THE SECRETARY OF TRANSPORTATION
WASHINGTON, DC 20590

May 3, 2016

The Honorable Christopher A. Hart
Chairman
National Transportation Safety Board
490 L'Enfant Plaza East, SW
Washington, DC 20594

Dear Chairman Hart:

I am writing with regard to your letter on the National Transportation Safety Board's (NTSB) urgent recommendations R-15-31 and 32, which were issued as a result of the Washington Metropolitan Area Transit Authority (WMATA) Metrorail smoke and electrical arcing accident near L'Enfant Plaza on January 12, 2015, and other events relating to the oversight of the WMATA Metrorail system.

Our Department takes every recommendation of the NTSB seriously, and this matter has been considered with the same level of seriousness. Unlike many urgent recommendations, however, these recommendations relied not only on the Department to take action, but ultimately Congress. Specifically, the NTSB's urgent September 2015 recommendations would require Congress to reclassify WMATA as a commuter rail authority, after which the Federal Railroad Administration (FRA) would have six months to commence regulatory oversight of WMATA Metrorail. Had we taken the NTSB recommendations whole cloth, it is entirely possible that we would still be awaiting such Congressional action and that the many oversight activities already undertaken by the FTA would not have happened in that vacuum.

The Federal Transit Administration (FTA) has existing legal authority, as provided by Congress in the Moving Ahead for Progress in the 21st Century Act of 2012, to undertake temporary and direct safety oversight of WMATA Metrorail. We did not have to wait, as it were. Moreover, subsequent to NTSB's urgent recommendations, Congress doubled down on FTA's role by further strengthening FTA's safety oversight authority in the Fixing America's Surface Transportation Act. The law expressly authorized FTA to administer a State safety oversight program when it determines that a State is incapable of providing adequate safety oversight that is consistent with the prevention of substantial risk of death or personal injury (49 U.S.C. § 5329(e)(8)). In summary, FTA already has the authority to provide immediate safety oversight of WMATA, and it has exercised that authority. The FRA does not have this authority, and in my judgment, we have taken the substance of the NTSB recommendations using the fastest, most effective method available to us.

The FTA is already providing safety oversight, on a temporary basis, over WMATA Metrorail until the District of Columbia, Maryland, and Virginia create a new, fully functioning and capable State Safety Oversight Agency (SSOA) that complies with Federal law to replace their ineffective Tri-State Oversight Committee (TOC). Within 30 days from the date on which NTSB issued its urgent recommendations, FTA was taking action, using its extensive knowledge and expertise of the rail transit industry and its safety oversight and enforcement powers. In a short time, FTA has provided more thorough safety oversight over WMATA than it has ever received before.

The core 13-member FTA-WMATA Safety Oversight team comprises dedicated multidisciplinary subject matter experts from FTA and across the U.S. Department of Transportation (DOT). While seven members of the team are from FTA, there are three members from FRA, and one each from the Federal Motor Carrier Safety Administration, the Federal Aviation Administration, and the Office of the Secretary. All are professional, experienced, and capable individuals who possess technical expertise in accident and incident investigations, inspections, audits, and/or data analysis. Furthermore, the team has experience with track and vehicles found only in a rail transit operating environment.

When intensive FTA-led safety inspections require additional staffing, FTA leverages expertise from other DOT agencies. For example, FTA successfully used other modal safety professionals to conduct a recent WMATA track-integrity safety blitz, augmented by additional FRA track inspectors, which identified numerous track defects and critical concerns regarding fire/life safety and compliance with roadway worker protection procedures. This collaborative approach to addressing transportation safety concerns is the smart and effective "One DOT" model that we use to address issues at DOT.

Since November 2015, FTA has conducted 143 inspections of critical components of WMATA's Metrorail system, including track, the Rail Operations Control Center (ROCC), automatic train control, traction power, communications, system maintenance, and vehicle maintenance. The FTA's inspections assess both the condition of critical infrastructure and how well WMATA follows its own procedures, rules, and safety standards. The FTA is also investigating accidents and incidents at WMATA, including incidents involving third rail smoke and fire, red signal overruns, and the unintended uncoupling of a revenue service train, among others. In addition, FTA is working to complete the backlog of 125 open investigations inherited from TOC, some of which date back to 2013. To date, FTA has closed out a total of 42 investigations.

The FTA had already focused on Metrorail safety in the year prior to NTSB's urgent recommendations, conducting a comprehensive Safety Management Inspection (SMI) of WMATA in the spring of 2015, and issuing Safety Directive 15-1 in June 2015. The FTA is now managing and verifying WMATA's implementation of 91 corrective actions arising from the SMI. The FTA has verified several of the corrective actions successfully implemented by WMATA, including corrective actions related to long-outstanding issues from the 2009 Fort Totten collision, emergency response training, and the reduction of noise and distractions in ROCC. The WMATA has submitted additional corrective actions to FTA for closure review, and is actively working on dozens more. I believe this demonstrates FTA's effectiveness and ability to achieve the goal of NTSB's urgent recommendations, which is for DOT to take actions that will improve the safety of the WMATA Metrorail system, recognizing that ultimately

WMATA itself must undertake corrective actions necessary to address the problems all of us have identified.

I remain confident that the FTA team has the right transit industry expertise, technical ability, and enforcement powers to improve Metrorail's safety—and again, FTA is leveraging resources throughout DOT, including from FRA. I have no uncertainties about the FTA-WMATA safety oversight role. What FTA has accomplished in a short time should be a model for the District of Columbia, Maryland, and Virginia as they create a new, fully functioning, and capable SSOA, and I have repeatedly urged those jurisdictions to take immediate action.

Alongside direct safety oversight, FTA is exercising another of its important authorities. In February 2016, WMATA submitted its Fiscal Year (FY) 2017 Capital Investment Plan to FTA for review, for which FTA directed the use of $473 million in Federal funds. The FTA conducted a thorough review of proposed and pending WMATA grant applications to ensure that Federal monies are directed to projects that support NTSB safety recommendations issued to WMATA, corrective actions arising from the FTA-WMATA SMI, and key infrastructure improvements, such as third rail rehabilitation. The FTA denied WMATA's proposals to use $20 million in Federal funds on two non-safety related projects, and instead is requiring that those funds be held in reserve for use on safety-investment needs that will be identified during the course of FY 2017. If required, FTA also has statutory authority to withhold up to 25 percent of financial assistance received by WMATA under the Section 5307 formula grant program.

The FTA's exercise of direct safety oversight, coupled with the allocation of millions of dollars in Federal funds to address safety needs at WMATA (an authority vested in FTA, not FRA), is a powerful combination that will effectively support the WMATA Metrorail safety improvements that NTSB seeks.

For the reasons stated above, we believe the best antidote for WMATA is to tackle its punch list and build a safety culture, and for the region to establish an effective SSOA. If we believed that taking further action would advance the cause, we would undertake it. However, given the actions already under way, we believe the recommendations should be closed.

We look forward to continuing to work with you and the Board on rail transit safety improvements. If I can provide further information or assistance, please feel free to call me.

Sincerely,

Anthony R. Foxx