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The MBTA operates commuter rail service on the Worcester/Framingham line between Worcester Union Station and Boston South Station. This service operates with schedules focused on providing trips to Boston before 9 a.m. and from Boston after 4 p.m. Station stops are generally 1 to 5 miles apart with maximum trip distances of 30 to 45 miles. The *CTrail* Hartford Line provides another link to Western Massachusetts, with its commuter rail service to Springfield. The *CTrail* Hartford Line schedule focuses on accommodating daily travel to Hartford and New Haven, Connecticut. Commuter rail services typically receive public financial support to offset between 25% and 75% of the service's operating costs.

(The MBTA also operates commuter rail service from the North Shore, South Shore and along a portion of the Route 2 corridor of Massachusetts.)

**Intercity Passenger Rail:** Intercity passenger rail provides connections among different urban centers, with longer distances between stops and lower frequencies than commuter rail. Amtrak is the principal national operator of intercity passenger rail in the United States, although there are private operators that are pursuing or have recently initiated service. (See page 24 regarding details related to privately operated intercity services).

**Long-Distance Intercity Service** operates with limited frequencies, typically only one or a few daily trips. Long-distance intercity service typically includes station stops that are 15 to 75 miles apart and routes between 750 and 2,800 miles long. Many passengers use these services for personal/recreational travel. The Amtrak Lake Shore Limited is an example of a long-distance intercity service that travels through Western Massachusetts enroute between Boston and Chicago.

**High-Speed Intercity Rail Service** operates with frequent service; station stops 30 to 50 miles apart, a maximum line distance of 500 miles, and a top speed of 160 mph. High-speed rail generally serves the business travel market. Currently, the only high-speed intercity rail service in the United States is the Amtrak Acela that operates between Washington, DC, New York City, and Boston. Between Boston and New York, Amtrak Acela operates with top speeds of 150 miles per hour and average speeds of 82 miles per hour.

**Regional Intercity Rail Service** operates with moderate frequency; station stops 10 to 50 miles apart, maximum runs of 750 miles, and a maximum speed of 125 mph. A high proportion of trips are for business and personal/recreational travel. Rail services in Western Massachusetts considered Regional Intercity Rail include:

- Amtrak Vermonter from Washington, DC to St. Albans, VT,
- Amtrak Northeast Regional Service from New York City to Springfield,
- Amtrak Valley Flyer Service from New Haven, CT to Greenfield, and
- Amtrak Hartford Line Service from New Haven, CT to Springfield.

The East-West Service Alternatives are identified as having eight to ten daily round trips between Pittsfield and Boston, have station stops spaced an average of 26 miles apart, and a total corridor distance of 150 miles. With these characteristics, all East-West Service Alternatives would be defined as Regional Intercity Rail Service.

## **Legal/Regulatory Characteristics**

### **Commuter Rail /Intercity Rail**

There are specific federal definitions that distinguish between intercity and commuter rail services. The definitions were initially established in the 1970s during Amtrak's inception to establish which rail services Amtrak would operate and which ones were the responsibility of the freight railroad owner/operator. At that time, under the Interstate Commerce Commission (the predecessor agency to the Surface Transportation Board), commuter rail service was defined as passenger rail service on routes less than 100 miles; services used by daily or regular passengers, either within a metropolitan area or between a metropolitan area and its suburb; and service provided primarily in peak weekday travel times and service where 70% or more of the passengers travel on multi-ride tickets. Since that time, the federal definition has evolved to:

"commuter rail passenger transportation" means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.<sup>1</sup>

Intercity passenger rail is defined under federal regulation as:

"intercity rail passenger transportation" means rail passenger transportation, except commuter rail passenger transportation.<sup>2</sup>

Given the federal definitions, the East-West Service Alternatives would be defined as Intercity Passenger Rail.

