Amtrak: On the wrong track

By Charles H. White Jr.

As U.S. Supreme Court justices wrestle with whether Amtrak, as a quasi private corporation, should have the right to set performance standards that would also affect the freight services with which it shares lines, the rail system is facing gridlock. America's outmoded railroad policy leading to this situation was created in a crisis atmosphere 50 years ago. It is counter-productive today and, if not revised, potentially disastrous for the future. A look at the past can better inform the actions required today.

America's rail industry was in a serious long-term decline after World War II. Fundamental economic change and the government's policy of subsidizing competitive transportation modes drastically cut into the railroads' previous near-monopolistic position on interstate transportation.

The railroads hit a crisis point by 1970. The Penn Central Railroad was in bankruptcy, the largest in U.S. history at the time, and pulling down its connecting railroads serving America's industrial heartland. It was soon to be joined in bankruptcy by the Rock Island and the Milwaukee Road railroads, important agricultural carriers serving the Midwest.

More than 25 percent of the industry's track mileage was already operated by bankruptcy trustees. Arguably too big to fail, Penn Central was proving to be too big to fix through the bankruptcy process. The case would soon overwhelm the courts and lead to the creation of the federalized Consolidated Rail Corporation, or Conrail, to help stabilize the country's railroad system.

With the nation already in a deep recession, the impact of a rapidly failing rail network on the rail-dependent industrial and agricultural sectors called for immediate congressional action. The crisis situation also raised the inescapable issue of whether a bankruptcy-prone private sector railroad industry continued to fit America's needs. This basic question led to a decade of negotiation and eventually, a grand bargain between the railroads and Congress.

To survive as a private sector industry, the railroads argued that they needed significantly increased rate-making flexibility (revenue), and quicker ability to downsize their extensive physical plant and eliminate rail passenger services (costs). Both cost reduction tactics were subject to lengthy administrative litigation at the Interstate Commerce Commission and in the courts. If Congress would ease these limitations on rail management, the huge burden of nationalization and/or subsidization of the U.S. railroads might be avoided. The railroads' private sector status might still be saved. Congress took the chance. This first step in the bargain brought us Amtrak.

The law creating Amtrak was very efficient in relieving the railroads from passenger obligations. A carrier merely had to pick from a menu of equipment donations and/or payments equivalent to different loss measures to walk away from one of its original purposes — moving people. The resulting avalanche of decrepit and mismatched rolling stock made the first Amtrak trains very
colorful but did little to inspire confidence in the new carrier. The lack of a long-term financial commitment set the uncertain stage that still characterizes Amtrak. More important, the bastardization and disinheritance of Amtrak made it a mere tenant on the freight railroads' tracks. This is hardly an appropriate setting to build a high speed passenger rail system, much less an adequate national rail passenger service.

After the creation of Amtrak, the industry and Congress negotiated during the '70s to reach the other goals — rate-setting flexibility and quicker infrastructure downsizing. The Staggers Rail Act of 1980 completed the deal. Under Staggers, the railroads were given a chance to remain a private sector industry by means of greater rate-making flexibility (including the right to make contract rates with individual shippers) and a quicker abandonment process. The legislation essentially shifted the industry away from a public utility/common carrier orientation toward more of a negotiated contract carriage posture.

This shift was accompanied by a vigorous merger movement during the '80s and '90s. The freight rail industry dramatically concentrated in terms of both corporate structure and underlying physical infrastructure. From a networked system of more than 40 interconnected Class I carriers in 1970, the industry merged down to four mega-systems with few meaningful competitors. Its physical infrastructure has been "rationalized" to such a degree that the terms "capacity constraint" and "gridlock" are increasingly heard. The freight railroads prospered under the bargain while Amtrak remains a second-rate passenger-carrying tenant on the increasingly constrained freight network.

This rail policy model does not make sense for the future. The projected need for freight rail infrastructure development will most certainly outstrip the freight railroads' self-financing abilities. Amtrak, if it is to be an adequate national passenger service, or even begin to think about becoming a high speed service, needs its own dedicated track system.

It is time to review America's railroad policy.

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