

Testimony of John H. Broadley
Before the Railroad Subcommittee of the
House Transportation and Infrastructure Committee
March 11, 2011

I am here this morning to outline for the Committee some of the approaches to privatization of rail passenger services that have been adopted in Europe, specifically Britain and Germany. International experience can shed some light on alternatives that are available to us in the United States.

1. Comparability of NEC and European Conditions

US passenger operations fall into two groups. The first is a group of low frequency, and relatively slow passenger trains that operate on predominately privately owned freight lines. Most of Amtrak's long-distance trains such as its service between Washington, D.C. and Chicago fall into this group. The second is a group of high frequency and relatively fast passenger trains that operate primarily on the Northeast Corridor ("NEC"). Operating and economic characteristics for the two groups of trains are very different.

I will focus on the NEC passenger services because they present economic and operating characteristics that are similar to those in several Western European countries. I will briefly summarize those similarities:

- The NEC has a relatively high population density distributed along the line—Washington, Baltimore, Wilmington, Philadelphia, New York, New Haven, Providence and Boston. This is comparable to many routes in Western Europe. Attachment 1 shows the population density of the NEC states and of a selection of other countries.
- Most of the population centers along the NEC have good public transportation systems serving their city-center passenger rail stations. This mirrors the situation in most Western European cities.
- The NEC is heavily used for intercity and commuter operations. Many Western European lines have similar usage patterns. Attachments 2 and 3 show comparative passenger density on the NEC and electrified lines in selected Western European countries. Attachment 2 shows passengers per route kilometer. Attachment 3 shows passenger kilometers per route kilometer.
- The NEC is publicly owned or controlled and is predominately a passenger rail facility. Again, this mirrors the situation in much of Western Europe.
- Finally, long distance passenger rail services on the NEC (Acela and Northeast Regional) are within striking distance of financial viability on an "above the rail" basis. This is the situation on European long-distance lines.

Prior to 1994, the British railways were owned and operated by British Railways (“BR”), a corporate entity that was wholly owned by the British government. British Railways provided and maintained the infrastructure and conducted long distance passenger, commuter, and freight operations. The same situation prevailed in Germany where most of the railways were wholly owned and operated by the German Federal Railway (DB).

2. Restructuring of British Railways to Introduce Competition into Passenger Services

In the early 1990’s the British government undertook a root and branch restructuring of the railway in order to introduce competition where competition was possible, with the objective of promoting more economical and efficient service. The concept was simple in outline.

- The infrastructure (track, signaling system, and stations) would be transferred to an infrastructure company—“Railtrack.” Railtrack would own, maintain, and operate the infrastructure and would charge the users track access fees sufficient to pay the total cost of the infrastructure. Because Railtrack was viewed as a monopoly, its track access fees would be subject to government regulation.
- Existing passenger locomotives and passenger equipment would be transferred to rolling stock leasing companies that would lease rolling stock to passenger operating companies.
- Each of the principal passenger routes in the country would be put out to bid with the successful bidder obtaining an exclusive franchise to operate on that route for the term of its franchise agreement. It was anticipated that all the operating franchises would require public subsidy (they did) so they were to be bid on a “least subsidy” basis. The franchises had varying terms, generally between 7 and 14 years.¹
- The freight business of British Rail was split into a number of parts and offered for sale outright, to include their rolling stock and a reasonable track access contract to enable the new owners to establish themselves while negotiating for their future.

The basic structure established in 1994 has been retained, though there has been some change in the players.

- Railtrack was originally intended to remain in public ownership, but was sold outright through an IPO in 1996. It was forced into bankruptcy by the Labour government in 2001 and its infrastructure assets and responsibilities were transferred to successor Network Rail, which can best be described as “non-dividend paying” private entity benefitting from agreed government guarantees for its debt, and charged with delivering track access to passenger and freight operators in compliance with access contracts, and developing the network to meet future demand.

¹ It should be noted that government subsidies were originally to be introduced into the rail system through the franchising subsidies. Railtrack’s access charges to the train operating companies were intended to cover all of Railtrack’s costs.

