

**TO:** Peter Miasek, President, Transport Action Ontario  
**FROM:** Greg Gormick, President, On Track Strategies  
**SUBJECT:** Review of the NDP's proposed VIA Rail Canada Act (second draft)  
**DATE:** December 12, 2013

I've reviewed the second draft of the NDP's proposed *VIA Rail Canada Act* and, while it's an improvement over the first draft, I still find it a rather weak approach to the creation and maintenance of a national rail passenger system.

As I wrote previously, I believe the act needs to be broadened into a *National Rail Passenger Service Act*, so its powers could also be applied to the benefit of Amtrak's operations in Canada, existing and future commuter railways, any provincially-operated rail passenger service or even tourist train operations, including Rocky Mountaineer. Making this happen may be as simple as inserting a clause into the final draft that states the powers of the act are also applicable to these other passenger operators. This would be especially beneficial when it comes to the matter of a non-VIA passenger operator's rights vis-à-vis the freight railways.

Whoever is drafting this act would benefit greatly from a thorough reading of the two most important pieces of legislation in the 43-year history of Amtrak. These are the original enabling act, the *Rail Passenger Service Act of 1970 (RPSA)*, and the re-authorization legislation, the *Passenger Rail Investment and Improvement Act of 2008 (PRIIA)*. There are elements in both that could be dropped almost directly into the proposed *VIA Rail Canada Act* to give it the teeth it requires in setting a framework that will make it difficult for a hostile government or host freight railway to tamper with the whole concept of a national rail passenger system.

## **COST RECOVERY AND FINANCIAL TARGETS**

When Transport Canada deputy minister Nick Mulder set out to sink VIA through what became the Mulroney government's Bill C-97, he intended to do it partially by setting high cost recovery targets for every category of service. Had the bill passed and taken effect, it would have eliminated every VIA train within a very short period thanks to the impossibility of hitting these cost recovery targets without completion modernization.

There is wording in Section 6(c) of this draft of the proposed *VIA Rail Canada Act* that could be twisted by those opposed to the continuation of a national rail passenger service to bring about the complete shutdown of the system. This is the requirement that VIA "maximize the financial performance of its passenger service so as to minimize the need for government financial assistance."

The problem with this phrase is that the ultimate maximization of VIA's service to minimize funding would be to shut it down altogether.

Building on a proposal by the Rail Passenger Action Force of 1984-1985, it would be better to set a minimum system cost recovery target of 50% from operations. Coupled with the ability to optimize the use of its equipment, facilities and other resources, as embodied in Section 6(a)(ii) of the proposed act, this should shield VIA from the budget slashers and give it the tools to attain that reasonable level of cost recovery. This target could be reviewed periodically and adjusted in amendments based on the degree of modernization that occurs.

## **TRAIN SERVICE AGREEMENTS AND RELATIONSHIP WITH THE HOST RAILWAYS**

Like the two pieces of Amtrak legislation, the proposed *VIA Rail Canada Act* needs to be much more specific in delineating the obligations of the freight carriers. When VIA was formed in 1977, it was understood that CN and CP were being relieved of a traditional obligation to provide rail passenger service that operated under the regulatory overview of the Canadian Transport Commission and its predecessors. For this relief, the freight railways were expected to perform in ways conducive to the operation of VIA.

Over the years, this obligation on the part of the freight railways has been cast aside with the blessing of previous governments. This approach has got to change if we are going to have a sustainable national rail passenger service that isn't facing a constant barrage of financial and operational penalties imposed by two freight railways that seem to believe they are being hard done by through the mere existence of VIA.

The *RPSA* contains some very effective language regarding the relationship between Amtrak and the freight railways that needs to be modified for Canadian application and included in the proposed *VIA Rail Canada Act*.

