently failed to inform Caprail of their intentions (I broke the news to Caprail I comptroller Benjamin Noble). C&OR asked ORDC to consider converting the current operating agreement into a long-term lease (they requested 75 years but ORDC considered 25) after the buyout so it could potentially use the line as collateral for capital improvements on the line.

The anti-abandonment and anti-privatization fights regarding the PRL essentially concerned differences of various business and governance models, and over certain parties that would benefit more from the proposed deals than others would. After the PRL's proposed privatization, ORDC planned to use the sales proceeds to acquire the Galion-Delaware-Columbus segment of the Cleveland-Columbus rail line that CSX was barely using for part of its Cleveland-Columbus-Cincinnati "3-C" high-speed rail line and for Columbus-area commuter service. Another option was to churn the proceeds back into capital improvements for the PRL and other ORDC projects. To its credit Caprail I has preferred the line remain in the public domain and be more openly accessible to more railroads to improve its financial viability.

#### Proposed Transportation Solutions

The **ODOT 2002 Freight Study** mentions the pending increase in freight to cross the state, and includes an analysis of various solutions to the capacity crisis.

#### State DOT Solutions:

One roadway solution that ODOT is considering are new "Super-4" highway on virgin hills and valleys between Cadiz-Newcomerstown and bypassing Coshocton to compliment the double-laned US 36 and SR 16 segments that are lightly used now as a means to shift traffic off of I-70 in the Pittsburgh-Columbus corridor. Those combined costs are currently projected to total \$1B. Restoration of the Panhandle between Pittsburgh-Weirton and additional capacity improvements totaling approximately \$100M would remove more truck traffic between Pittsburgh-Columbus while saving on roadway construction and maintenance costs and immediately addressing the energy crisis.

Both ODOT Planning and ORDC ignore past railroad freight data (including the referenced maps) that might be used for future planning purposes. At a 2005 meeting with ODOT Deputy Director Division of Planning Howard Wood, ODOT Geographic Information Systems manager

David Blackstone, and then ORDC Secretary-Treasurer/Assistant Director Matthew Dietrich to inquire about their interest in possibly using volumes of publicly archived and private collectors' railroad-related data and documents to assist them with rail planning and possible rail route restoration, they said they didn't have much use for historic data, and according (somehow) to their Ohio Revised Code missions were more interested in current data. When I asked if they had any similar highway data to correlate the increase of highway traffic when the railroads abandoned and consolidated their routes, they said no as they did not keep records back that far to the early 1980s, and furthermore posed those highway traffic increases were attributable to other factors and not necessarily rail line abandonments. An ODOT division director disputes the claim that ODOT does not have highway data that far back, and hopefully OTC has retained records of its past data for analysis purposes.

Indiana DOT is proposing a multi-state truck-only lane on I-70 as a means to abate congestion. However Conrail abandoned the Panhandle main line between Columbus-Bradford, OH-Richmond-Indiana, the adjacent secondary line between Dayton-Richmond, and one of the two parallel NYC and PRR lines between Indianapolis-St. Louis. Restoration of these missing segments would cost a fraction of new truck lanes and accomplish congestion and intermodal goals more efficiently and expeditiously.

Unless the federal government changes its policies including the use of tolls on the Interstates and other roadways to help finance their maintenance, state DOT's business models will remain the same with their funding earmarked mostly for roadway projects. ODOT has enough troubles now under its subsidized and inadequately funded business and governance model trying to pay for its own roadway projects, having borrowed \$600M from the State for its 2006 shortfalls, and all transportation providers are coping with 40% construction cost increases due to the energy crises.

#### Roadway Privatizations:

Ever since the government started financing and subsidizing public roadways, rail service advocates have complained about imbalanced "modal equality" policies especially when the modern railroads are largely privately financed. Rail industry analyst and columnist Roy Blanchard reviewed highway (more properly turnpike) privatizations perhaps inferring restructuring as a way to balance each mode's funding and market fairness-

"Need further proof that governments are lagging in highway spending where it counts? States from New Jersey and Pennsylvania to Ohio and Indiana are making deals with private operators to own, manage, and maintain their toll roads. Truckers hate the idea because infrastructure that was free or nearly free will now cost serious money, but the states are off the hook for all that highway department overhead. Or take a

gander at what's happened in Mississippi post-Katrina, where the US 90 bridge across two miles of water at Pass Christian was still closed 18 months after the disaster.

In contrast, the CSX bridge in the same location has been open for a year. Similarly, (Norfolk Southern) wasted no time getting its six-mile bridge across Lake Pontchartrain reopened. The common thread was the determination and private capital of the railroad management to reopen these vital arteries. One has to ask whether the state highwaymen have the same determination and resources." (Trains Magazine, 6-2007 p.35)

Theoretically the privatized highway owners could also own and operate trucking companies, and favor them on their tollways against other competitors and passenger vehicle operators, in effect emulating the current private railroad model and their trackage rights. However, few analysts and researchers have actually posed modal equality with rail lines being administered by government agencies, open to all qualified users, universal access to all points on routes, and carriers not arbitrarily assessing additional fees for various consist types.

#### ODOT-ORDC Model:

No State government agency is currently prepared much less willing to fully accept the responsibilities required to finance and administer a public rail network to equally host freight and passenger service like roadways or even airways. Former ODOT Director Gordon Proctor in numerous meetings arbitrarily ignored all options for ODOT to acquire, restore and/or administer intercity/interstate rail lines to help reduce congestion and expansion costs on Ohio's roadways, claiming that was the private railroad companies' responsibilities and ODOT had little ability to become involved in their market.