- The franchising responsibility, originally lodged in an Office of Rail Franchising, was transferred for a few years to a Strategic Rail Authority, but was finally assumed by the Department for Transport in 2006.
- The economic and safety regulatory functions, including regulation of Network Rail's access charges and conditions, have been folded into the Office of Rail Regulation.

The key features of the current structure today, therefore, are as follows:

- Network Rail, with the approval of the Office of Rail Regulation, establishes conditions and charges applicable to train operators on the network.
- The Department for Transport conducts periodic bidding processes for each of the franchises. Multiple operating companies compete for each franchise, each of which is exclusive as to a series of origin and destination stations.

It is noteworthy that this process introduces competition *for the franchise*, not competition among the franchisees *for the passenger*. There are limited cases where a high speed operator and a commuter operator compete for passengers between the same two points, but these are not very common.

3. Restructuring of Deutsche Bahn to Introduce Competition into Passenger Services

The German approach has been similar to the British, but with significant differences. The German railway company (DB) was, like BR, for the most part a vertically integrated railroad, owning the infrastructure, and operating long distance, regional, and urban trains. In contrast to the British reorganization, the German reorganization of DB separated the infrastructure into a separate *subsidiary of DB* (DB Netz), separated the long distance trains into another separate *subsidiary of DB* (DB Fernverkehr), and separated the regional and urban services into a third *subsidiary of DB* (DB Regio).² In a further reorganization in 2007, all DB's passenger operations (DB Fernverkehr and DB Regio) were brought under a single umbrella called "Deutsche Bahn."

DB Netz (now DB Netze) has established a regime of track access charges applicable to all users of the network. The network is open to any company able and willing to provide long distance service and able and willing to pay the track access charges and abide by the track access and safety conditions. Long distance passenger trains are expected cover their operating costs, including the cost of track access, and do not receive direct subsidies. Theoretically, there is competition in the German long distance passenger market *for the passenger*. In practice, DB Fernverkehr faces almost no competition and has over 99% of the domestic long distance market.

² Other activities were separated into other subsidiaries that are not relevant in the passenger context.

The regional and urban trains require subsidy and are managed differently from long distance trains.

The federal government divested itself of the responsibility of providing regional and urban services and transferred the funding for those services to the individual states (Regionalisierungsgesetz). Each state established one or more regional public transport authorities responsible for purchasing regional and urban rail service in its jurisdiction. These purchases are by competitive tendering in much the same manner as the franchises are tendered in Britain.

The rail service contract ("Verkehrsvertrag") entered into between a public transport authority and a rail operator typically runs for 8 to 15 years. The contracts are bid on a "least subsidy" basis. As with the British franchises, competition in the German regional and urban rail market is *for the rail service contract, not for the passenger*. To date, DB Regio, the regional and urban service subsidiary of DB, has a market share of approximately 85%, but this is declining as competition grows.