### **Passenger Rail Access**

As noted in the East-West Passenger Rail Study Final Report, passenger railroads can gain operating rights over freight railroads, subject to coordination and operating agreements. There are several different approaches used to secure rail line access. The Rail Passenger Service Act of 1970, which created Amtrak, provided Amtrak with rights of access to operate

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<sup>1</sup> 49 U.S. Code § 24102 (3)

<sup>2</sup> 49 U.S. Code § 24102 (4)

over the nation's freight lines.<sup>3</sup>Amtrak already has established some operating rights over the line between Boston and Albany to operate the Lake Shore Limited.

Amtrak is the **only** railroad that has rights of access to the facilities of any other railroad or regional transportation authority. These access rights provide Amtrak with access to any rail line in the United States and give Amtrak the ability to use any host railroads' facilities, such as stations or railyards.

Amtrak access and use of rail lines and facilities still requires payment to the host railroad, but with a payment structure based on the incremental costs<sup>4</sup>. Use payments based on incremental costs, instead of fully allocated costs, represent a significant cost reduction for Amtrak in comparison to costs paid by other passenger railroads. This is especially true on corridors with regular freight traffic, where operating passenger trains do not introduce significant added maintenance or inspection costs. In addition to the incremental cost structure, the Railroad Passenger Service Act of 1970 provided Amtrak with a right to train dispatching preference over freight trains, a preference that is exclusive to Amtrak.

The process for Amtrak to secure access to a host railroad's line and facilities typically includes negotiating an operating agreement that defines the operation of the existing services, the process for implementing new services, expected service standards, the payment amounts and terms for services provided by the host railroad, apportionment of liability, and a dispute resolution process. Part of this operating agreement process is often an assessment of the capacity of the corridor, evaluation of the ability of the rail line to accommodate the additional services, and identification of any additional infrastructure necessary to accommodate the service, if any. As noted, Amtrak is authorized to make agreements for the use of freight railroad facilities, for a fee. If Amtrak and the freight railroad cannot come to an agreement on the terms of use or the fee, the Surface Transportation Board (STB) has jurisdiction over the dispute and authority to prescribe reasonable terms for Amtrak to use the freight facilities.

Although a dispute resolution process exists through the STB, the process of negotiating terms and securing Amtrak access can be an extended one. The process of negotiating access for the Amtrak Downeaster service between Boston, MA and Portland, ME took approximately five years as Amtrak, the State of Maine and the railroad Guilford Industries (now Pan Am Railways) worked through issues related to train speed limits and track conditions. In this instance the STB was brought in to resolve issues specifically related to incremental costs.

In Alabama, Louisiana and Mississippi, Amtrak has been working with the three states, the Federal Railroad Administration and the two operating railroads (CSX and Norfolk Southern) to restore Amtrak service in the Gulf Coast region that ceased operation after Hurricane Katrina. Since 2015 the entities have been conducting engineering reviews and capacity studies to determine the appropriate schedules and capacity improvements. As a result of

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<sup>3</sup> 49 U.S. Code § 24308

<sup>4</sup> The Railroad Passenger Service Act of 1970 requires Amtrak to compensate the freight railroads that Amtrak operates over but only for the incremental cost for the use of their tracks. Incremental costs typically include: Incremental maintenance costs resulting from Amtrak's use of freight railroad tracks, Cost of developing and maintaining tracks and other facilities for Amtrak's exclusive use; Cost of incremental services provided by freight railroads for Amtrak service (i.e. additional train dispatchers).

the extended 5 -year time period the process has taken, Amtrak recently filed with the STB with a request to order the railroads to provide access.

