Global Railway Review

# High-speed rail in the United States: A golden opportunity

*Raymond Atkins, Terry Hynes and Morgan Lindsay from the Transportation Group at Sidley Austin LLP detail why they believe that private investment is the way forward for high-speed rail in the U.S., but not without government support.*

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The current U.S. Transportation Secretary, Pete Buttigieg, recently shared his vision to see the United States "leading the world when it comes to access to high-speed rail." Given the current state of passenger rail service in America, achieving that vision will be a Herculean task. America lags far behind Europe and Asia in high-speed rail development – only 33.9 miles (54.6km) of the current U.S. passenger rail network is capable of supporting train speeds in excess of 150mph.

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Secretary Buttigieg is not the first American official to advocate for investment in high-speed passenger rail service. As far back as 1998, the U.S. Transportation Secretary at the time, Rodney Slater, presented a high-speed rail plan and allocated more than $30 million to support state-sponsored high-speed rail projects. In 2009, the then-Transportation Secretary, Ray Lahood, issued a policy paper calling for construction of a high-speed rail network connecting major U.S. cities, and Congress appropriated more than $8 billion for that purpose. Two years later, the Obama Administration announced an ambitious plan to make high-speed rail service available to 80 per cent of Americans within 25 years.

## Getting to the root of the problem

Despite longstanding recognition that the nation's passenger rail system needs to be modernised, these initiatives failed to gain traction. The reasons why are rooted in geography, technology and government policy decisions dating back to the post-World War Two era.

The United States is a vast country, stretching more than 3,000 miles from the coast of Maine to southern California. In the 1950s, Congress acted to connect the nation by approving construction of a 41,000-mile interstate highway system. The interstate highway network (which has grown to nearly 50,000 miles) gave rise to America's love affair with the automobile – the number of registered cars in the United States increased astronomically from 25 million in 1950 to more than 287 million in 2020. The advent of passenger jet travel in the late-1950s created another exciting alternative to intercity travel by train.

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The post-war surge in highway and air travel had a devastating impact on America's passenger trains. Freight railroads, which were losing business to a burgeoning trucking industry made possible by the new interstate highway network, abandoned their passenger trains in a desperate (and, ultimately, unsuccessful) effort to avoid bankruptcy. Congress responded to this crisis by nationalising passenger rail service in a federally owned railroad, Amtrak. While that policy decision preserved service to communities that otherwise would have lost access to passenger rail, the increasing popularity of automobile and air travel made it impossible for Amtrak to become self-sustaining.

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Today, increasing public awareness of the harmful effects of climate change and ever-worsening congestion on America's highways have created a golden opportunity to ignite a rail renaissance in the United States. High-speed passenger rail has assumed a prominent place in the conversation about how to combat climate change and improve the nation's transportation infrastructure. American policymakers are at a critical crossroads: how will the nation seek to implement Secretary Buttegieg's vision for a world-leading high-speed passenger train system?

**Is a government-run high-speed network the answer?**
One approach would be to expand and upgrade Amtrak's existing service. Early indications are that this option – creating a government-run high-speed rail network – may be favoured by policymakers. While the Biden Administration's massive infrastructure plan includes $80 billion for rail, the lion's share of those funds are earmarked for Amtrak. But a high-speed rail strategy based solely on Amtrak's government-operated train service is doomed to fail.

The United States has an abysmal track record when it comes to government-run passenger rail service. Amtrak operates year after year at a loss, costing U.S. taxpayers nearly $100 billion since its inception. Despite massive subsidies, Amtrak trains (with the exception of its Acela service in the Northeast Corridor) rarely operate on time. Past federal spending to 'upgrade' Amtrak services has yielded only modest increases in train speeds, typically 10mph. Such marginal benefits hardly seem worth the price. Likewise, billions of dollars in federal funding for California's 800-mile high-speed rail project have, after more than a decade, produced nothing more than partial construction of a small segment between Merced and Bakersfield – a "railroad to nowhere" that provides no transportation benefits for major cities like Los Angeles and San Francisco. In both cases, government control over rail construction projects has resulted in endless delays, massive cost overruns and minimal return on taxpayer investment.