4. Conclusions

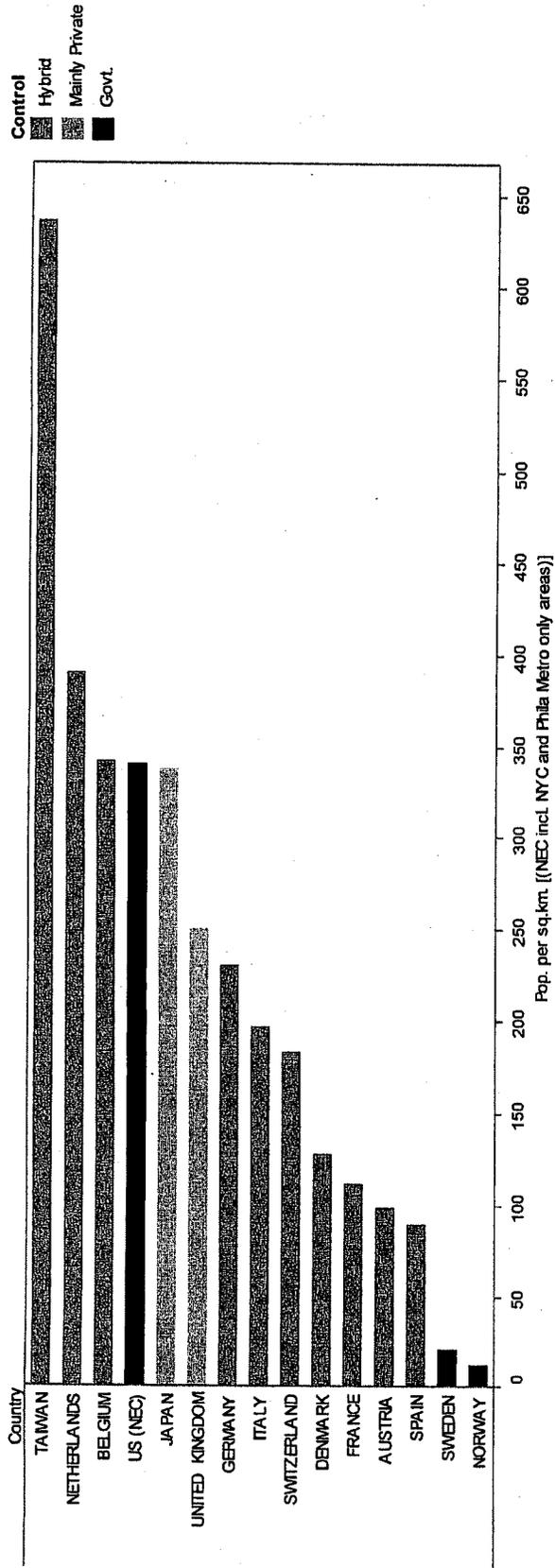
Because operating and demographic conditions are similar among the NEC and Britain and Germany, the approaches taken in those countries to introduction of competition into the passenger rail market could provide feasible templates for the NEC.

Both the British and the German approaches depend upon franchising the use of the rail infrastructure. The appropriate authorities can provide access to the infrastructure to a qualified train operator under prescribed safety, operating, and financial terms.

Where rail passenger service will predictably require a public subsidy, both the British and German approaches have been to introduce competition by requiring train operators to compete for an exclusive franchise or rail service contract at least cost to government.

