Lee

RAIL PASSENGER CORRIDORS

REMOVING BARRIERS
TO
PRIVATE SECTOR DEVELOPMENT

by the

U.S. DEPARTMENT OF
TRANSPORTATION

FEDERAL RAILROAD ADMINISTRATION

JUNE 1981

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

AUG 12 1981

The Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The enclosed report is in response to Section 1005 of the Rail Passenger Service Act, as amended, (45 U.S.C. 501 et seq.), which requires the Secretary of Transportation to submit to the Congress a report describing the actions taken to encourage private sector development of rail passenger corridors. The report identifies five types of barriers, three of which are amenable to mitigating action by government. The report concludes, however, that responsibility for initiating such action rests with State and local governments.

State, local and regional authorities are best positioned to address issues such as how to mitigate the impact of multiple ownership of corridor rail facilities and property essential for passenger operations. They also are the best informed as to how to reconcile conflicting government policies which might discourage private development of rail passenger service.

There are few actions the Secretary of Transportation can take in advance of State or local initiatives, with the exception of technical support and the coordination of efforts with ongoing Federal projects, such as the Northeast Corridor Improvement Project.

Sincerely,

Drew Lewis

Identical Letter to:
The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D. C. 20515

INTRODUCTION

OBJECTIVE

The objective of this report is to identify potential barriers to private sector development of rail passenger corridors and actions that the Federal Government, in particular the Secretary of Transportation, should take to remove those barriers so as to encourage private development or operation of service in such corridors. This report is in response to Section 1005 of the Rail Passenger Service Act (45 U.S.C. 501 et seq.), as amended by the Passenger Railroad Rebuilding Act of 1980 (P.L. 96-254), requiring that the Secretary of Transportation encourage the private sector development of rail passenger corridors.

BACKGROUND

In Section 212 of the Passenger Railroad Rebuilding Act of 1980, Congress expressed an interest in determining whether or not the private sector would be interested in funding, implementing and possibly operating rail passenger service in selected rail corridors. The Secretary of Transportation was specifically directed to encourage private sector development of rail passenger corridors, including the Atlantic City to Philadelphia Corridor. The Secretary was directed to:

(1) take all necessary steps to remove institutional and legal barriers to the private development of rail passenger corridors, in cooperation with private rail carriers, Amtrak, the Consolidated Rail Corporation (Conrail), commuter agencies, and State and local transportation authorities.

(2) ensure that investment of Federal funds in contiguous corridors is coordinated with privately developed corridors; and

(3) coordinate the investment of Federal funds with State, local, and private funds for non-operational improvements, such as stations, in privately developed corridors.

The term "barriers" as used herein refers to any condition that would act as a deterrent to private investment in the development or operation of intercity rail passenger services. Each potential rail passenger corridor has a unique set of institutional, market and operational conditions associated with it. Any one, or any group of conditions may discourage private sector development. The existence and severity of these conditions or "barriers" will determine the appropriate nature and mix of government actions required to remove those barriers and enhance the likelihood of private sector interest and investment.

APPROACH

The Department used a case study approach to investigate potential barriers to the private sector development of rail passenger corridors. Barriers to private sector development were examined in three corridors where there is a unique private sector stimulus to passenger demand (i.e., gambling)--Atlantic City, New Jersey-Philadelphia, Pennsylvania; Los Angeles, California-Las Vegas, Nevada; and Reno, Nevada-Sacramento, California/San Jose, California.

The Atlantic City-Philadelphia Corridor was chosen as the case study corridor. Special factors associated with this particular corridor suggest that it may provide particularly attractive opportunities for private sector development and operation. Since the opening of the first gambling casino in 1979, several private sector parties have expressed an interest in developing or operating improved rail passenger services between Atlantic City and Philadelphia, an activity which New Jersey DOT (NJDOT) is currently pursuing. New casino openings continue to attract increasing numbers of visitors and workers. This continuing growth gives evidence that the current transportation facilities serving the region may soon be inadequate.

NJDOT has had a long-standing interest in maintaining rail transportation to and from Atlantic City. The State has subsidized rail passenger service for Atlantic City for the last 17 years, and in 1978 acquired sizable portions of the railroad right-of-way in this corridor.

The Atlantic City to Philadelphia rail corridor case study was jointly conducted by the Department and NJDOT. The study will result in two reports. This report, prepared by the Department, is designed to identify and suggest ways to remove, wherever possible, barriers to private sector development of rail passenger corridors. The second report, which is currently being prepared by NJDOT, is an investment

brochure designed to solicit potential developer participation and to describe the relative merits, revenues and costs associated with the operation of improved rail service in the Atlantic City to Philadelphia Corridor. Because of time limitations, it has not been possible to develop the investment brochure and gauge the private sector response prior to submission of this report to Congress.