ODOT thus reserves rail issues to ORDC, although the Commission has likewise stated numerous times it will not "run" a railroad as that would be "Socialism". True Socialism involves a government owning rights of way, infrastructures, and facilities, and being the sole operator of the trains. Their misinterpretation discounts its sister Ohio Turnpike Commission providing a public tollway without engaging in competitive carriage service, and doing so to date rather successfully. ORDC is questionably subsidizing Class II & III railroad companies so marginal that they cannot obtain funding from regular commercial banks, and by doing so the State sanctions monopolized ownership/franchise and operation of their rail networks. This blatant corporate welfare is more akin to Socialism's cousin Corporatism that likewise violates the principles of the formerly popular laissez-faire free market Capitalism philosophy.

ORDC's model to rescue, restore, and reprivatize rail lines from its creation date onward has been fundamentally flawed financially and

politically. It is too undercapitalized by the federal and state governments to meaningfully achieve any of these goals successfully. It cannot receive significant portions of the gasoline tax funds as those are largely earmarked for roadway improvements, and which is increasingly underfunded (see CNN reporter Bill Tucker's report at <http://www.cnn.com/video/#/video/business/2008/06/03/tucker.highway.funding.cnn> , and commentator Lou Dobbs' analysis at <http://transcripts.cnn.com/TRANSCRIPTS/0806/02/ldt.01.html>) ORDC cannot rely upon federal and state matching funding for special high price projects (including the Cleveland/Ohio Hub Proposal discussed below) as the US DOT and FRA are less inclined to finance those projects particularly after rejecting a \$2.33B loan to the Dakota, Minnesota & Eastern RR to construct and improve its network. Also the national defense budget has been taking funding priority over internal infrastructure improvements and will do so for the foreseeable future.

#### Cleveland/Ohio Hub Proposal:

ORDC has promoted the Ohio Hub proposal (**Ohio Hub**) as a PPP solution for capacity improvement, interstate high-speed passenger rail service, and intrastate service particularly between Cleveland-Columbus-Cincinnati. Passenger rail service popularity is increasing, as is its need corresponding to the energy crisis and the airlines' problems. ORDC supports rail passenger service too but only if it does not interfere with freight operations, and under Mr. Seney had opposed Amtrak service in favor of an alternative PPP high-speed rail coalition until Gov. Ted Strickland announced his desire for intrastate Amtrak service to be restored ASAP. ORDC's ORC requires it to initiate a "3-C" project between those cities, but the legislators creating that mandate failed at the time to comprehend the various conflicts between the railroad industry and the State regarding the different business and governance models required for such a project, not to mention a tremendous increase in freight traffic on portions of those routes particularly after the Conrail-CSX-Norfolk Southern M&A.

The Hub proposal concentrates on passenger service between Buffalo-Cleveland-Chicago, Pittsburgh-Cleveland-Chicago, and eventually Cleveland-Columbus-Cincinnati, but neglects other routes where heavy travel occurs regionally and ODOT has significant roadway congestion. Consider that Amtrak operated trains from Youngstown-Cleveland, Pittsburgh-Alliance-Lima-Chicago, and Pittsburgh-Columbus-St. Louis. Why for example would high speed rail advocates think passengers would want to ride a train between Pittsburgh-St. Louis requiring a Pittsburgh-Cleveland-Chicago-St. Louis route, when they can drive directly via I-70 saving numerous hours at less total cost, even with the increased cost of gas? The Hub would have to operate at tremendous speeds to compete with I-70, but high speeds equal much greater costs as they admit in their report, and would probably use more energy too.

The Hub proposal would purchase passenger train sets (engines and passenger cars), then apparently using a PPP or quasi-transit model

expect a private operator to run the trains and generate enough revenues to be profitable and pay the operation/franchise fee. The Hub proposal is very vague as to the precise ownership, operation, and subsidization models considering the \$4B public financing they are requesting for the project, which invites opposition from anti-passenger rail advocates including noted public transit antagonist Wendell Cox.

The Hub proposal fails to restore additional routes in favor of increasing capacities on existing routes. The Pittsburgh area landslide and ethanol train accidents shut down Norfolk Southern's nationally-important Pittsburgh-Cleveland line twice forcing traffic to re-route onto their already congested Buffalo-Cleveland line. Thus an upgrading of trackage on existing routes without having redundant routes available is useless during contingencies. This very basic network engineering principle is being ignored by transportation planners who must be held accountable for their planning decisions when the next major contingency occurs.

#### Producer Actions:

A major complaint by companies that are closing their factories is those site locations are too isolated (quoted twice each from Weirton Steel and US Ceramic Tile in East Sparta, OH executives), but they fail to say their transportation isolation is due in part to the loss or downgrading of rail access and service they used to enjoy. Large producers with the financial wherewithal are now forcing competition by locating new plants where two or more carriers can competitively serve them, including Toyota that on 1-12-2007 reported it wanted to build five more plants in North America but in the recent past had insisted upon sites with access to two or more rail networks. VW recently selected Chattanooga for its new plant due in part to a public terminal railroad that provides access to both CSX and NS. Other companies if able to are moving their supply chain facilities closer together to save on both transportation and energy costs.

#### Federal Rail Industry Policy:

Congress continuously deliberates and adopts or rejects railroad industry regulation and deregulation. Currently there is a House bill pending to re-regulate portions of the industry, but the chances of its approval are believed to be marginal under the current administration. Surprisingly in ORDC Acting Executive Director Matthew Dietrich's 3-30-2007 commissioner report ([ORDC Comm Packet Excerpt.pdf](#)) in the latter part of bullet point two, he apparently advocates a pro-railroad company viewpoint. Shouldn't ORDC's policy be more like ODOT's and OTC's, which are to provide their public roadways equally to all carriers, shippers, and receivers, and not advocate carriers over shippers and receivers, especially when many of them are captive customers?



## Rail Turnpike Solution

The State must begin showing serious initiative in trying to solve its transportation problems without resorting to traditional solutions that to date have not significantly changed the situation for the better. State agencies and legislators have not given independent industry experts, academicians, historians, and rail advocates adequate chances to share their valuable advice that may enrich deliberations and assist proposing more appropriate policies.

