



TESTIMONY OF THOMAS A. HART, JR., ESQ.
VICE PRESIDENT FOR GOVERNMENT AFFAIRS AND GENERAL COUNSEL
US HIGH SPEED RAIL ASSOCIATION
To US House of Representatives, Transportation and Infrastructure Committee, Field Hearing in
New York City, NY with Chairman John Mica Presiding

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On behalf of the United States High Speed Rail Association (USHSR), its President, Andy Kunz, and its 250 members, I extend greetings to the prestigious Transportation and Infrastructure Committee. I am here representing USHSR as its Vice President for Government Affairs and General Counsel. The USHSR is a non-profit trade association born from a vision for advancing a state-of-the-art nationwide "true" high speed rail (HSR) system to be completed in phases around the country. Our mission is to build widespread public, business, and political support for major investments in a national HSR network.

The USHSR is pleased to share its thoughts on HSR development in the Northeast Corridor. This past November, USHSR hosted an international conference featuring Secretary Ray LaHood and 400 attendees in NYC that focused on the Northeast Corridor. The conference yielded much support and enthusiasm for building a true HSR system in this corridor. Today, we are delighted to express a common interest in the Chairman's vision for the rapid creation of a true HSR system in the Northeast Corridor funded in part by the private sector through innovative public-private partnerships.

This national HSR system will revive our economy and manufacturing sector by creating millions of new jobs. It will be the catalyst for the next national real estate boom as well as significantly reduce our dependence on foreign oil. It will also shrink our national carbon footprint, and it will create efficient mobility that's safe and affordable for its passengers. Aside from these great benefits is the desire to keep America more competitive through the constant development and innovation of its transportation systems as President Obama mentioned 2 days ago in his State of the Union Address.

Presently, all of our national transportation systems are overloaded and in a state of disrepair - which causes countless delays and waste - costing the nation more than \$100 billion dollars per year in lost time and wasted fuel. With the price of oil rising again and heading towards \$100 per barrel, it is of the utmost importance that we quickly get these new rail systems built to offer a redundant transportation system not dependent on oil or subject to oil price fluctuations. Ironically, increased oil prices translate into increased rail ridership, which in turn improves the business case from HSR. We have already seen this happen in the summer of 2008 when oil hit \$147 per barrel, and the ridership on America's rail systems rose to record levels.

Just one year ago this week, President Obama in his State of the Union Address, announced a commitment of \$8 billion dollars for this new visionary HSR program by remarking, "[t]here's no reason Europe or Asia should have the fastest trains." The very next day executives from USHSR joined the President and Vice President Biden in Tampa for the announcement of HSR's arrival to Florida and America's introduction to 21st century's transportation.

The popular Washington, DC to Boston passenger train route, otherwise known as the Northeast Corridor is particularly ideal for HSR investments not only because it stretches across seven states totaling 480 miles, it has the most robust ridership level from a population of approximately 50 million. In 2009, Amtrak's daily rail ridership in the Northeast Corridor was more than 27,000 passengers. Economically strong, the Northeast Corridor has among the highest income levels per capita in the nation. Such demographics make the Northeast Corridor ripe for HSR development and investment by the private sector. Despite these advantages, the Northeast Corridor's plan for HSR presents numerous challenges. The states connected along the proposed routes have a combined deficit of over \$45 billion and are currently dealing with widely deteriorating infrastructure. Also, any major regional investment will require bipartisanship due to mixed control of the governorships among the seven states. Additionally, the Northeast Corridor is not shovel ready due to the absence of a comprehensive environmental impact study, lagging regional planning, and the Federal Railroad Administration's and the incumbent carrier's token investments in HSR over the past decade. Moreover, the purchase of real estate and other freight control right of ways will be costly as well as the labor and construction

costs for building a new dedicated HSR track. Nevertheless, these challenges can be overcome by key consensus building efforts from government leaders and private investors.

Despite the common misconception, Amtrak's Acela is not true HSR. Globally, HSR trains regularly operate at speeds of 186 to 220 mph. Although the Acela has merits, it falls short of maximizing the potential a true HSR line would deliver to both consumers and its operators. Currently, Acela is limited by its own operating speed compounded by the lack of separate, dedicated track. The Acela averages 79 mph most of the line because it shares its track with other passenger and freight trains. Therefore, the development of a true HSR system would necessitate new dedicated track independent of freight operations. Additionally, the two routes that Amtrak runs out of NYC along the Northeast Corridor generate much of the entire system's revenue and are two of the few Amtrak lines that actually return considerable profits. However, with the right development and adequate investment in HSR, there is a vast consumer base that can be tapped into for a true HSR line that can deliver safe, efficient, and faster travel.

The debate is now how do we fund one of America's most important infrastructure projects. With the continuing economic and political climate of reducing public spending and the challenges in attempting to balance the budget, the future HSR development in the Northeast Corridor will heavily depend upon private sector investment. In addition, the price tag is encouraging some state government institutions to redirect capital away from these types of projects. In spite of this, there has been a renewed commitment for federal investment from the Obama administration, but more capital is needed to ensure a successful project that meets the expectations of consumers in an efficient and profitable manner. Public-private partnerships are needed to carry out this important national program and global experience shows that they can be successful.

Last year, the UK government auctioned off a 30-year concession for the right to own and operate its first high speed railway, the HS-1, linking London to the Channel Tunnel. The sale generated approximately \$3.4 billion dollars¹ and was sold to a consortium of two Canadian pension funds - Borealis Infrastructure and Ontario Teacher's Pension Plan. The concession sale is estimated to return 40 percent of the construction cost to the

¹ Mark Reutter, British Deal Shows Private Investment Demand for High-Speed Rail, PROGRESSIVE FIX (December 10, 2010) available at <http://www.progressivefix.com/british-deal-shows-private-investment-demand-for-high-speed-rail>.

