

US PASSENGER RAIL

PPPS ON TRACK

AT THEIR PEAK IN THE EARLY 1920S, PRIVATE RAILROADS CARRIED NEARLY ALL US INTERCITY TRAVELLERS. FOLLOWING A HALF-CENTURY OF DECLINING MARKET SHARE CAUSED BY INCREASED HIGHWAY AND AIR TRAVEL, THE RAIL INDUSTRY NEARLY COLLAPSED IN THE LATE 1960S UNDER THE WEIGHT OF UNPROFITABLE PASSENGER LINES. BY **PETER W DENTON**, RAIL AND INFRASTRUCTURE GROUPS, AND **GEORGE K MILLER** AND **DAVID NAREFSKY**, INFRASTRUCTURE GROUP, **MAYER BROWN**.

Bankrupt railroads sought to shed their passenger service, and the federal government stepped in to preserve US passenger rail service by consolidating existing intercity lines into a new quasi-public carrier, Amtrak. Outside of Amtrak's profitable Northeast Corridor between Washington DC and Boston, private freight railroads continue to own and use nearly all track that currently hosts intercity passenger rail.

While federal law grants Amtrak access to any freight lines and ostensibly provides Amtrak with trains with dispatching priority over freight traffic, congestion on the shared tracks, strict federal safety standards, and competing commercial goals result in frequent delays, artificially low speed limits, and capital improvement schedules keyed to the needs of the freight railroad owners. A subsistence diet of federal funding throughout its history has further limited Amtrak's performance and growth potential.

Against these odds, however, intercity passenger rail ridership has risen over the last 15 years as air travel has become less convenient, highways have become clogged, and urban cores have been revitalised (including improved last mile transportation to and from train stations).

A new project delivery paradigm is also emerging, with US states and private railroads seeking to complement and compete with Amtrak, and the federal government experimenting with alternatives to the traditional block grants directed to Amtrak through competitive grant programmes and innovative financing mechanisms, such as private activity bonds, the Transportation Infrastructure Finance & Innovation Act (TIFIA) credit programme, and the Railroad Rehabilitation & Improvement Financing (RRIF) credit programme.

Spurred by federal policy changes in the Passenger Rail Investment & Improvement Act of 2008, and an influx of more than US\$10bn in federal funds for high-speed rail through the American Recovery & Reinvestment Act of 2009 and subsequent appropriations, US states such as California have taken an increased role in planning, developing, and funding new and improved intercity passenger rail lines.

The most recent Amtrak reauthorisation bill, the Fixing America's Surface Transportation Act of 2015, continues this trend, creating a new pilot programme that would allow a state, another public entity such as a joint powers authority, or a private rail carrier to bid to supplant Amtrak and operate up to three long-distance – more than 750 miles – passenger rail routes.

Foreign rail companies, and their sovereign hosts or owners, have also entered the US market, shopping attractive financing packages for new state-sponsored projects in an effort to gain a foothold in the burgeoning US passenger rail industry and to set a precedent for the use of their proprietary high-speed rail technology.

Furthermore, the reintroduction of long-abandoned intercity passenger rail service by an affiliate of a Florida freight railroad may herald a return to the old model of private railroads operating both freight and passenger service.

California High-Speed Rail

The highest-profile and most ambitious US intercity passenger rail project in development is California High-Speed Rail. The California High-Speed Rail Authority (CHSRA), the California state agency developing the project, expects to connect San Francisco to Los Angeles by 2029 with high-speed trains reaching speeds of up to 220mph through a combination of new construction of dedicated track and upgrading existing track to be shared with freight and other intercity and commuter passenger rail service (Phase 1). CHSRA plans to eventually expand service to Sacramento and San Diego at a later date.

CHSRA currently estimates full Phase 1 implementation to cost US\$68bn. The federal government has granted the state US\$3.3bn for the project. California has allocated US\$10bn in

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general obligation bond proceeds deriving from a 2008 state ballot proposition and bond measure. The state also plans to use 25% of the proceeds from a cap-and-trade carbon emissions pricing scheme for project construction.

Under the state cap-and-trade programme, California sets an overall limit on greenhouse gas emissions from capped sectors, then holds auctions for the sale of “allowances” that permit the emission of greenhouse gases.

The latest estimates of cap-and-trade revenues from the California Legislative Analyst’s office, the California legislature’s non-partisan fiscal and policy adviser, would result in the annual allocation of US\$925m to US\$1.25bn to the high-speed rail project in 2015 and 2016, but the programme could sunset by 2020 if not reauthorised by the state legislature.

Construction is currently under way on new dedicated track for the Initial Operating Segment – a 300-mile portion of the 520-mile Phase 1 from Merced to Burbank that CHSRA plans to open by 2022 and forecasts to cost US\$31bn. In September 2015, CHSRA received 36 expressions of interest from private firms for delivery of the Initial Operating Segment through a public-private partnership model that could include private financing.