For example, nowhere within the Hub study is mention of public ownership and administration of rail lines without engaging in carriage service, even though ODOT, OTC and public airports successfully use the model, and private carriers including trucking companies, airlines, and charter bus carriers operate profitably without being required to own or operate their own rights of way or infrastructure. My inquiries into the omission have to date not been recognized. Also my past proposals that the PRL be alternatively administered by a multi-county port authority empowered specifically to own and administer the right of way and infrastructure were met with opposition by ORDC's pro-privatization/PPP staff and discounted by six of the seven PRL hosting county boards of commissioners I petitioned, with some commissioners having received campaign contributions from SVI officials and others remaining rather apathetic toward more government responsibilities (even though each county engineer must administer their designated intracounty roadways).

At ORDC's 2006 annual retreat, its staff aired pleas for more State funding to maintain its existence and to more adequately fund its projects. Former Sen. Jeffry Armbruster who was in attendance asked why ORDC did not issue revenue bonds for its projects, repayable by the railroad companies on a pay-as-you-go basis. He also asked why existing and new port authorities could not administer rail infrastructures, possibly inferring a model like the Ohio Turnpike that he was once a board member of, and relieving marginal carriers of their rights of way, infrastructures, and facilities so they could concentrate solely upon carriage service. There was no response from any ORDC staff or commissioners, most likely because his suggestion conflicted with their rescue-restore-reprivatize mission, and that only a few in attendance knew of the powers the ORC grants port authorities. Yet unlike the Ohio Turnpike most of those port authorities involved in rail choose to net franchise rail operations vs. actively administering them by themselves. The Toledo-Lucas County Port Authority that describes itself as "a land holding company" similarly privatizes port/dock operations to a select carrier claiming "public agencies can't do it (operate a port) on their own".

A few years earlier I had queried a number of OTC officials at one of its monthly meetings if they thought their business and governance models could be successfully emulated for public rail lines, and each replied they couldn't see why not.

The concept of a railway turnpike is not unique. Former Harvard University Prof. D. Daryl Wyckoff describes the possibility in his 1976 book "Railroad Management" written during the Penn Central crisis when various emergency solutions were being posed ([Wyckoff pp128-133.pdf](#)).

A true turnpike pays all of its expenses using revenues based upon users' network accesses and uses. The concept conforms to Adam Smith's observation in his "The Wealth of Nations" (Book V, Chapter 1, Part III, Article 1):

"When the carriages which pass over a highway ... pay toll in proportion to their way to or their tunnage, they pay for the maintenance of those public works exactly in proportion to the wear and tear which they occasion of them. ... This tax or toll, too, though it is advanced by the carrier, is finally paid by the consumer, to whom it must always be charged in the price of goods. As the expense of carriage, however, is very much reduced by means of such public works, the goods, notwithstanding the toll, come cheaper to the consumer than they could otherwise have done; their price not been so much raised by the toll, as it is lowered by the cheapness of carriage."

For railway turnpikes, the assessment should be based upon the ton-miles each train engine and car uses the rail network.

The 20-mile Los Angeles-Long Beach Alameda Corridor Transportation Authority (<http://www.acta.org>) is quite close to being a true railway turnpike, with minor differences being its users retaining a number of functions vs. administering them itself. ACTA uses a car-mile and consist-based fee assessment vs. a true public turnpike ton-mile consist-neutral fee assessment. According to its 2007 per TEU charges page- ([http://www.acta.org/corridor\\_performance\\_teu\\_charge.htm](http://www.acta.org/corridor_performance_teu_charge.htm)) it assesses each empty container \$4.57, and each full container \$18.04. Other rail cars are assessed \$9.13. Note ACTA charges different rates for different car types, and differentiates between empty and full containers.

ATCA's rail network maintenance of way:operating expenses ratio was percentage-wise less than OTC's 2005 highway MOW:operating expenses ratio-

	MOW	Operating Expenses	%
ATCA	\$3,990,152	\$33,749,081	11.82
OTC	\$34,185,000	\$155,472,000	21.98

Thus using a MOW:OE ratio we can approximate a true public railway turnpike administration. In a theoretical railway turnpike, all administration costs including maintenance of way costs would be paid for by ton-mile assessments. That calculation is as follows-

- 1) Determine the Total Annual Network Ton-Miles. For each train on a network, multiply its tonnage by its distance traveled; sum all the ton-miles for one year.
- 2) Determine the Total Network Track Miles. "Track Miles" is the distance in miles of all individual tracks in a network or route; "Route Miles" is the distance in miles between two points.
- 3) Determine the Annual MOW per Track Mile. \$25K MOW per track mile for ~50 MPH freight track is recommended by US DOT Inspector General for Class I rail carrier traffic U.S DOT Office of Inspector General Archives; \$5K for FRA Class II 25 MPH freight track is recommended by Roy Blanchard, The Blanchard Company; at least \$1K for no traffic on a line is recommended by ORDC. Note - these costs are prior to at least 40% construction and MOW price increases due to the recent runup in energy prices (Ohio DOT Director James Beasley 3-13-2007 testimony).
- 4) Determine Annual Network MOW. Multiply Total Network Track Miles \* Annual MOW.
- 5) Determine Ton-Mile Assessment for MOW. Divide Annual Network MOW by Total Annual Network Ton-Miles.
- 6) Determine Ton-Mile Assessment for All Expenses. Add all other expenses to Annual Network MOW; divide all expenses by Total Annual Network Ton-Miles.

A spreadsheet of scenarios for 10, 200, and 1200 mile single, double, and triple track routes hauling between 0M-250M tons annually, with variable administration costs was created in Excel ([MMY RR VC Calc 5-21-2008.xls](#)) no macros, with a .pdf hardcopy also available ([MMY RR VC Calc 5-21-2008.pdf](#)).