Other railroads can gain access to a freight railroad's lines and facilities. However, the process requires a negotiation between the owner/operator of the railroad right of way and the passenger rail service sponsor on commercial terms. Importantly, there is no guaranteed right of access and no mediation process that will define a path to resolution, as Amtrak has with the STB. Important attributes that must be kept in mind through the negotiation process include:

- Active railroad property cannot be taken by eminent domain
- A freight railroad is a private business that has a responsibility to its owners/shareholders to earn a fair return on investment
- Maintaining corridor capacity is important for a freight railroad. Capacity is impacted differently by different types of service (intercity, commuter and freight) and different service frequencies,
- Capital improvements to improve corridor capacity requires realistic budgets and schedules
- Liability protection is an important component of the negotiation

### **Financial Characteristics**

The Rail Passenger Service Act of 1970 created Amtrak to provide nationwide passenger rail service. Amtrak receives Congressional funding for some capital and operating costs, but it is also responsible for covering costs through passenger fares. The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) includes a provision that requires states to pay the costs assigned to their respective Regional Intercity Rail Service.<sup>5</sup> Amtrak also assigns costs incurred for the common benefit of more than one route based on a proportionate share. Consistent with this provision, titled PRIIA Section 209, a cost allocation model has been developed by Amtrak and sponsor states that is used to determine how to allocate costs for state sponsor reimbursement.

In Western Massachusetts, as part of Amtrak's legislatively defined Long-Distance system, the Lake Shore Limited operating expenses are absorbed by Amtrak (and supported by the federal government through its National Network grant), whereas the Vermonter, the Amtrak-operated trains on the Hartford Line, and the Valley Flyer service are all classified as "state-supported" and receive financial assistance from Massachusetts and Connecticut. The Vermonter is supported by Vermont in addition to Connecticut and Massachusetts.

### **Summary**

The East-West Passenger Rail Study Report identified three potentially viable alternatives for passenger rail service between Western Massachusetts and Boston. The service concepts are all defined as intercity passenger rail, and therefore it would be possible to engage Amtrak to provide the service.

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<sup>5</sup> Amtrak's Northeast Regional Services that operate along the same corridor as the Amtrak Acela service between Washington DC and Boston, MA were treated differently by PRIIA. The costs and revenues for those services are not allocated to the respective states.



















## Legal Capabilities

### **Ability to enter into agreements and contract for intercity service**

Management and oversight of the East-West Passenger Rail Service would require the authority to enter into multiple contracts during both the start-up phase and for ongoing operations.

The authority would be required to enter into agreements with the rail line owners (CSX, MBTA, MassDOT) to determine the terms for the use of the line. A contract would be required between the authority and Amtrak for the operation of the service. Several other agreements/contracts would likely also be required to facilitate access, maintenance, marketing, and capital improvements.

### **Eligibility to receive and manage federal and other funds**

It is anticipated that the authority would need to receive and manage federal funds in order to oversee the service. Federal grant programs have specific requirements for a grantee to receive and manage federal funds. For public authorities these requirements are typically related to accounting systems and the ability of the grantee to follow Generally Acceptable Accounting Procedures (GAAP). More specifically it would be important for the authority to have established procedures related to:

- Allowable Costs & Cost Principles – Managing direct and indirect costs for reasonableness for the performance of the award and conforming to any grant limitations or exclusions noted.
- Activities Allowed/Unallowed – Managing activities charged to a federal grant that they are reasonable for the performance of the award and conform to any limitations or exclusions noted in the award.
- Cash Management – Ability to manage funds since many federal grants are cost reimbursement only. Authority must have ability to manage cash flow of projects being managed.
- Matching, Level of Effort – Many grant awards would require contribution of a “local match,” contributing the authority’s own resources to the grant program. The authority would need to both have access to sufficient funds for the local match and procedures in place to account for and ensure the local match is being made.
- Equipment and Real Property Management – Equipment purchased with federal funds must be tracked and inventoried. The authority would need to establish a system to manage and track purchased equipment.
- Procurement, Suspension, and Debarment – The authority would need formalized procurement policies established (in writing) with an appropriate price analysis or bidding procedure that includes ensuring bidders have not been barred from federally funded projects.

All agencies that receive federal funds are subject to basic audit requirements, which are spelled out in the Code of Federal Regulations. The audits are intended only to examine the federally funded parts of an organization's operations, and are not designed to identify unrelated problems. The audits are necessary to make sure that federal dollars have been spent properly on legitimate costs. It is therefore extremely