In conducting this case study, the Department and NJDOT formed an Advisory Committee of public and private sector representatives interested in the development of the Atlantic City to Philadelphia rail corridor. The Advisory Committee was extremely helpful in a number of respects, including the identification of institutional, legal and other potential barriers to the development and operation of the corridor by the private sector. The Committee included representatives from Conrail, Amtrak, New Jersey Transit, Delaware River Port Authority/Port Authority Transit Company (DRPA/PATCO), the Atlantic City Redevelopment Authority, the Atlantic County Transportation Authority, the City of Atlantic City, the Atlantic City Expressway Authority, the City of Camden, the City of Philadelphia, the Casino-Hotel Association, the Casino Control Commission and others.

Barriers identified in the case study were discussed with representatives from the Los Angeles to Las Vegas and San Jose to Sacramento to Reno Corridors. Although conditions in each corridor differ in some respects, many of the barriers in the Atlantic City to Philadelphia Corridor exist in the other corridors.

ORGANIZATION OF REPORT

The next section presents the study's findings with respect to the identification and evaluation of potential barriers to the private sector development of rail passenger corridors. Following that is a discussion of some of the options available to Federal, State and local governments to mitigate the impacts presented by those barriers. The last section draws conclusions as to the actions that appear most likely of success in removing particular types of barriers.

POTENTIAL BARRIERS TO PRIVATE SECTOR DEVELOPMENT

INTRODUCTION

This section describes potential barriers to private sector development of rail passenger corridors. These findings focus on the complex interrelationships of the potential barriers and the operational and economic feasibility of providing rail passenger service in the corridor.

Barriers to the private sector development of rail passenger corridors have been identified as follows:

- Multiple Ownership of Required Facilities and Property
- Labor Costs and Restrictions
- Multiple or Conflicting Government Policies
- Conflicts with Other Train Operations
- Uncertainty of Access to Financial Markets

MULTIPLE OWNERSHIP OF REQUIRED FACILITIES OR PROPERTY

Access to existing railroad right-of-way (tracks) and to supporting yard and station facilities is a critical element in the development of rail passenger services by the private sector. The alternative of providing another separate right-of-way, with its significantly larger capital investment and environmental requirements, imposes a risk that even the most financially secure private investor will almost certainly reject. In most cases, existing right-of-way and facilities are owned and operationally controlled by rail carriers (Amtrak or freight railroads), or State or local governments. This is true of all the rail passenger corridors currently being evaluated by the Department and Amtrak for the Congress and is particularly true in the case of the Atlantic City to Philadelphia Corridor, where three levels of State and local government or quasi-governmental agencies (NJ Transit, PATCO, and the Atlantic City Redevelopment Authority) and two railroad companies (Amtrak and Conrail) own segments. Thus, access to the right-of-way, stations,

and service facilities for any potential corridor service will require that developers enter into a series of detailed negotiations with each of these agencies and companies.

The level of existing services and the sensitivity of the owner to the continued operation of those services or the level of control exercised over those operations will be important factors in the negotiation of access agreements. Such concerns will determine the current owner's willingness to negotiate terms under which a potential developer of rail passenger services may purchase, lease, or gain access to those facilities through trackage fees. Owners of right-of-way, stations, equipment or maintenance bases or even parking facilities will require certain assurances to protect current investments in those facilities and, in most cases, continued access to those facilities. The degree of flexibility with which current owners will permit the reorganization of facilities or the operation of current and future services will, in large part, determine the feasibility of private sector rail passenger service in the corridor.

Station facilities, with multiple users will require extensive and time consuming coordination. For example, commuter or other local authorities whose operation or control of a station facility are key to the schedule and service reliability of their system will want terms which preserve their current level of operations and also ensure the opportunity for future expansion. In so doing they might demand terms which limit the developer's access to the facility and impose a burden on passenger rail services that he may wish to operate.

To arrive at terms agreeable both to the current owners and users, and the developer could require detailed and time consuming negotiations. Terms to be negotiated may cover administrative and support services; maintenance and other operational services; and the allocation of costs, both on the right-of-way and in jointly used support facilities.

The complexity of the situation increases with the number of owners and users. In the Atlantic City-Philadelphia Corridor, a developer would have to negotiate with the five owners of the right-of-way, three owners of existing terminals and stations, as well as the two owners of available yard facilities. Such a situation with its inevitable delays and uncertainties could be a major obstacle to private sector development in the corridor.