For a proof of concept, suppose Conrail's Pittsburgh-Columbus Panhandle route was still continuously intact and selected for a public railway turnpike. The route between Pitt-Grant/MP 191.1 was ~191 miles. If the freight route was extended east via the Monongahela Line to Thompson Yard for interchanging with multiple carriers, its length would be ~200 miles. What would the variable costs be to administer the line for 50M annual tons of traffic (the amount Conrail was running on the Panhandle before they out-of-routed it elsewhere and eliminated other customers)?

The previous variable administration costs scenario; 200 route mile, double-track line; Case 6 50M Annual Tons is used. The equivalent number of 100-car trains using the segment annually is determined by dividing an arbitrarily set 10K ton per train amount (at 100 tons per car) into the total tonnage, i.e., 50M tons / 10K tons per train = 5K trains.

The number of ton-miles on the 200 mile segment is determined by multiplying the 10K tons per train by the number of trains (5K) by the

200 route mile distance, i.e., 10K tons per train \* 5K trains \* 200 miles = 10B ton-miles.

The route was originally single track then upgraded to multiple tracks and subsequently downgraded back to single track and abandoned between MP 11-MP 39. For this exercise the whole route will be double track meaning the track miles will be twice the route miles, i.e., 200 route miles \* 2 tracks = 400 track miles.

Per the US DOT Inspector General's recommendation for heavy use Class I rail lines, the annual MOW per track mile is set to \$25K.

The annual network MOW cost is determined by multiplying the track miles by the \$25K per mile MOW value, i.e., 400 track miles \* \$25K = \$10M annual MOW for the entire route.

The ton-mile toll assessment for MOW only is determined by dividing the annual network MOW cost by the total ton-miles, i.e., \$10M annual MOW / 10B ton-miles = \$0.001 per ton-mile. Thus the fee for a 100 ton car going the 200 mile route would be 100 \* 200 \* \$0.001 = \$20.

Since all other public railway turnpike administrative costs are unknown for now, a table was created listing theoretical administration costs (including MOW) based upon what percentage MOW would be of all other administrative costs. The percentages used ranged from 50%, 25%, 10%, 5%, 2.5%, and 1%. Per the previous chart, the Ohio Turnpike Commission's 2005 MOW was 21.98% of their operating expenses before debt service, and the Alameda Corridor Transportation Authority's 2005 MOW was 11.82% of their operating expenses before debt service. (See [OTC's 2005 CAFR .pdf p.31](#) and [ACTA's 2005 CAFR .pdf p.8](#))

The ton-mile assessment for all administrative costs including MOW is determined by dividing the theoretical administration costs by the total network ton-miles. Say all administrative costs could be held to 10% MOW costs, just under ACTA's 11.82%. The toll for a 100 ton car going the 200 mile route would then be 100 \* 200 \* \$0.01 = \$200.

While in a theoretical railway turnpike all administration costs including MOW costs would be paid for by ton-mile tolls, in reality more of the administrative costs would instead be "fixed" and not as "variable" as MOW costs. Thus another scenario is necessary to better account for those differences.

A spreadsheet of scenarios for 10, 200, and 1200 mile single, double, and triple track routes hauling between 0M-250M tons annually, with fixed administration costs was created in Excel ([MMY RR FC Calc 5-21-2008.xls](#)) no macros, with a .pdf hardcopy also available ([MMY RR FC Calc 5-21-2008.pdf](#)).

Again using the Pittsburgh-Columbus Panhandle route for a public railway turnpike, the fixed administration costs scenario; 200 route mile, double-track line; Case 6 50M Annual Tons is used. The ton-mile MOW assessment is the same as in the variable cost example, with 50M annual tons over 400 track miles at \$25K MOW per mile requiring \$0.001 per ton mile.

Since all other administrative costs are again unknown for now, a table was created listing theoretical administration costs, this time excluding MOW costs, based upon what percentage MOW costs would be of all other administrative costs. The percentages ranged from 50%, 25%, 10%, 5%, 2.5%, and 1%. Using the previous example, if administration costs excluding MOW costs could be held to 10% and the MOW costs are \$10M, the administration cost would be \$90M, i.e., \$10M MOW is 10% of \$100M, and \$100M - \$10M MOW = \$90M administration alone.

A per-car administration "fee" to cover all administrative costs excluding MOW is determined by dividing the administration costs by the total number of cars using the network annually, i.e., at 10% MOW the administration cost is \$90M,  $\$90M / 500K \text{ cars} (5K \text{ trains} * 100 \text{ cars per train}) = \$180 \text{ per car}$ .

The ton-mile toll is then be added together with the administration fee to determine the total assessment charge for each engine and car. The combined toll and fee assessment for a 100 ton car going the 200 mile route would be  $(100 * 200 * \$0.001 = \$20 \text{ MOW}) + (\$180 \text{ administration}) = \$200$ .

#### Caveats:

- 1) A public railway turnpike is assumed to be administered by a non-profit government agency using a non-profit, closed-loop, unsubsidized and un-cross-subsidized business model.
- 2) A public railway turnpike is assumed to be property tax free on its rights of way, infrastructures, and certain facilities.
- 3) A public railway turnpike is assumed to be consist-neutral except in cases where special attention, clearances, or escorts are necessary and may require an additional fee.
- 4) Capital expenditures for non-MOW projects are considered to be additional debt most likely financed by public tax-free revenue bonds. Bond interest and amortization payments may be added to the administration costs with requisite assessment increases, and once defeased the assessments would be re-adjusted to cover regular administration costs. If the fixed cost model is used, other costs would be added to the administration fee and not the MOW toll.
- 5) Carriage, energy, certain insurance coverages, labor, and other associated costs are the responsibilities of the carriers, shippers, and/or receivers and not of the public turnpike provider.