Moreover, Amtrak's existing network is ill-suited to serve as the foundation for a state-of-the-art U.S. high-speed rail system. Most Amtrak trains operate over tracks that are shared with freight and/or commuter railroads. The physical characteristics of those tracks – including grade, curvature and weight of rail – were designed to move heavy freight cars at slower speeds. Conversely, the design characteristics of high-speed rail systems are incompatible with heavy-haul freight operations. Even if existing shared tracks could be upgraded to support high-speed trains, commingling slow-moving freight trains and passenger trains operating at speeds in excess of 150mph would be a recipe for disaster. That is why virtually all high-speed passenger trains operate on dedicated tracks that are not shared with other trains.

**The potential of private investment**
The success of America's privately-owned freight railroads provides a model for creating a world-class high-speed passenger rail network in the United States.

There is a better way. America's freight railroads are the safest and most productive in the world. They were built by entrepreneurs who recognised the need for, and potential of, a privately-owned rail freight sector. Elimination of unnecessary government regulation enabled the freight railroads to recover from the travails of the post-war era and to innovate in ways that deliver fast and reliable service to the many industries that rely on rail freight to move their goods. The U.S. rail freight network is operated and maintained without government subsidies. While most new investment in rail freight infrastructure is privately financed, carriers have partnered with government to fund improvements where opportunities to benefit both the freight network and broader public objectives present themselves.

The success of America's privately-owned freight railroads provides a model for creating a world-class high-speed passenger rail network in the United States. Today, private investors are seeking to develop high-speed rail lines in California, Nevada, Texas, Florida and Maryland. These modern-day rail entrepreneurs have the ability to make prudent investment decisions that are free from the political compromises that delay – and, inevitably, increase the cost of – government-controlled projects. Once

constructed, market forces will spur these privately-run passenger railroads to offer competitive rates, convenient schedules and a superior passenger experience.

This is not to suggest that there is no role for the United States government to play in the development of a high-speed rail network. To the contrary, government must implement policies that create incentives for private investors to risk the billions of dollars required to bring their projects to fruition.

**The need for government support**

The first, and most important, step that government must take to encourage the development of privately-owned high-speed passenger rail lines is to streamline the environmental and permitting review process. The environmental review of the 'DesertXpress' high-speed train between southern California and Las Vegas took more than six years, prompting the original investors to withdraw from the project. The proposed high-speed line between Dallas and Houston, Texas, was subjected to similarly lengthy environmental and safety reviews. Constructing an interstate rail line requires a multi-year permitting process before the federal Surface Transportation Board. Such interminable regulatory hurdles discourage investors from committing capital to projects that are likely to take a decade or longer to generate any return on investment. While it is certainly appropriate to evaluate the transportation merits, safety and environmental impact of these new rail lines, there is no reason why the government review process cannot be completed in two years (or less) without undermining the public interest.

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The federal government must also act to pre-empt state and local efforts to derail meritorious high-speed rail projects. While cities to be served by a high-speed train almost always support construction of the line, communities along the route where the train will not stop typically oppose the project. Opponents utilise state and local legislative and judicial processes to place obstacles in the path of unwelcome high-speed trains, causing delays and increasing the project's ultimate cost. Federal pre-emption of state and local laws that enable opponents to frustrate high-speed rail development efforts would eliminate another major hurdle for private investors seeking to build high-speed lines in the United States.

Finally, the federal government should partner with the developers of privately-owned high-speed rail projects by assisting them in obtaining access to capital. Constructing a high-speed line requires a massive upfront capital investment. Given the number of years required to bring a high-speed rail project to an operational state, obtaining construction capital from conventional commercial financing sources is not feasible. In Europe and Asia, governments supported the development of high-speed rail lines through both direct and indirect financing arrangements. For the reasons discussed in this article, private ownership is the route most likely to achieve a world-class passenger rail network in the United States. Nevertheless, the federal government can make an impactful contribution to the success of meritorious private high-speed rail projects by providing capital support in the form of grants or low-interest loans.

**In summary**

The imperative to respond to the threat of climate change provides a singular opportunity for the United States to pursue Secretary Buttegieg's vision for a world-class passenger rail system. America's experience with rail freight provides a roadmap for that pursuit – private entrepreneurs stand ready to build and operate the first high-speed trains on the North American continent. Now, government must do its part by adopting policies that reduce regulatory red tape, pre-empt state and local efforts to defeat high-speed rail projects for parochial reasons and assist proponents of meritorious projects in obtaining access to capital.

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