
Testimony of
Eric Madison
Chairman, Tri-state Oversight Committee

***“Back on Track:
The WMATA Red Line Metrorail Accident”***

Committee on Oversight and Government Reform
Subcommittee on the Federal Workforce, Postal Service,
and the District of Columbia
United States House of Representatives
The Hon. Stephen F. Lynch, Subcommittee Chair
The Hon. Jason E. Chaffetz, Ranking Member

July 14, 2009
2:00 pm

Room 2247
Rayburn House Office Building
Washington, DC 20515

Introduction

Chairman Lynch, Ranking Member Chaffetz, distinguished members of the Subcommittee, good afternoon. I would like to thank you for the opportunity to appear before this committee to discuss the WMATA Rail Operations, the tragic accident of June 22, 2009, and the activities of the Tri State Oversight Committee (TOC). The TOC believes that the Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia, plays an important role in assessing the Metro Rail system's safety as well as rail transit safety throughout the country.

Before I begin, I would like to take this opportunity on behalf of the members of the TOC to express our heartfelt sympathy and concern to the families of those who died and were injured in this tragic accident. We will continue to keep them in our thoughts and prayers. The members of the TOC are fully committed to working closely with WMATA, the Federal Transit Administration (FTA), and Congress to improve WMATA rail operations to prevent another tragic accident from occurring.

I must note that presently, the TOC is a party to the National Transportation Safety Board's (NTSB) investigation of the June 22nd Red Line collision. Within an hour of receiving notification of the accident, the TOC had members from all three jurisdictions at the accident scene, working alongside WMATA, the NTSB and other first responders. The TOC has been working closely with the NTSB investigation, has members assigned to working groups, and other tasks related to the investigation. Under the NTSB's protocol, all parties (other than the NTSB's designated spokesperson) are prohibited from publicly discussing specifics about the accident, the accident investigation, or drawing any public conclusions until after the NTSB Final Report has been issued. This is intended to protect the integrity of the investigation process. As such, I would respectfully request that if you have any specific questions regarding the accident, that you present them to the NTSB. Once the NTSB has issued its final report, the TOC may issue a supplemental report about the June 22nd tragedy and the corrective actions the TOC will recommend to WMATA.

My testimony will address three primary areas. First, I will provide a brief overview of the State Safety Oversight (SSO) program in general as prescribed in Section 49 of the Code of Federal Regulations (C.F.R.) Part 659 and the TOC's roles, responsibilities and authority. Second, I will discuss the TOC's recent history in working with WMATA to address safety deficiencies that were noted prior to the tragic June 22nd collision. Third, I will address the limitations experienced by the TOC, which are above and beyond those faced by other traditional regulatory agencies.

SSO/TOC Overview

The TOC is the SSO agency responsible for the oversight of the Washington Metropolitan Area Transit Authority (WMATA)'s rail transit operations. Pursuant to section 49 Code of Federal Regulations, Part 659, each state with a rail transit or fixed guideway system that receives FTA funding, and is not under the jurisdiction of the Federal Railroad Administration (FRA), must designate an agency of the state to carry out SSO requirements. In general, almost all heavy rail rapid transit systems such as WMATA, the New York City Subway system, other large City subway systems, and light rail systems are outside the jurisdiction of the FRA and as such come under the jurisdiction of the SSO, if they are funded by the FTA.

The states can determine which entity can conduct the oversight, as long as it is not the transit agency itself. In brief, section 49 C.F.R. Part 659 requires state safety oversight entities to perform the following tasks:

- develop standards for the transit system's safety and security plans and procedures;
- oversee the execution of these plans and procedures;
- review and approve those plans annually;
- investigate accidents and hazardous conditions that meet certain criteria prescribed in 49 CFR Part 659, or direct the transit agency to investigate them on the TOC's behalf based on accident investigation procedures approved by the TOC;
- require the transit agency to develop corrective action plans to address safety deficiencies from a variety of sources including accident, incident and hazardous condition investigations, and both internal and external reviews of the transit system;;
- approve the corrective action plans and monitor their implementation,;
- require the transit system to develop internal safety and security audit programs, conduct those audits, and monitor their results; and
- conduct independent reviews of the implementation of transit systems' safety and security plans on a three-year basis, at a minimum.

SSO entities can also conduct other activities as they deem appropriate based upon state-specific requirements. Moreover, Section 49 C.F.R. part 659 requires SSO agencies to certify to the FTA that it has complied with the requirements of this statute.

Unlike most SSO programs, where the rail fixed guideway operates within the borders of a state, WMATA's rail system operates in more than one state. The

TOC was organized in 1997 and its membership has included fire chiefs, emergency managers, transportation planners and transit specialists. Currently, the TOC has members from the District Department of Transportation, the Maryland Department of Transportation, and the Virginia Department of Rail & Public Transportation. It would be inefficient to have three distinct SSO agencies from each jurisdiction served by WMATA's Metrorail. Instead, each agency designates two members as well as alternate members if needed, and the Chair of the TOC rotates annually between jurisdictions. The District of Columbia currently holds the Chair and Virginia as the Vice Chair.

TOC's Recent History

Since the 2006 Government Accountability Office audit of the TOC, its membership has taken significant steps to address issues of funding, personnel resources and administrative processes. While the audit noted a significant backlog of accident reports and corrective actions for the WMATA transit system, the TOC and WMATA have been working aggressively to close these reports and plans. Over the past year, concerted efforts have reduced the backlog of open investigations. TOC has either adopted or closed 83 WMATA investigation reports, but during this period fifty-five new investigations of reportable accidents/incident were initiated. Currently, there are forty-three investigations remaining open.