Thus it is in the best interests for a public railway turnpike to encourage as much use by as many users as possible to reduce assessments across the board. OTC restoring rail lines at ~\$1-\$2M/mile (without bridge or tunnel costs which are about proportionately equivalent to highway bridge and tunnel costs) would be significantly less expensive than it adding a fourth lane to the Ohio Turnpike or ODOT adding more lanes to the Interstates and US routes to address the impending capacity crisis, particularly when an Ohio Legislature Local Transportation Needs and Funding Report said two tracks have the same capacity as 16 lanes of highway. OTC public railway turnpikes would definitely ease maintenance requirements and costs upon their highway turnpike and ODOT highways, and prevent a loss of revenue from traffic shifts to ODOT roadways, natural competition with private railways, or the State subsidizing private railroads' capital expenditures on lines within the OTC corridor(s).

#### Legal Procedures:

The Ohio Revised Code Chapter 5537 Turnpike Commission would first require revisions to authorize OTC to additionally construct, acquire, and administer public "railway turnpikes". A draft of the necessary ORC Chapter section changes is [ORC 5537 OTC Revised Summary.pdf](#).

OTC might consider the following revisions to its Mission Statement: "To operate and maintain a user-fee supported highway transportation systems with sound financial management that provides ~~motorists and travelers~~ users with safe, modern and helpful services.", and its Vision Statement: "To be the ~~road~~ transportation system of choice for those traveling across ~~Northern~~ Ohio." OTC may also have to change the design on its official seal.

Although the public turnpike model "nationalizes" rights of way, infrastructure, and some facilities, it is not complete nationalization or public monopolization as OTC would not engage in competitive carriage service, just as it does not competitively carry against trucking companies on its roadway turnpike. Thus many of the current state laws regarding private monopolized railroads would not apply to a public railway turnpike, particularly those involving market regulation and property taxes. PUCO and Ohio Dept. of Taxation ORC sections would have to be amended thereby acknowledging a public railway turnpike is a competitive marketplace, its users are for-hire and private carriers and not common carriers, and the rights of way, infrastructures, and some types of facilities are property tax-free.

OTC relies upon established ORC motor vehicle operation rules and District 10 of the Ohio State Highway Patrol to enforce them. It would have to adopt and codify certain new railway rules, perhaps borrowing from the Northeast Operating Rules Advisory Committee where applicable, and coordinating with PUCO, OSHP, or the FRA to enforce them. Other state and local laws would most likely require revision but overall that should not be viewed as an insurmountable task.

## Potential OTC Rail Projects:

OTC should conduct thorough analyses into which line segment acquisitions and restorations would be most beneficial to promptly address the capacity, congestion, and energy crises, and then move to acquire, restore, and administer those lines. OTC should also be able to move quickly to acquire more lines if Class I railroads threaten to abandon or spinoff unwanted lines, if more Class II/III carriers become financially unstable, or if Wall St. realizes the superior efficiencies of a public railway turnpike and advocates wholesale nationalizations across the rail industry. The following main line segments might be candidates for acquisition or restoration-

- Panhandle Rail Line (Caprail I's Gould Tunnel-Columbus plus various short branch lines)
- Panhandle Line East (abandoned Pittsburgh-Weirton; Norfolk Southern's Weirton-Gould Tunnel)
- Youngstown-Cleveland (former Erie Lackawanna RR main line from Pymatuning, PA-Latimer, OH; Levittsburg-Aurora; restored freight trackage and interchanges from E. 37<sup>th</sup> St.-Whiskey Island; restored passenger route interchanges into Cleveland Union Terminal)
- Panhandle Line West (abandoned Dayton-Indianapolis via Richmond, IN)
- Panhandle Line Northwest (abandoned Columbus-Chicago via Hilliard-Bradford, OH)
- Ft. Wayne Line (Pittsburgh- Alliance-Lima-Ft. Wayne, IN-Chicago. The US STB split this former Conrail high speed, high capacity main line in half at Crestline with the eastern half awarded to Norfolk Southern and the west to CSX. CSX net leases Crestline-Chicago to Class II Chicago, Ft. Wayne & Eastern RR, and that line is single track and 25 MPH at best. Administration under one agency would restore open access, universal service, and through service would significantly relieve CSX's and NS's consolidated Pittsburgh/Buffalo-Cleveland/Akron-Chicago routes through northern Ohio. NS uses the line segment between Pittsburgh-Alliance as part of its Pittsburgh-Cleveland main line, which is not recommended for acquisition. The Bayard Branch route of the NS ex-Cleveland & Pittsburgh RR line between Rochester, PA-Yellow Creek, OH-Alliance should instead be acquired, and the abandoned Beaver Valley Industrial Track connection could be restored to connect the Bayard Branch into CSX's ex-Pittsburgh & Lake Erie RR main line at West Bridgewater, PA so that both NS and CSX have equal access to the east end of the line. Various track configurations would be necessary to connect the west end of the line into both NS and CSX networks.)

- Other east-west routes between the problematic rationalized area between Port Huron, MI to Cincinnati and various north-south lines within Ohio

OTC PRL Acquisition Procedures:

After OTC informs Caprail I, ORDC, C&OR, and other relevant government agencies it is interested in acquiring the PRL, subsequent options could include but are not limited to the following-

- ORDC with permission from Caprail I re-assigns the net lease-to-own agreement to OTC.
- Caprail I cancels the net lease-to-own agreement with ORDC and re-assigns it to OTC for the balance of the term of the previous net lease-to-own agreement.
- Caprail I cancels the net lease-to-own agreement with ORDC and negotiates a new sale, lease, lease-to-own, etc. agreement with OTC.
- The State or OTC forwards the balance of the net lease-to-own agreement to Caprail and ORDC buys it out early; the State then re-assigns it to OTC.
- Caprail could cancel the net lease agreement with ORDC, refund its payments, and retain ownership, then negotiate a sale, lease, lease-to-own, etc. agreement with OTC, but ORDC would probably then have to refund C&OR its monthly payments meaning they would have used the line for free from 1992 to the present, an option that might not be desirable.