One element that needs strengthening is the delineation of the relationship with the freight railways regarding the provision of adequate infrastructure. CN, in particular, has weasled out of maintaining lines to the standard required by VIA. The most glaring example is the Newcastle Subdivision, which has deteriorated despite the fact that VIA signed a valid train service agreement in 2009 that included the continued operation of the *Ocean* over this line.

CN seems to view its train service agreement with VIA as a one way street, where they can hit them with any charge they deem necessary, but with no requirement that they should maintain the infrastructure that enables them to profit from VIA. This is akin to a landlord who collects rent monthly, but applies none of it to basic maintenance and then demands additional compensation when the money-earning property deteriorates.

The proposed act needs to set a benchmark for the maintenance of the infrastructure and facilities required by VIA. It could be set at the current level of maintenance, track classification, maximum permissible speed, etc. If these levels fall, then VIA should not be on the hook for the cost of bringing the infrastructure back to the required standard. That's what's been happening in recent years and it amounts to double dipping by the freight railways.

As well, the proposed act needs to set the formula for billing by the host railways. The Amtrak cost-plus-incentive approach remains the best way. An easy way to arrive at this formula for VIA is to duplicate the agreements Amtrak now has in place for the operation of the *Adirondack* and the *Pacific Cascades* in Canada. Much to CN's displeasure, Amtrak pays considerably less to operate in Canada than VIA. Is there any reason why VIA should be compelled to pay more for access to CN or CP infrastructure than is the case for a foreign railway?

It is further suggested that the train service agreements be available for public scrutiny to the extent possible without breaching commercial confidentiality. The railways won't like this, but there's no reason why they shouldn't be required to inform the taxpayers of how much they're billing them for a service that is, to a large degree, being provided in a monopolistic setting. VIA has no choice but to use certain lines, but that's no reason why the public should be gouged. Making the train service agreements as transparent as possible will help prevent this.

### **PROVINCIAL INVOLVEMENT**

Another element of the proposed act that requires strengthening concerns the concept of provincial participation in the funding of certain services that are not necessarily required for a national system, but would serve important regional needs as adjuncts to the basic network.

As Transport Action has correctly pointed out throughout the National Dream Renewed campaign, it is no longer valid for the provinces to remain aloof from the serious decline in intercity public transportation options and mobility that have occurred ever since the 1990 VIA cuts. The changes in the level of service provided by rail, air and bus have been massive, and they have left many regions without any public transportation options. This is a situation the provinces cannot ignore if they wish to see these regions thrive. It is high time for the provinces to face this problem and deal with it for their own benefit.

Expanding the section of the proposed act that covers provincial participation ("Additional service") will be a way to compel them to take on some responsibility for the provision of certain current services in the short term, especially the expensive remote trains. The famous 403(b) clause in the *RPSA* did this in the U.S. It set a formula for the sharing of costs and the performance targets necessary to retain pre-Amtrak routes that were clearly in the best interests of the states, but not vital for the operation of the basic system.

*PRIIA* has taken this approach even further. It has created an enlarged framework for state participation in the funding of Amtrak, while also obligating ongoing federal financial involvement. As we saw recently, some states screamed bloody murder about this, but faced with the very real possibility of losing rail services that had become important components of their state transportation networks, they complied and signed the new funding agreements. A similar approach needs to be taken in the proposed *VIA Rail Canada Act*.

## **FEEDER BUS SERVICES**

Hand-in-hand with this mechanism for provincial participation in VIA, there needs to be a clause that gives VIA the right to contract for the operation of feeder bus services. As we well know, the national intercity bus system is in both disarray and decline. A strong VIA with a mandate to provide multi-modal solutions to our mobility problems can help change this.

As has occurred in the U.S. under Amtrak's Thruway bus program, VIA could play a role in encouraging the provision of bus service to off-line communities that have lost all public transportation service. This would also work to VIA's advantage, extending its reach into areas where there is little or no prospect of ever delivering direct rail service and generating revenue it will require in order to provide a cost-effective service with the lowest draw on the taxpayers.

