

TO: Peter Miasek, President, Transport Action Ontario
FROM: Greg Gormick, President, On Track Strategies
SUBJECT: Review of NDP proposed VIA Rail Canada Act (first draft)
DATE: November 29, 2013

Having the benefit of access to the act proposed by the Rail Passenger Action Force of 1984-1985, the acts tabled but never enacted by the Conservatives (C-97 in 1986) and Liberals (C-26 in 2003), and the two versions of the Amtrak legislation (1970 and 2008), my opinion is that this first discussion draft requires several revisions and additions if it's going to assure the future of VIA as a publicly-funded, national rail passenger service.

At the outset, it should be pointed out that Bill C-97 is a terrible starting point for any VIA legislation. It was written largely under the direction of Nick Mulder, an anti-rail civil servant, and it was designed to kill VIA completely within three years through the application of unattainable cost recovery targets.

Time is short on this first review, so let me bring this down to the key points that need to be addressed in the next draft of this well-meaning attempt to bring some stability to the continuation of a national rail passenger service for Canada.

- The issue of electrification, while worthy of discussion, doesn't properly belong in the *VIA Rail Canada Act*. VIA is facing multiple problems that need to be resolved before there is any discussion of an issue as far-reaching and expensive as traction power. It would be more appropriate to deal with rail electrification within the terms of the National Transit Strategy, as it is likely that it will be applied to commuter rail projects long before it becomes an issue in the context of intercity rail passenger service.
- Punishment seems to be the underlying theme of the proposed relationship with CN, CP and other host railways. This will never work. The relationship needs to take a "carrot and stick" approach, such as that embodied in the original Amtrak legislation. Train service agreements with the freight railways should be based on passenger train superiority/priority and compensation on a direct-cost-plus-performance-incentive basis. The freight railways should be enabled to earn a large percentage of the contracted price for handling VIA and other passenger trains based on on-time performance. This performance should be measured not just between end points, but should take into account the performance between intermediate points, too.
- Guaranteeing proper handling and performance can be accomplished through Section 152 of the *Canada Transportation Act (CTA)*, which VIA recently applied in a dispute with CP. This section of the *CTA* needs to be broadened as part of the process to enact the new *VIA Rail Canada Act*.

- The new act needs to establish – or re-establish – VIA’s basic right to operate on any line owned by a freight railway if it is required for the provision of a national network, as sanctioned by Parliament. When disputes arise regarding the capacity of those lines and the need (if any) for capacity expansion, the matter shall be subject to binding arbitration by the Canadian Transportation Agency.
- Appointment of the VIA board of directors should be made subject to confirmation by the House of Commons.
- In addition to the presentation of its annual report to Parliament, VIA should be required to present it to the public in a series of town hall meetings across the country in major centres served by the railway.
- The legislation should establish a goal of 50% all-in, system-wide cost recovery within five years of the enactment of the new act – provided stable operating and capital renewal funding have been provided.
- The basic route network outlined in this draft needs to be divided into categories, which should be:
 - Transcontinental
 - Corridor
 - Regional
 - International
 - Remote
- The existing transcontinental services (Montreal-Halifax and Toronto-Vancouver) need to be mandated in the legislation as daily trains. It has long been established that daily service is more effective in terms of cost recovery, ridership, equipment and crew utilization, and marketability than tri-weekly. This subject is covered in detail in my forthcoming Transport Action Atlantic report, *Revitalizing New Brunswick’s Rail Sector*. Mandating the maintenance of these trains on a tri-weekly basis will not lead to the realization of their maximum potential.
- Remote services should be separated from the rest of the basic national network and subject to alternate financing by the relevant federal departments and/or provincial agencies that benefit from them.
- Any proposed discontinuance of service should be submitted to the House of Commons and subjected to a negative vote; that is, a majority would have to approve any discontinuance proposal put forth by VIA and endorsed by the Minister of Transport.
- Provincial financial and planning involvement should be enshrined in the act, similar to the provisions of the U.S. *Passenger Rail Improvement and Investment Act* of 2008.

- Experimental services should be established with clear performance guidelines, including ridership, cost recovery and passenger-miles per train-mile, and given a three-year period in which to prove themselves.
- Members of Parliament should have the right to request that the Minister of Transport direct VIA and Transport Canada to conduct studies relating to the establishment of new routes and services.
- The provision of international services in conjunction with Amtrak should be specifically included in VIA's mandate under the new act.
- In common with Amtrak, VIA should establish a 100% domestic purchasing policy, which should only be varied when no Canadian supplier can meet VIA's needs.
- All provisions of the proposed *VIA Rail Canada Act* shall apply equally to Amtrak, provincially-funded carriers, such as Ontario Northland, commuter rail agencies and tourist train operators. Section 87 of the *Canada Transportation Act* should reflect this, too.

On production and delivery of the second draft of the proposed *VIA Rail Canada Act*, I will be commenting further on the above points. I look forward to having the opportunity to deal in greater detail with this vital issue on behalf of Transport Action's National Dream Renewed campaign.

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