OTC would also have to negotiate with ORDC/C&OR for any PRL improvements performed deemed to be above and beyond the state the line was received in, with natural and use depreciations factored in. Caprail I's parent CFA's new contact address is-

Benjamin L. Noble, Principle  
Civic Finance Associates, Inc.  
603 Great Springs Road  
Bryn Mawr, PA 19010-1701  
(610) 525-8185  
blnoble@cfainc.net

Norfolk Southern retained trackage rights on the PRL from its acquisition of Conrail, and C&OR has likely negotiated trackage rights with W&LE if not other railroad companies. OTC should revoke all trackage rights and replace them with access and use fees granting all qualified users equal rights, rules, and responsibilities.



## Capital Improvements:

Gould Tunnel south of Steubenville is in increasing need of repair and reconstruction into an interstate highway-quality structure. Conrail had proposed to "daylight" it (blast it open) but environmental concerns from various federal and state agencies may well prohibit that option today. It should instead be re-bored to increase its width for two tracks and possibly for a maintenance roadway, increased in height to permit double intermodal container stack clearance, and concrete lined to improve drainage as its east end track frequently floods after rainfalls. Conrail could have addressed the tunnel just as it did in its government-assisted Philadelphia-Pittsburgh-Cleveland clearance project ([CR PA Clearance Project 8-20-1987.pdf](#)) but improving Gould would have negated their plans to eventually abandon the Panhandle.

To help expedite traffic on the primarily single track main line until the complete second main line is completely restored, additional passing sidings of up to two miles in length will be required to help trains pass each other. The sidings can later be incorporated into the second main line.

## Interstate Panhandle Acquisitions and Restorations:

As stated previously the Pittsburgh-Columbus line was not successful until the line's construction was completed between those cities, thus the short stretches of third party-held existing Panhandle main line and abandoned right of way between Pittsburgh-Gould Tunnel should be acquired and reconstructed.

Heading east from MP 49.5 at Gould Tunnel's eastern portal, Norfolk Southern owns the main line and large railway bridge across the Ohio River to ~MP 39+4062' approximately midway through the adjacent Weirton Steel rail yard where the track dead-ends. WVDOT Division of Rail owns the abandoned right of way from ~MP 39+4062' to MP 35.13 at the PA/WV state line, and Washington and Allegheny Counties in PA respectively own the right of way from MP 35.13 to the end of the track at MP 11 Walkers Mill. Conrail sold the remaining new main line to the Pittsburgh Industrial RR in 12-1996, which later sold it to SVI subsidiary Pittsburgh & Ohio River RR from MP 11 to ~MP 4.5 at the Esplen Jct. interchange with Norfolk Southern at the southern base of its "Ohio Connecting Bridge" over the Ohio River just downstream from Pittsburgh's Golden Triangle Point. The old main line is being used by the Port Authority of Pittsburgh between Carnegie-Elliott (~MP 3.2) for a busway and although it might not be ideal for restored freight and certain passenger operations due to the concreted roadway and potentially restricted Corliss Tunnel clearances, rails could be embedded in the concrete for light rail use on the busway up to a restored connection back onto the Panhandle/Monongahela Line at he Elliott junction with W. Carson St./SR 51 just west of MP 3.

Cost estimates for re-single-tracking the ~28.5 miles Pittsburgh-Weirton segment with safe and secure grade separations including bridge widths sufficient for future multi-track restorations approach \$100M.

#### Operation Procedure:

After canceling the net franchise agreement with C&OR and other trackage rights agreements with other railroads, OTC would be responsible for dispatching trains akin to an airport traffic controller. Communication and information links would be required between OTC, train operators, and dispatchers for the operators so that all users are coordinated simultaneously. Each train would be assigned a slot and speed that is calculated to be safely and securely separated from other traffic. OTC would also coordinate scheduling at the various gateway interchanges with private railroads.

OTC would meter access and use on the line accomplished by a network of scales and automated equipment identification readers. Most train engines and cars are already equipped with AEI tags, and readers could identify each engine and car, correlate each with its weight, and determine the distance each engine and car travels. Speeds could be similarly monitored. OTC's MIS would calculate access and ton-mile assessments and could automatically bill either the carrier or the shipper/receiver thereby largely eliminating manual toll-takers found on its highway turnpike.

OTC enforcement would also assess fines and other access/use restrictions for violations including speeds, excessive slot time use, flat wheels, malfunctioning equipment, and other problems.

#### Potential Users:

The Panhandle's potential users could include the following carriers operating in the region that could connect to the line and in instances use the Panhandle to bridge remote networks together-

- Norfolk Southern [NS System Map.pdf](#)
- CSX [CSX System Map.pdf](#)
- Canadian National [CN System Map.pdf](#)
- Genesee & Wyoming [G&W PA Map.pdf](#)
- RailAmerica RA [I&O System Map.jpg](#), RA [INS System Map.jpg](#)
- Wheeling & Lake Erie [W&LE II System Map.pdf](#)
- Summit View's Pittsburgh & Ohio Central, Columbus & Ohio River, Ohio Central [SVI System Map.pdf](#)
- RJ Corman [RJC System Map TM 6-2007.pdf](#)
- Carload Express's Allegheny Valley, Camp Chase Industrial [CE AV System Map.pdf](#), [CE CC System Map.pdf](#)
- Ohi-Rail [Ohi-Rail System Map 5-17-2007.pdf](#)

Note G&W has recently proposed to buyout the SVI system that includes the Panhandle operating agreement with ORDC.