British treasury.² Such savings is likely to help reduce the British's government's record deficit. In 2040 - when the concession ends, the railway reverts back to the government, which anticipates re-bidding it for an equal or higher price. "[O]ver the course of its 150-year-plus lifecycle, [HS-1] repays its construction cost, probably several times over."³ Reportedly, the "higher-than-expected bids for the UK's only dedicated [HSR] line revealed [a] strong demand for such assets" and demonstrates an alternative solution to funding HSR development, especially in the Northeast Corridor which has one of the densest market of riders.⁴

Although there has not been a public-private partnerships undertaken in America for the railroad industry, there have been several other developments of transportation infrastructure in a similar manner, particularly in the development of toll roadways. Creative public-private partnerships will allow governments to tap into the \$400 billion that is currently available for investment in such projects from private financial institutions on Wall Street, in pension funds, and in the banking sector. Furthermore, there is a potential for a high ROI (return on investment) for public projects such as this because of the current market of riders that exists in large urban areas like New York City, Philadelphia, and Boston.

The key for success is to incentivize the private sector in conjunction with targeted expenditures of public funds. These incentives can be created and implemented through federal legislation. Next week, USHSR will propose the "Private Investment in Infrastructure Act of 2011." Under such legislation, private companies seeking to invest in public projects stand to gain specialized benefits such as guaranteed loans, tax credits, possible deferred payments on loans until profits are made as well as other concessions for investment in the construction and operation of the nation's rail lines. HSR corridors can then be developed with a less reliance on public funds, thereby expediting its development, design, and construction at a lower cost. Meanwhile, the public partner retains some control and management of the overall rail program to ensure that public requirements and government standards are met.

² *Id.*

³ *Id.*

⁴ Robert Wright, £2.1bn HS1 Sale Lifts Privatisation Prospects, FINANCIAL TIMES (November 10, 2010) available at <http://www.ft.com/cms/s/0/6be9c170-e90d-11df-a1b4-00144feab49a.html#axzz1BgsRnLPT>.

Public funding and support is very important but it is the private sector's investment that will ensure the development of a commercially viable HSR transportation system. The government cannot solely be relied upon to carry the full financial burden of public infrastructure projects. Private industry must step up and fill the gaps in HSR funding and operations. Also, it is equally important that government investment, minimum guarantees, tax credits and other means are made available to give the private sector the comfort and assurances to invest in this long term project. In essence, there must be a permanent and on-going federal HSR program established to signal that this project is of national significance similar to the way interstate highway system was built.

At this time, the case in Florida is an excellent opportunity for a public-private partnership model to fill the State's \$300 million dollar gap for HSR funding. The public-private partnership team that successfully develops that model will likely be engaged for decades as the country develops HSR systems in California, Chicago, and the Northeast Corridor. Thus, we are confident that market forces will make the business case. The first test of the private market will occur in Florida as the Florida Rail Enterprises is expected to release its Requests For Qualifications (RFQs) to bidders next week and it is expected to contain a requirement for private investment to fill the funding gap. In closing, we invite this Committee to continue this discussion at our upcoming HSR Summit in Washington, DC February 8th, 9th, and 10th on Capitol Hill.

Thank you, Mr. Chairman for your time and your leadership. We look forward to working with you in the future and welcome the Committee's questions and comments.

Thomas A. Hart, Jr., Esq.
Vice President for Government Affairs and General Counsel
US High Speed Rail Association
10 G Street NE, Suite 710
Washington, DC 20002
Office: (202) 248-5001
Email: thart@ushsr.com
Website: www.ushsr.com

THOMAS A. HART, JR., ESQ



PROFESSIONAL PROFILE

Currently, Mr. Hart is the Vice President for Government Affairs and General Counsel for the United States High Speed Rail Association (USHSR). Through his efforts, the USHSR advocates for policy and legislation for high speed rail in America. In this role, Mr. Hart works with federal and state elected officials, the White House, and federal agencies. As an advisor, he frequently appears on professional panels on high speed rail, financial services, telecommunications, congressional affairs and other domestic and international issues. Prior to joining USHSR, Mr. Hart was a partner at Holland & Knight, LLP where he practiced government affairs, telecom, real estate, and corporate law.

Recently, Mr. Hart was featured in Uptown Magazine profiling his role in the expansion of High Speed Rail throughout the world, his brokerage of business between international developers, as well as his ability to determine the next big "wave" in technology – having been previously successful in implementing policies for telecommunications, wireless technology, and the internet.

PRACTICE EXPERIENCE

- Government Regulations
- Corporate
- Telecommunications
- Financial Institutions
- Commercial Real Estate
- Non-profit Associations

EDUCATION

J.D., Georgetown University Law Center (1980)
B.S., Economics, Brown University (1977)

BAR ADMISSIONS

Mr. Hart is admitted to practice before the State Courts of the District of Columbia and the U.S. Court of Appeals for the eighth, tenth, and District of Columbia Circuits and is a member of the Bar of the United States Supreme Court and District of Columbia.

INVOLVEMENT AND AFFILIATIONS

- Founder and Vice-Chairman, Telecommunication Development Fund, created by the Telecommunications Act (1996)
- Member, African-American Real Estate Professionals Organization (AAREP) Board
- Counsel, National Bankers Association
- Executive Producer, On the Potomac Productions
- Board of Directors, Anthony Bower YMCA