LABOR COSTS AND RESTRICTIONS

Labor costs are one of the most significant elements of railroad operating costs. These costs often reflect past technology and associated labor requirements, and are often aggravated by restrictive operating work rules. If the operator of a corridor contracted with an existing carrier for service, union work rules may require the carrier to pay operating employees on a mileage basis with or without consideration of time worked; to pay for delays at the beginning or end of an assignment; and to use established crew sizes. Seniority rules and districts, and restrictions against outside contracting would limit an operator's flexibility. If two or more railroads are involved, the operator's flexibility may be further constrained as employees of one railroad company or employees of different unions which perform similar functions do not, by agreement, operate or perform those functions in territories or over railroads not normally within their jurisdiction.

Financial feasibility might require a developer to obtain wage reductions and work rule changes to achieve greater productivity. A substantial multi-party negotiation process would be involved.

MULTIPLE OR CONFLICTING GOVERNMENT INTERESTS AND POLICIES

The extent to which private sector development of rail passenger corridors is economical may be related to the level of government investment in other modes and the burdensome restrictions placed on improved rail services. For example, large capital investment programs, such as expressways that provide access to key markets, enhance the competitive advantages of the bus and auto modes over rail. In most instances, these types of facilities, including air terminals, are already in place and are a part of the current market condition under which a rail passenger carrier must expect to operate. The prospective private developer may not be attracted to situations where future decisions affecting his interests are going to be influenced by government actions that clearly favor the utilization of competing services.

In addition to the existing rail line in the Atlantic City to Philadelphia Corridor, there are two State highways and a toll road traversing much of the corridor and providing access to Atlantic City. The toll road is under the jurisdiction of the Atlantic City

Expressway Authority, which is contemplating a partial widening of the expressway and substantial additional parking facilities several miles outside Atlantic City in anticipation of casino related traffic growth. Although automotive traffic projections may warrant this widening even if there were improved rail service, prospective private developers can be expected to view such plans as a disincentive to rail investment.

Plans of autonomous transportation agencies, such as the Expressway Authority and PATCO, which operate rail service between Philadelphia and Lindenwold (Lindenwold is an intermediate city in this Corridor), are important ingredients to the private developer's assessment of market stability and rail's prospective competitive position. Therefore, long-range planning policies developed and agreed to by State and local governments as well as the transportation institutions that they create are likely to have a significant influence on private sector interest in rail passenger corridors. An important part of the government planning process will be the degree to which preference is shown for one mode over another.

The limitations placed on expanded rail services by governmental entities can also discourage private sector development. For example, local governments sometimes place speed restrictions on the operation of rail services through their jurisdictions, particularly at grade crossings. These speed restrictions can have significant economic implications in that extended trip times tend to deter ridership. Requirements for the elimination or protection of grade crossings can be a substantial deterrent to private investment if the costs are to be borne strictly by the developer.

Other regulatory constraints exist at all levels of government. They include construction permits, enviromental considerations and a host of other rules. If property owners abutting the proposed passenger line are antagonistic, they may delay or even cause cancellation of the project by using such regulations either to add to the developer's costs or to stop development.

CONFLICTS WITH OTHER TRAIN OPERATIONS

Regardless of who owns the property, there is a strong likelihood of operational conflict among the different types of rail service that operate over a rail facility. Dispatching control and the priority of rail movements over common rail facilities has been a long-standing concern among the various rail services, e.g., the use of the Northeast Corridor by intercity passenger, commuter, and freight trains.

Some types of freight traffic, especially long, heavy, coal trains, interface poorly with high speed passenger services. If the owner of the facility is also the operator of the freight trains, the developer will be concerned that passenger trains will incur excessive delays or that the passenger service will be expected to bear the costs necessary to expand system capacity to permit reliable and speedy passenger train operations. Although a high quality rail facility may exist, the operation of that facility and the owner's willingness to adjust current operations to permit improved or expanded passenger services could present a barrier to a potential private investor.

In those instances where marine and rail operations must be coordinated for bridge openings, as is the case in the Atlantic City to Philadelphia Corridor, another potentially significant operational barrier exists.

UNCERTAINTY OF ACCESS TO FINANCIAL MARKETS

Estimates of future rail patronage in today's competitive market rely on a number of important variables. For example, in the Atlantic City to Philadelphia Corridor, estimates of demand were determined from projections of the number of operating casinos anticipated for 1985; the number of employees per casino who would be likely to travel by rail; the amount of secondary and even tertiary employment generated and likely to travel by rail; various operating scenarios, each with its own sensitivities to trip time and frequency; rail fares versus the costs of competing modes; the projected costs of gasoline; various marketing and historical preference factors; as well as demographic factors such as population growth and per capita income.

Each of the above variables not only influences the estimates of rail patronage, but also affects operational considerations, fleet sizing requirements, scheduling and other marketing techniques and, most importantly, the estimates of expected revenues. Thus, in light of the large amount of initial capital investment required to provide such service and the uncertainty regarding future returns on such investments, there is generally a high degree of risk associated with financial investments in intercity passenger services. It is the latter issue which might be the most significant potential barrier to the private developer.