Open access would be available to third party expeditors including UPS, USPS, JB Hunt, etc., and to lineside shippers and receivers should they choose to own/operate their own trains or just enjoy competitive carriage service from railroad companies and/or expeditors. Toyota, VW, and other manufacturers would be forced to look at the Panhandle region for new factory locations if they truly require multiple carrier access in their business models. AEP could operate its own trains between its mines and Conesville power plant similarly to their barges they operate between their mines and riverside power plants, which would help offset their recent proposed electricity price increases.

Intercity and commuter and passenger service could be provided by Amtrak and the Port Authority of Pittsburgh and the Central Ohio Transit Authority respectively, and possibly by other county transit agencies or private service providers per their interest in local service. Excursion train operators and other types of passenger, historic, or antique motive power and equipment operators would be welcome and safely and securely separated from other traffic.

Other utilities could be located adjacent to the tracks on the approximately 100' wide right of way to help serve the region. Likewise the PRL right of way is adjacent to the Ohio Erie Canal and could possibly assist with or host towpaths, canals, and other beneficial uses so long as each use is again safely and securely separated from each other.

#### Additional Capital Improvements:

If the concept proves to be successful in terms of increasing gross tonnages, increasing the number of rail users, shifting some traffic from adjacent highways, and increasing uses of intermodal terminals across the State and region, additional capital improvements and line segment restorations could be undertaken to further optimize the network and increase the scale of the networks respectively. Needed improvements would include interchange reconnections particularly in multiple quadrants to help eliminate backup movements, multiple main line tracks, additional sidings for spurs to attach to help keep the main lines clear, improved track including welded rail for better speeds and safety, and roadway and other rail line grade separations.

#### Additional Uses of the Right of Way:

OTC leases portions of its rights of way for other uses including telecommunications, gas/oil pipelines, and electric transmission lines. Similarly OTC could coordinate joint uses of the railway right of way for those and other purposes providing they are safely and

securely separated from each other. Multiple modes of transportation and telecommunication upon the same right of way would give OTC the opportunity to diversify using the public turnpike model, just as private companies do for greater efficiencies under one administration vs. an administration per mode/per carrier's network.

#### Opposition and Other Issues:

Most railroads on the surface might oppose a public turnpike railway model as a threat to their monopolistic business model. These private railroads have always claimed trucks on public roadways are unfair competition, but have never advocated equivalent modal provision and fair competition with multiple carriers on the same tracks, just as trucking companies compete on the very same roadway lanes. However after liquidating line segments and consolidating traffic they appear to realize their past decisions have exceeded the capacities of their remaining networks that have contributed to the current transportation crises. Former Conrail officials have admitted they made a mistake in abandoning the degree of trackage on their networks that they did.

Certain fringe Wall St. analysts and investors would oppose the model as the pricing power of their monopolized carrier holdings would suddenly be converted to fair market competition. They must be held accountable for decreasing efficiencies in the distribution sector while insisting upon monopolized intermediation to corner producers and other users as a means to increase their profit opportunities.

Credit rating agencies must also be questioned for insisting OTC's Debt Service Coverage Ratio be arbitrarily increased in exchange for better debt ratings, making their tolls more costly to adequately cover the ratio increases thereby raising calls for its privatization (as if for example Macquarie and Cintra could operate more efficiently while demanding profits).

Privatization advocates naturally will cite the creation of yet another bureaucracy, and that the private sector can administer projects much better than the government can. If it is interested in administering railway turnpikes in addition to public roadway turnpikes much less ensuring the Ohio Turnpike remains public, OTC should stand by its record and challenge PPP advocates and suitors to demonstrate how privatized distribution provision with an additional profit margin assessment in its tolls and fees helps producers and users effectively compete in the global market against other public distribution models, particularly those heavily subsidized in some countries.

W&LE would oppose a PRL turnpike on the grounds that the public turnpike model would unfairly compete with its adjacent privately owned and operated route between Pittsburgh-Jewett. W&LE previously abandoned their adjacent Jewett-Bowerston main line and consolidated its traffic onto the PRL using trackage rights from C&OR. W&LE then

wanted to purchase the PRL for \$30M – the approximate scrapping price for their adjacent ~30 mile Gould-Jewett main line, and could have shifted their main line traffic onto the PRL between those same points too. Adding the PRL to their portfolio would have made W&LE a more attractive takeover target if not a possible candidate for liquidation. However the PRL serves as a backup route for W&LE's main line, just as its main line serves as a backup for the PRL. Additional OTC acquisition of the W&LE Gould-Jewett main line (at ~\$100K/mile current market rates) in addition to the PRL would provide two adjacent routes in the corridor with room for another main line track on the PRL in this challenging mountainous region. The acquired W&LE main line could be used while Gould Tunnel is being improved, and thereafter the PRL main line could be used while the acquired W&LE main line's tunnels and bridges would be similarly improved.

## Other Issues

### Pipelines:

Although buried and generally out of sight, pipelines are nonetheless an important distribution network for those materials that can use them for transit. Reportedly the nation's pipeline network that is mostly privately owned and operated is in similar need of maintenance and expansion to not only help address the transportation crises but to directly address the energy crisis.

Buckeye Partners is proposing a new ethanol pipeline as shown in the map [Buckeye Ethanol Map.pdf](#). Note there is a gap between Pittsburgh-Columbus that could be filled by a new pipeline constructed on the Panhandle ROW, and could also serve the Coshocton and Cadiz ethanol plants as both competition and redundancy for the outbound rail service. Interestingly had PCTC survived, Buckeye was one of its subsidiaries, so it could have horizontally integrated transportation service for those and other plants.

### Energy Overview:

The rapid energy price increases over the past number of years and subsequent very recent pullback is making it particularly hard for transportation planners to plan sufficiently if not accurately for long term needs and projects. The volume increases in ODOT's 2002 Freight Study over the next decades must now be re-considered and perhaps better pegged to energy costs. We have also witnessed a direct correlation between energy costs and transportation use or disuse, modal preferences, and even vehicular type use preferences.

