**July 16, 2024**

**Responses of Marc Scribner to Chairman Crawford's Questions for the Record**

**A Hearing on "Revenue, Ridership, and Post-Pandemic Lessons in Public Transit"**
**Before the**
**Subcommittee on Highways and Transit**
**Thursday, June 13, 2024**

1. **Your testimony referenced Section 13(c) of the Urban Mass Transportation Act of 1964. Can you please provide more context on how Section 13(c) requirements may make it harder for transit agencies to improve overall system productivity?**

   Typical Section 13(c) agreements include provisions that greatly constrain transit agency management in any decision involving employees. For all of these provisions, it is important to keep in mind that the overarching goal of Section 13(c) is to preserve the status quo.

   First, agreements generally require agencies to notify employee unions 60 to 90 days prior to any contemplated agency action that would alter the agency workforce as a result of a federally assisted project. Once notice has been given, agencies and unions must agree to implementing terms that apply Section 13(c) requirements to the proposed agency action. This can be a barrier to implementing any operational or service changes that impact the agency workforce.

   Second, contracting out service is greatly constrained. Many Section 13(c) agreements include explicit language requiring the transit agency to be the "sole provider" of transit service. The "sole provider" clause is included as part of the standard Section 13(c) Model Agreement at Paragraph 23. Generally, these restrictions are strongest when applied to contracting-out existing service that had not been previously subcontracted, but some arbitrators have interpreted "sole provider" provisions to prohibit the subcontracting of new service as well.

   Third, "carryover rights" clauses often contained in Section 13(c) agreement, which nominally require a new contractor to hire the employees of the former provider, generate sizeable uncertainty for agencies. The scope of these protections is unclear, but litigation is likely to arise if an agency attempts to contract-out service it had directly provided as the sole provider.

   Finally, successor clauses contained in Section 13(c) agreements tend to require any future contractors to assume obligations that had previously been agreed on by the transit agency or a preceding contractor. This greatly limits the ability of new contractors to introduce productivity-enhancing operational and service changes that impact the workforce.

2. **Mr. Regan's written testimony contends that the Government Accountability Office (GAO) has found that existing transit labor law, such as Section 13(c), has not delayed the implementation of new technologies, increased costs, or made it harder to improve operational efficiencies. Is this your interpretation of GAO's findings?**

   Mr. Regan is mistaken on both the scope and conclusions of the November 2001 GAO report, which was based on a survey of transit agency activities between October 1995 and September 2000. First, the underlying GAO survey did not contemplate automation technologies designed to perform core operating functions. As responses to Survey Question 25 contained in Appendix I of GAO's report show, only the following technologies were considered: automatic passenger counter, electronic fare collection system, computerized or internet traveler information system, computer assisted dispatching and scheduling system, Global Positioning System (e.g., automatic vehicle location system), automated demand response dispatching (on-board equipment), articulated buses, advanced technology buses (e.g., low floor, low emission buses), bus rapid transit system (e.g., dedicated lanes, automatic guidance system), on board electronic security monitoring.

   Noticeably absent from this list is any technology resembling the transit vehicle automation systems that I discussed in my testimony. This is likely due to the fact that three decades ago, fully automated trains now commonly deployed globally were not yet a mature technology. Today, there is a thriving global market for transit automation systems from numerous experienced vendors and contractors.

   Second, while GAO's report concluded that "Section 13(c) had a minimal impact on most areas of transit operations we identified," it also found that contracting-out was the major exception to this general conclusion. As responses to Survey Question 22 contained in Appendix I of GAO's report show, 46.5% of transit agencies reported that "Section 13(c) has made it much more difficult to contract out" (18.3%) or "Section 13(c) has made it somewhat more difficult to contract out" (28.2%) "fixed-route transportation or fixed-route transportation-related services" during the survey period. "In addition," as GAO concluded, "some transit industry officials reported that although provisions of Section 13(c) arrangements may directly limit contracting out for services, more often agencies are discouraged from contracting out because of their perception that such action will cause problems, such as Section 13(c) claims or delays in the receipt of grants."

   a. **How have available technologies developed in the years since the last GAO review of Section 13(c) or other Federal transit labor provisions?**

      Fully driverless trains at Grade of Automation Level 4 (GoA4) are now standard on new rail transit lines worldwide. While the United States currently has a single GoA4 light-rail system in Honolulu, many cities around the world have deployed GoA4 light- and heavy-rail operations since 2000,

including: Sydney, Australia; São Paulo, Brazil; Vancouver, Canada (Millenium and Canada Line expansions); Santiago, Chile; Beijing, Chengdu, Fuzhou, Jinan, Nanjing, Nanning, Ningbo, Shanghai, Shaoxing, Shenzhen, Suzhou, Taiyuan, Tianjin, Wuhan, Wuhu, Xi'an, and Zhengzhou, China; Copenhagen, Denmark; Lyon (Line B expansion), Paris (Lines 1 and 4 expansions), Rennes, and Toulouse (Line B expansion), France; Nuremberg, Germany; Hong Kong; Budapest, Hungary; Delhi, Mumbai, and Navi Mumbai, India; Jakarta, Indonesia; Brescia, Milan, Rome, and Turin, Italy; Nagoya and Tokyo, Japan; Macau; Kuala Lumpur, Malaysia; Lahore, Pakistan; Lima, Peru; Doha, Qatar; Singapore; Barcelona, Spain; Busan, Incheon, and Seoul, South Korea; Lausanne, Switzerland; Taichung and Taipei (Circular Line expansion), Taiwan; Bangkok, Thailand; Istanbul, Turkey; and Dubai, United Arab Emirates. Dozens of additional fully automated rail lines are currently in the planning or construction stages globally.

3. **Based on your analysis, will ridership on our Nation's transit system recover to pre-pandemic levels?**

   The general consensus in the transportation research community is that nationwide transit ridership is unlikely to recover its pre-pandemic ridership within the next decade. Beyond 2035, forecasts are extremely difficult, but transit faces strong headwinds that call into question the ability of transit ridership to ever recover to its 2019 levels. Long-term demographic changes and economic growth are expected to reduce the size of the workforce and increase household wealth in the coming decades, two trends that bode poorly for transit's future in the United States.

   a. **If not, what factors should transit agencies consider when making decisions related to how to attract riders?**

      Given transit's ever-diminishing niche in United States passenger transportation, policymakers and transit agencies should seek to dramatically reduce construction and operating costs. Operations should be reoriented to serve transit-dependent riders who cannot afford private transportation and agencies' costly efforts to convert affluent residents who can afford private transportation should be curtailed.

      It is important to understand that inefficient capital and operating expenditures represent an opportunity cost: forgone enhanced transit service that would be possible under more efficient resource allocations. As a result, inefficient transit expenditures have a significant negative impact on transportation equity by denying better service to transit-dependent riders—and thereby denying them improved access to employment and social opportunities.

Further, bus transit, with its significantly lower capital costs and greater flexibility, should be preferred over costly rail transit. Bus routes can be cheaply and rapidly changed as conditions change, and competitive contracting is easier to implement for transit bus operations. Agencies should also examine emerging alternative services such as microtransit and technologies such as automation that can better serve their remaining customers and lower costs.

Finally, policymakers and transit agencies should examine alternatives to traditional transit agency subsidies, such as mode-neutral transportation vouchers that can be issued directly to transit-dependent riders. Transportation vouchers would give those riders the opportunity to choose the travel options that work best for them while encouraging transit agencies to compete for those dollars with better service.