All Aboard Florida

While California High-Speed Rail is a state-sponsored project using public money, the All Aboard Florida Brightline project will be privately owned and operated through an affiliate of Florida East Coast Railway (FECR). FECR is a regional freight railroad owned by Fortress Investment Group, a private equity firm, and is a successor to the railroad built at the turn of the 20th century by Henry Flagler that is often credited with the development of Florida’s eastern coast.

All Aboard Florida expects to operate its Brightline high-speed intercity passenger rail service from Miami to Orlando, with stops only in Fort Lauderdale and West Palm Beach, by 2017. The project is expected to cost a total of approximately US\$3.1bn.

All Aboard Florida expects funding from US\$1.75bn in proceeds of tax-exempt private activity bonds – the largest issuance to-date under this federal financing incentive, which was initially authorised in 2005 – approximately US\$571m in corridor and station land and US\$686m in cash equity from Fortress, and approximately US\$69m in contributions from the local commuter rail operator for use of the Brightline Miami station. Separately, an affiliate of All Aboard Florida will acquire rolling stock for use in the project for approximately US\$415m.

The project financing relies solely on farebox revenues from the passenger service, with no public funds (although benefiting from the lower cost tax-exempt financing provided from the private activity bonds), and Brightline will represent the first privately developed US passenger rail project in over 100 years.

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The new Brightline passenger trains will share existing upgraded right-of-way with FECR from Miami north to Cocoa, then operate on new dedicated track from Cocoa west to Orlando. All Aboard Florida expects that the three new rail stations in South Florida will generate significant transit oriented development opportunities, with the Miami station in particular to include 3m ft² of mixed-use development.

Going forward, other savvy freight railroad owners may also be incentivised by the availability of federal funding and financing programmes (and the potential to turn an operating profit on certain passenger routes) to deliver passenger projects that include capital improvements to their rail lines that would benefit both their traditional freight business and a new passenger service.

Texas Central Railway

Texas Central Partners seeks to build a new dedicated 240-mile high-speed passenger rail line between Dallas and Houston, Texas, utilising Japanese Shinkansen bullet train technology, with an estimated project cost of US\$10.9bn. Texas Central has indicated that it does not expect to use public funds, but that it may seek a federal loan under the RRIF programme.

Texas Central raised US\$75m in venture equity from high-net-worth individuals based in Texas in 2015, and has an extensive project team in place, including a number of high-profile advisers such as Ambassadors Ron Kirk and Tom Schieffer.

Texas Central also recently received a commitment by the Japan Overseas Infrastructure Investment Corp for Transport & Urban Development to invest US\$40m in the project, and has partnered with Central Japan Railway Company on a promotional and technical basis.

Texas Central recently reached a unique donated services agreement with a joint venture of Archer Western Construction and Ferrovial Agroman US Corp, under which the contractors will provide US\$130m in engineering and pre-construction work for the project in exchange for the first right to negotiate construction of the civil works portion of the project. Texas Central expects to raise approximately US\$155m in additional funds in 2016, to begin construction in 2017, and to start operations in 2021.

XpressWest

The XpressWest high-speed rail project (formerly known as DesertXpress) proposed between Las

Vegas, Nevada and Southern California would consist of a new, dedicated double-track corridor within the existing Interstate 15 right-of-way and has an estimated project cost of US\$6.9bn.

It is expected that the project will connect with the California High-Speed Rail system at Palmdale, California, and potentially expand elsewhere throughout the Mountain West region under later phases. The project languished for years in early planning stages following difficulty securing a federal loan under the RRIF programme, but has acquired new life in recent months thanks to a commitment by a consortium of Chinese rail industry companies to deliver the project.

Northeast Maglev

Yet another effort by Central Japan Railway Company to gain a foothold in the US, the Northeast Maglev project is a bold proposal to build a Superconducting Maglev system between Washington DC and New York City, with magnetically levitating trains reaching speeds in excess of 300mph, and potentially approaching 400mph.

Northeast Maglev LLC and its affiliate Baltimore Washington Rapid Rail have focused their initial efforts on the 40-mile Baltimore–Washington

corridor, which they expect Maglev trains to traverse in 15 minutes. The line has an estimated cost of US\$5bn. In November 2015, the federal government awarded US\$27.8m to Maryland for studying the project.

Gateway Project

Congested century-old rail tunnels under the Hudson River between Newark, New Jersey and New York City have represented a critical bottleneck on Amtrak's Northeast Corridor for years. Under a plan announced in November 2015, the Gateway Development Corporation, a newly created subsidiary of the Port Authority of New York and New Jersey, would dig two new tunnels under the Hudson River.

New Jersey and New York have committed to fund half of the approximately US\$20bn project, and the federal government and potentially private partners would provide the remaining funds. Project proponents have targeted the RRIF credit programme and the New Starts grant programme for funding and financing, and Senators Charles Schumer (D-NY) and Cory Booker (D-NJ) have touted recent statutory revisions to these federal programmes and to Amtrak's accounting methods as beneficial to project. ■



REUTERS/Mike Blake – An Amtrak passenger train makes its way along the California coastline