Transportation planners might consider projecting even with new drilling we ultimately will start running out of oil (at least that more cost effectively obtained) unless we discover how oil is created and make more of it, or develop cheaper technologies to extract it from the harder to reach pockets. However alternative fuels should

increase in quality and decrease in costs. In one recent development photosynthesis was emulated in the lab, offering hope for cheaper and more voluminous H<sub>2</sub> production. Alternative fuels could thus help restore and stabilize transportation use, but for now transportation financing must remain dependent upon energy costs. However Wall St. investors could start hoarding fossil fuels further hampering transportation financing, as this 8-20-2008 opinion to the Dover-New Philadelphia Times-Reporter notes-

"Oil companies already have 66 million domestic acres on which to drill. They have not (drilled) and will not drill. They want to control the leases which add a great deal of value to their companies. They can be sold or used as collateral. Local companies are doing the same thing. They are buying up leases as fast as they can knowing those leases will be very valuable in time. They have no intention of drilling now."

#### Telecommunications:

Transportation planners should not discount the role of telecommunications, which essentially is the transport of electrons and photons. Telecommunication technologies are only in their infancies, and will only become faster, cheaper, more powerful, and increasingly the mode of choice. Note the effect the Internet has had upon newspapers, USPS, and brick & mortar retailers. Ailing airlines have additionally suffered from increased videoconferencing use to save not only on costs but numerous hassles.

[OSCnet Map.pdf](#) shows the Ohio Supercomputer Center's intrastate fiber line network. They own some lines and lease others from private telecommunication carriers, as shown in a 2000 Wired Magazine US map [US Fiber Map Small.pdf](#) with the Ohio area blown up on [OH Fiber Map.pdf](#). The intrastate network can be roughly equated to intrastate highways, with the interstate/intercity lines being the Interstate highways.

Note the lack of lines and subsequent redundancy between Pittsburgh-Columbus, which is a national defense/homeland security issue. Transportation ROWs could help telecommunication redundancy by offering their ROWs for more fiber line installations to increase their robustness.

#### Other Modes' Effects on ODOT:

We cannot act like the aforementioned and other presented proposals will not affect ODOT and/or OTC and expect them to merely eat those losses and simply scale back their administration. The infrastructures and facilities are still out there, and they need administered and serviced. Perhaps conveyance of the Interstates to OTC should be considered, as they are limited access and can be somewhat easily converted to tollways for more precise use metering

and payments. That would leave ODOT and the counties with the state routes still under the gas tax model.

The other modes have the luxuries of taking their infrastructures out of service if they are not needed. Pipelines and fiber can be left in the ground and their pumps and network equipment utilized elsewhere. Railroads have obviously liquidated unneeded track. But highways and roads in general have constantly expanded. If in the future the other modes are used more extensively, perhaps ODOT and the counties should consider they over-expanded in scale. The interstates under ODOT and OTC might have too much capacity in lane-miles. The excess might not be cost-justified should energy and construction costs continue to excel. China might one day experience the same problems once they realize they have to adequately service what new infrastructures they've built.

The task force has learned ODOT and OTC are starting to share some responsibilities to increase efficiencies. Should these and other transportation agencies explore not only intra-modal sharing but also inter-modal market entry to stem use shifts elsewhere? ODOT & OTC are primarily highway providers, counter to diversification advice most experts give to other private sector transportation and telecommunication providers, and private sector producers that can horizontally and vertically integrate and if necessary cross-subsidize lines of businesses. The holdup in standardized provision might be the difference of business models, i.e., gas taxes vs. tolling. Should the models be standardized then more efficiencies could be realized. Economically and politically the other modes are competitors, but technologically they are also redundant modes to not only ensure supply chains are robust, but to use as a marketing tool vs. other states and nations for global economic competition.

## Conclusion

The Ohio Turnpike has been a success over its 50 years of operation in addressing the State's transportation needs while remaining financially sound. The Alameda Corridor Transportation Authority's project is experiencing continued use and growth with its quasi-railway turnpike model that demonstrates it could be emulated elsewhere with similar success. Tax-free public revenue bond financing is an available and proven option for financing infrastructure projects, and if complimented by pay-as-you-go ton-mile assessments for each user to adequately finance its administration and maintenance without federal or state subsidization, then those projects should be as equally successful and investment grade. Therefore a true public railway turnpike model perhaps under the administration of the Ohio Turnpike Commission should be further investigated as one means to viably solve the Midwestern and Northeastern transportation capacity, congestion, energy, pollution, passenger liability, and other crises.

## About the Author

Daniel L. Van Epps is an Ed.D doctoral candidate in Technology Education/Systems Analysis at West Virginia University. He holds a fiber optic certificate from Lansing (MI) Community College, a BA and MA in Telecommunications/Information Systems and Technology from Michigan State University, a Masters Certificate in Intelligent Transportation Systems from the University of Michigan, and has taken a graduate railroad business course at Carnegie Mellon University. Originally from Detroit, MI and a graduate of Dover (OH) High School, he is currently an independent researcher, lobbyist, and consultant with proposed projects ranging from restoring 3.5 miles of abandoned rail line in Mineral City, OH under administration and operation of a new Community Improvement Corporation; an intermodal facility at east Dennison, OH; the Ohio Turnpike engaging in public railway turnpike provision; and together with a new Akron-Uhrichsville, OH conduit and fiber line to help rollout backbone speed and dark fiber availability in Eastern Ohio and increased network redundancy in the Pittsburgh-Cleveland-Columbus corridor, the repurposing of an apparently abandoned Pittsburgh-Columbus military conduit and fiber line for public use by the military, Homeland Security, telecommunication carriers, universities, supercomputer centers, and lineside end users. Information on those and other proposals is online at his website <http://www.multimodalways.org>

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