## **BOARD COMPOSITION**

The proposed act states the board shall consist of not more than 15 directors in addition to the chairperson and president, and it requires that one member each be appointed from among (1) its passengers, (2) the Canadian Tourism Commission and (3) the Federation of Canadian Municipalities. But, it is very non-specific regarding the qualifications of the directors.

At its inception under the *RPSA*, Amtrak's board was required to include:

“Eight individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with general business and financial experience, experience or qualifications in transportation, freight and passenger rail transportation, travel, hospitality, cruise line, and passenger air transportation businesses, or representatives of employees or users of passenger rail transportation or a State government.

“In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate and try to provide adequate and balanced representation of the major geographic regions of the United States served by Amtrak....”

Something along these lines would definitely improve the proposed *VIA Rail Canada Act* and give us a reasonable assurance that the board possesses the real-world talent to deal with the multitude of issues facing any competitive transportation business. This issue requires some further consideration by those drafting this proposed act.

## **HEADQUARTERS LOCATION**

I am alarmed by the inclusion of the stipulation that VIA's head office "must be at the City of Montreal." There is no way to soften a simple fact of VIA's sorry existence: a large part of its problem is that it is headquartered in Montreal. It doesn't attract the best talent as a result.

The commercial heart of Canada is Toronto, which is also VIA's largest traffic generator. It would only make sense to headquarter the corporation here. If complete relocation is not possible, then there should be some provision made for the transfer of key departments, particularly marketing.

When the Mulroney government's Rail Passenger Action Force wrapped up its work prematurely and over its own objections in the spring of 1985, one member of the team prepared a blistering summary of the work the group had undertaken. The subject of VIA's headquarters location was covered. The author wrote, "VIA is a Montreal-based, Quebec-dominated Crown corporation (there is a reluctance on the part of the Government to interfere overtly with management because of this)."

This situation hasn't changed in the 28 years since that report was written. It must change if VIA is ever to be a truly national rail passenger service with management that understands the needs and the thinking of all of the regions of Canada, not just one province.

## **TRANSCONTINENTAL SERVICE FREQUENCY**

I can't emphasize too strongly that the proposed act should call for the provision of daily service on both the Montreal-Halifax and Toronto-Vancouver routes. As I have said repeatedly throughout the National Dream Renewed campaign, anything less than daily service is a formula for excessive costs, constrained revenue, operational inefficiency and less-than-ideal public utility. The case for daily long-haul service has been made repeatedly by Amtrak.

## **PERFORMANCE REPORTS**

While the proposed act continues the requirement that VIA file annual performance reports with the Minister, this should be broadened to include the business plan for the following year. The objective should be transparency. VIA management should not be allowed to hide behind the argument that providing this information will damage its competitive position.

In addition to its annual presentation to Parliament through the Standing Committee on Transport, Infrastructure and Communities, VIA should be required to present its annual results and its business plan to the public. This could be accomplished in an annual series of town hall meetings in key centres on the VIA system from Halifax to Victoria. Public feedback should be encouraged and, where appropriate, incorporated into VIA's business plan for the upcoming year.

Furthermore, the act should require VIA to post its performance data on its website monthly, just as Amtrak does. This should include, but not be limited to:

- Revenue;
- Operating expenses;
- Cost recovery;
- Ridership;
- Train-miles;
- Passenger-miles-per-train-mile;
- Revenue per train-mile;
- Revenue per passenger-mile; and
- On-time performance.

On the last point, detail should be provided on a route-by-route basis and the causes for delays should be categorized and accounted for. This is one way to highlight any failing by an individual host railway.

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Please feel free to call me if you wish to discuss any of the points I have raised. If you wish to have me review the next draft of the proposed *VIA Rail Canada Act*, I will be delighted to take on that assignment. My hope is that the next draft will incorporate some of the recommendations we made previously, as well as those contained in this critique.

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