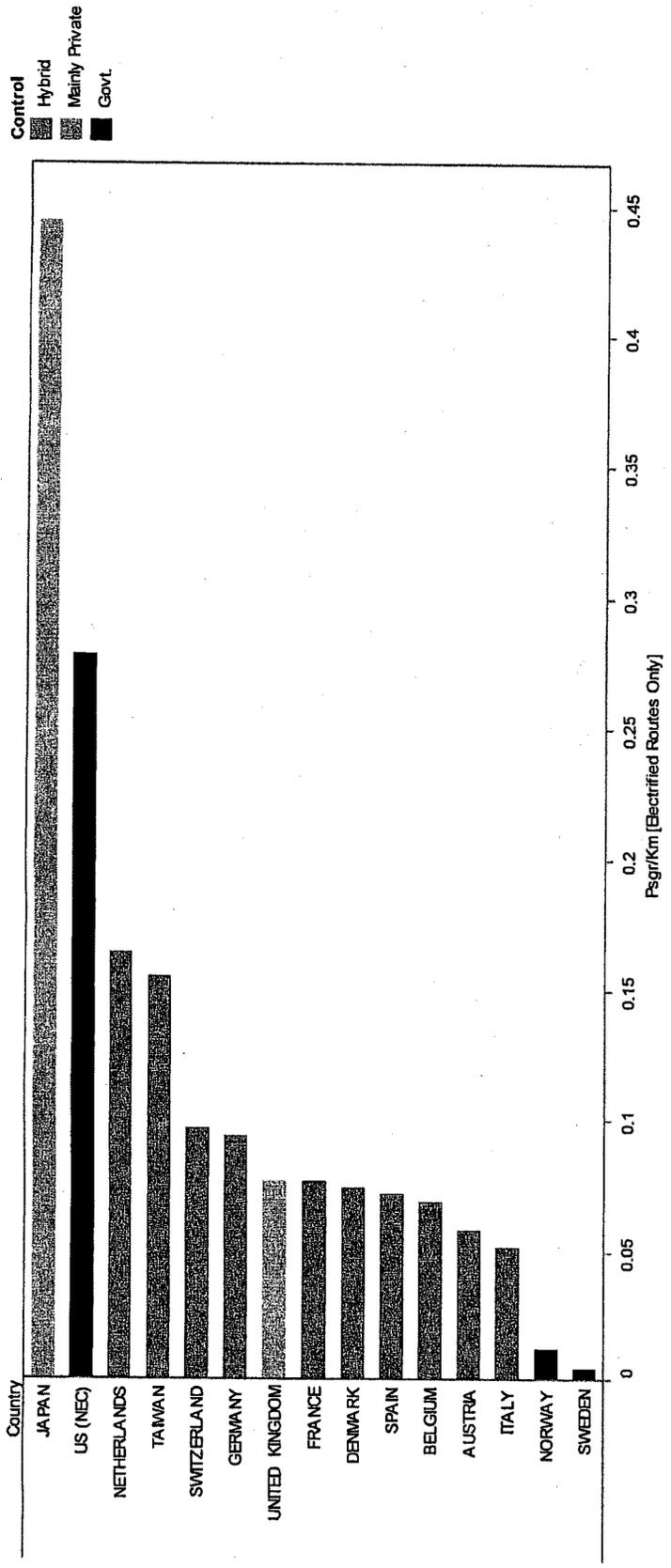
The German approach to the long distance market, *where trains are required to operate without direct subsidy*, has been to allow open access to the network to competing operators. The results have not been encouraging to date, with DB still holding 99% of the market. This suggests that there is not enough inherent return in discrete competing long distance services to support unfettered competition. In contrast, the British model, granting an exclusive, temporal franchise within a defined corridor or region, has proven successful from the government's perspective.

Population Density Northeast Corridor vs Selected Countries



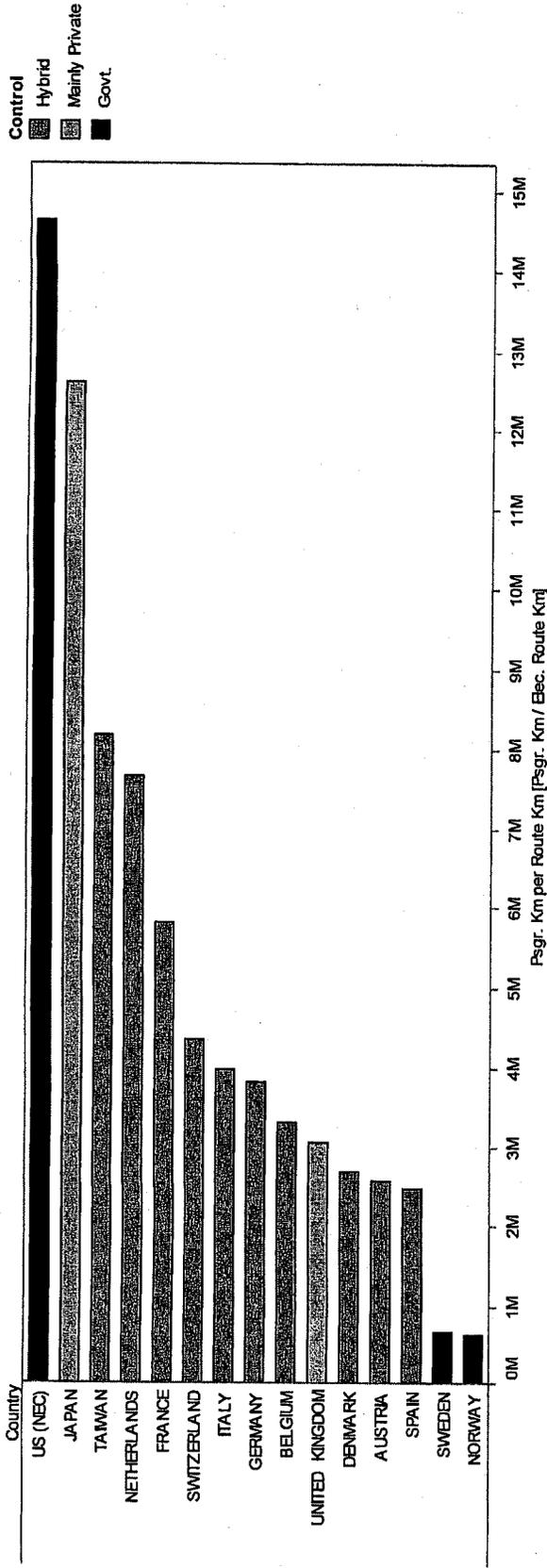
Sum of Pop# Density km# sq for each Country. Color show's details about Control.