The GAO report noted that the TOC administrative processes were cumbersome, which hindered its ability to react. In part, this problem exists because the TOC is comprised of three separate jurisdictions, which presents a variety of operational and logistical challenges. There are various challenges that arise due to the fact that each member has to adhere to the laws, regulations, and policies of their respective jurisdiction, which sometimes do not mesh well. With time and persistence, the members of the TOC have taken the necessary measures to perform the TOC's oversight tasks. For example, the TOC program procedures have been revised to allow the Chair and Vice Chair more latitude in decision-making.

The report also stated that "hiring a full-time administrator, or designating a TOC member to serve in a full time capacity" would help to significantly improve the program. Earlier this year, Virginia hired a Manager of Safety, Security & Emergency Preparedness whose full-time assignment is to serve as a TOC representative. The District of Columbia and Maryland are also working to secure additional resources. In addition, the TOC retains technical specialists in a wide variety of rail transit disciplines to assist it in its oversight efforts.

The TOC has moved quickly to meet the audit recommendations and taken other steps to be more effective. For instance, the TOC has changed its practice of

holding monthly conference calls to monthly face to face meetings with WMATA safety staff. Recently the TOC has held monthly, in-person meetings with WMATA, FTA and TSA representation. These meetings occur in concert with focused work sessions in which TOC and WMATA staff review and respond to open action items.

More importantly, the TOC has tracked, reviewed, critiqued, and approved (as warranted) Corrective Action Plans (CAPs) proposed by WMATA to address findings emanating from investigation reports, hazard mitigation, internal audits, and external reviews including TOC's Triennial Reviews and industry peer reviews. The TOC monitored the implementation of the CAPs, and closed them upon verification of completion. Over the past year, 30 CAPs were closed, but 75 new caps were added, resulting in a total of 122 CAPs that remain open. The TOC is working aggressively with WMATA to close this backlog of CAPS. The process of resolving CAPs, however, can be lengthy since many require WMATA to implement new engineering, operational, or maintenance practices.

In addition to the GAO audit, the FTA performed an audit of the TOC's SSO program in 2007. The audit resulted in eight Findings of Non-Compliance and four Findings of Compliance with Recommendations. Due to concerted efforts of TOC with the cooperation of WMATA, all but two findings of non-Compliance and one finding of compliance with recommendation have been closed by FTA. TOC is in the process of preparing its next audit response submission to FTA and expects to satisfy the three remaining audit findings in the near future.

TOC/SSO Challenges

While the administration of the TOC program has improved, significant challenges remain. The challenges are lack of a traditional regulatory structure and funding. The TOC has limited regulatory enforcement authority, based on 49 C.F.R. Part 659, which provides that the TOC can recommend that FTA withhold federal grant funds when WMATA is non compliant, however FTA can only withhold up to five percent of grant funding. These issues make it more complicated for the TOC to ensure that WMATA will expeditiously comply with TOC recommendations.

In particular, when the TOC conducts a safety and security audit, it is difficult to require or mandate that WMATA take action on identified findings. Similarly, WMATA may identify a hazardous condition, but unless they have funding and resources available to correct it, the TOC can only track the problem and request periodic updates. The TOC transmits formal correspondence expressing concerns in some instances, but WMATA retains the ability to respond at their discretion.

Unlike the FRA or the Federal Aviation Administration (FAA), transit's SSOs do have the authority under 49 CFR part 659 to enforce findings or

recommendations with fines, civil actions or other penalties. Any such authority must come from state legislatures, which becomes more complex for the TOC because its membership is made up of three separate jurisdictions. The state safety oversight program was designed by FTA to function as a “cooperative” effort with the transit agencies systems and as such it was not designed to operate under the traditional regulatory framework of civil fines and penalties.

Since the FRA and FAA regulate interstate commerce, they have broad constitutional authority to establish their safety oversight powers. However, the FTA (formerly the Urban Mass Transit Administration, or UMTA) was formed to disburse grants and assistance to rail and bus systems, few of which cross state lines in their operations. Although the FTA does fund limited training and travel for SSO safety oversight agency personnel, but currently there are no federal funds directly allocated to states for state safety oversight agency operations. Additional funding, resources, and continued training for the SSO program would be beneficial for effective oversight.

Despite these funding limitations at the transit system level, safety oversight programs have improved in the last few years. As I mentioned, currently the FTA funds some training through the Transportation Safety Institute as well as workshops for SSO managers. Such courses have helped to improve the overall baseline of SSO competence. They represent positive steps and should be continued.

Major rail transit systems receive tens of billions of federal dollars every year, the receipt of which is predicated on compliance with their SSO agency’s program standards. Yet SSO agencies do not receive federal funding to support their personnel or program management costs. For cash-strapped state agencies, many of whom now face major budget shortfalls, maintaining an appropriately staffed and funded oversight program can be difficult.

Conclusion

In closing, let me thank the Subcommittee once more for the opportunity to provide testimony in this important matter. The safety of America’s millions of daily transit passengers is a pressing concern for Congress, SSO programs, and transit systems. We are all aware of the aging infrastructure of most of the country’s rail systems and the need for expensive upgrades for many transit systems to adequately serve passengers. It is our hope that Congress will seek additional funding for rail infrastructure, SSO support programs, and necessary legislation to improve rail safety operations.

The TOC will continue to strengthen our working relationship with WMATA. Equally important, the TOC will continue to work with the NTSB during the investigation of the June 22nd accident and will work to implement the necessary

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improvements. The members of the TOC have a vested interest in making the WMATA rail system operate safely because most of our members and their families ride the system daily. I look forward to your questions and thank you for your time and consideration.