As part of the Atlantic City to Philadelphia Corridor study, financial organizations were approached to determine the criteria by which a potential rail passenger service developer would be

evaluated. These organizations responded that financial support could be found, generally, for the purchase of rolling stock and equipment but that support for other rail capital improvements was unlikely. The reason creditors are more likely to accept liens against rolling stock is that rolling stock can be more easily liquidated in the event of business failure than can fixed facilities.

MEASURES AVAILABLE TO REMOVE BARRIERS

A number of measures can be taken to remove or to mitigate the adverse impacts of potential barriers to the private development of rail passenger corridors. Some of them can be taken by public authorities.

Access to railroad rights-of-way and support facilities at reasonable cost represents an obvious potential barrier to the private sector development of rail passenger corridors. In certain corridors, as in the Atlantic City to Philadelphia Corridor, the State or local government may itself own and operate rail facilities. In these instances, or in instances where the opportunity exists and governments are willing to purchase or expand existing facilities, there may be a significant opportunity to stimulate private investment. The granting of a right-of-way to a private developer at nominal or significantly reduced cost would reduce capital requirements and act as an inducement to a private developer. State and local governments may be able to influence owners to permit private developer access to existing facilities through exercise of the power of eminent domain, or through property tax or other tax incentives.

Federal, State and local governments can do little to affect the potential impacts generated by labor cost or work rules, or to influence negotiations among the unions, the current rail operator, and the potential developer. State and local governments might, according to their own economic and development plans, provide financial incentives to facilitate efforts to reach an agreement.

State and local governments can provide various measures of support. For example, coordination can be improved by a long-term planning approach setting out procedures and criteria for the evaluation of transportation investment alternatives. Secondly, local government can arrange complementary investments, such as improved station access and egress through highway or street improvements at rail station facilities, and grade crossing protection or elimination. Most important, however, would be the assurance to prospective developers that future government policies would not serve to erode expected rail markets and revenues. For example, only State and local governments could provide the necessary assurances that public funds will not be diverted or used to build intercity bus terminals or improved access routes so as to

effectively enhance bus transportation at the expense of the rail mode. State and local governments can also ease the regulatory process with respect to certain application or reporting requirements. An example would be a consolidated State and local government certification process which could reduce uncertainty, shorten the development process, and reduce development costs.

Access to sufficient financial resources presents the most significant barrier to private sector development of rail passenger corridors. State and local government could provide all or part of the capital costs through right-of-way and other land acquisition, or through grants or guaranteed loans. Private sector beneficiaries of such rail service (e.g., casino operators) may also see fit to contribute financially.

CONCLUSION

Of the five broad barriers identified in this report, two appear particularly inappropriate for solution by any level of government. They are barriers that have their roots in labor costs and labor restrictions, and conflicts between different operators on a route. The other three categories of barriers are more amenable to possible solution through governmental action. (Specific areas in which actions could be taken by State and local governments are described in the previous section.)

The issues described under the latter three categories of barriers are primarily of local jurisdiction, being functions of the resources of the developer, the particular characteristics of the corridor, and the degree of State and local government support. There are few appropriate and effective actions which the Secretary of Transportation could take to remove barriers in advance of State and local initiatives. Except for support to private sector passenger rail development of a technical nature and possible coordination activities, if so requested, in areas where there is an existing major Federal involvement such as the Northeast Corridor Improvement Program, the Department does not see the Federal government playing a major role in the removal of barriers to private sector passenger rail system development.

The Department supports legislation introduced in the Senate, repealing Section 401(c) of the Rail Passenger Service Act which gives Amtrak exclusive passenger service franchise for any rail line over which it operates scheduled service. Enactment of this legislation would remove the requirement that a developer obtain Amtrak's permission to provide service over a rail line which it operates but does not own.

The following local initiatives are considered to be the most important ways to address barriers at the local jurisdiction level.

The State or local government could act to alleviate or remove this barrier by assisting in negotiations when impediments arise. For example, the State or local government might agree to buy property or property rights and lease them to the developer. Similarly, the opportunity might exist for the exchange of publicly-owned land for privately-owned land to permit the required rail operations.

The State, local and regional authorities could expedite their handling of controversial issues such as how to mitigate the impact of grade crossings and environmental issues. Of particular importance, the State and local governments can develop and adopt transportation plans and capital programs which are complementary to rail service. This is especially important in corridors in which semi-autonomous transportation authorities might build and operate a competing service with user-tax revenues. Preparation of annual transportation improvement programs represents an excellent opportunity to assure coordination of Federal, State and local funding in the development of intercity rail corridors to complement the competing modes.