Passenger Density
Passengers per Route Kilometer



Sum of Psgr#i/Km for each Country. Color shows details about Control.

Passenger Density Passenger Kilometers per Route Kilometer



Sum of Psgr. Km per Route Km for each Country. Color shows details about Control.

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name: John H. Broadley

(2) Other than yourself, name of entity you are representing:
None

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing: None

Signature

John Broadley

Date

3/9/11

JOHN HOWARD BROADLEY

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EDUCATION

1963 – 1967 Massachusetts Institute of Technology,
Cambridge, Massachusetts -- B.S.

1967 – 1970 Law School, University of California
Berkeley, California -- J.D.

EMPLOYMENT

- 1/00 - Owner of John H. Broadley & Associates, P.C.: Specializes in domestic and international transportation law and litigation, and domestic and international privatization, regulatory and institutional matters. Represents domestic clients in Surface Transportation Board regulatory matters, including regulated transactions (acquisitions and abandonments), rate and service litigation and in related proceedings before the federal courts. Represents domestic clients in safety issues before the Federal Railroad Administration. Represents international clients in rail construction, concessioning, financing, and related institutional matters.
- 7/84 - 1/00 Partner with the law firm of Jenner & Block: Specialized in domestic and international transportation matters. Practice was both domestic and international and focused on the restructuring of transportation enterprises both in and outside the bankruptcy environment, transportation labor, and regulatory reform, and transactions in a regulated environment. Practice also encompassed rate and service regulation under the Interstate Commerce Act. Regulatory litigation practice was before the Surface Transportation Board (formerly the Interstate Commerce Commission), the Federal Railroad Administration, and the federal courts. Practice also included antitrust litigation and counseling.
- 4/82 - 7/84 General Counsel, Interstate Commerce Commission: Responsible for defending Commission decisions relating to federal regulation of rail, water, and motor

carriers in the courts of appeal and the Supreme Court, and for providing legal advice to the Commission and the Commissioners.

1/81 - 4/82 Chief Counsel, Federal Railroad Administration: Responsible for providing legal advice and support to all the activities of the Federal Railroad Administration.

1/76 - 1/81 Special Counsel, Rail Litigation, Civil Division, U.S. Department of Justice: Responsible for representing the United States in nine railroad bankruptcy reorganization proceedings in the northeast and mid-west.

Responsible for representing the Department of Justice on the litigation and settlement teams that litigated, and ultimately settled, the cases resulting from the conveyances of rail property to Conrail under the Regional Rail Reorganization Act of 1973.

8/72 - 1/76 Trial Attorney, Economic Litigation Section, Civil Division, Department of Justice: Staff attorney representing various government agencies in litigation before the federal courts, both district and appellate.

9/70 - 8/72 Trial Attorney, Regulatory Section, Office of the General Counsel Department of Agriculture: Staff attorney representing the Secretary in administrative enforcement proceedings under the Commodity Exchange Act dealing with commodity futures trading.

PERSONAL

Born	Huddersfield, England - May 25, 1945
Marital	Married Sharon Kathleen Kettering of Burlingame, California, January 2, 1973. Widowed 2010.
Bar Memberships	California District of Columbia