Highway Users' Perspectives on Public-Private Partnerships

Testimony of Gregory M. Cohen, P.E.
President and CEO
American Highway Users Alliance

Subcommittee on Highways and Transit
Committee on Transportation and Infrastructure
U.S. House of Representatives
May 24, 2007

Introduction

Chairman DeFazio, Ranking Member Duncan, and Members of the Subcommittee, I am pleased to present testimony on behalf of the American Highway Users Alliance (The Highway Users) on the subject of "Public-Private Partnerships." We commend you for convening this timely hearing to address an issue that is gaining a great deal of attention from motorists, government agencies, transportation and investment companies, and the general public.

About The Highway Users

The American Highway Users Alliance (The Highway Users) is a non-profit, non-partisan organization, which advocates for public policies that improve mobility and safety, to benefit the millions of American road users. We are an association that brings together the interests of users of all the highway modes that contribute to the Highway Trust Fund, through a membership roster that includes numerous AAA clubs from coast-to-coast, trucking groups, bus companies, motorcyclists, and recreational vehicle enthusiasts. These members and the hundreds of other member businesses and associations require safe, reliable, and efficient roads to facilitate the movement of their employees, customers, and products. Since 1932, The Highway Users has worked closely with this Committee as a key stakeholder and grassroots advocate for improvements in surface transportation legislation and for a strong and trustworthy Highway Trust Fund.

Background: PPPs

Broadly defined, Public-Private Partnerships (PPPs) are government-sanctioned projects with greater private sector participation than traditional projects. Greater private investment in road projects has been viewed by many as a way to help supplement scarce public resources in an era of extreme, unmet needs. For this reason, The Highway Users supported provisions in the 2005 SAFETEA:LU highway bill to permit the Department of Transportation authority to issue $15 billion in tax-exempt private activity bonds for highways and surface freight transfer facilities.

Our support for PPPs in SAFETEA:LU was based on the appreciation that the private capital would help build new roads, for the primary benefit of highway users. Since 2005, we have become increasingly concerned that some PPP agreements have not been negotiated in the best long-term interests of motorists and/or may not even involve new construction. We are also concerned that the U.S. Department of Transportation's promotion of PPPs may be intended to undercut potential funding proposals that would grow the federal-aid highway program and strengthen the national highway network.

Long-Term Lease Agreements

In particular, we are concerned about long-term leases or "concession agreements" on existing toll roads. In general, public toll roads built in the United States were designed to provide a high-quality ride for the lowest possible toll. In many cases, tolls were instituted to pay for road construction, with the intention to remove tolls once major costs were repaid. Toll rates on public roads generally rise slowly or stay flat for long periods of time.

Under private operation, the mission of the toll road must change. If investors are seeking the highest possible returns, the new mission must be changed from maximizing the public good to maximizing profit for investors. Under such a scenario, tolls are raised regularly and the process is not subject to public or political review.

Lease agreements typically involve a large up-front payment from private investors to the State or local government, after which the private investor receives the toll revenue, and is held responsible for road maintenance, operations, and performance standards. The first agreement of this type in the U.S. was the 99-year lease of the Chicago Skyway, executed in January 2005, for $1.8 billion.

Without highway user involvement and congressional oversight, such deals may be harmful to motorists, especially interstate drivers. The two parties to the deal have powerful, financial incentives to execute a deal which may put their interests above those of the road users. On one side of the negotiating table, an elected official is motivated to complete the deal quickly and maximize the upfront payment. These two goals may work against each other if an elected official feels pressured to accept a less-than-reasonable amount of cash in order to seal the deal quickly. For example, there are questions about whether the $3.85 billion acquired by the State of Indiana in exchange for a 75-year lease of the Indiana Toll Road was undervalued, despite the fact that other bidders offered much less. In addition, a State or local official may be politically motivated to negotiate toll increases that disproportionately impact non-local motorists or "undesirable" vehicles. Pennsylvania's Governor Rendell observed at a National Press Club event that out-of-state truckers would pay for much of the lease of the Pennsylvania Turnpike. This line-of-reasoning means Congressional oversight is critically important. On the other side of the negotiating table, the private investors will want to maximize their profits. On both sides of the table, each party can get more of what they want by giving the motorists short shrift. The only way to truly protect road users is to require transparent negotiations, oversight from an impartial board of highway users, and congressional review to protect interstate commerce.

Opportunities abound for PPPs to provide benefits to road users, but threats also exist, and we recommend that this Subcommittee develop standards to judge whether a PPP project is reasonable.

<u>Opportunities</u>

- **Performance Standards.** Generally, State and local governments are not obligated to maintain performance standards for safety, congestion, pavement conditions, structural standards, winter maintenance, litter removal, etc. Under an enforceable contract, private operations and/or maintenance may be required to meet tough performance standards and can be held financially accountable when standards aren't met.

- **New Roads or New Capacity.** In recent decades, government agencies have done a poor job of addressing growing highway capacity needs. Since 1980, vehicle miles of travel have increased at more than 15 times the growth rate of lane miles. Traditional government funding is often not available for new roads and new lanes. Private companies may be able to quickly raise the capital to build roads and lanes that government agencies might otherwise take decades to construct. The return on investment comes from private companies collecting tolls paid by highway users or collecting "shadow tolls" paid by the government.

- **Faster Project Development.** There are a number of incentives for private companies to streamline project construction. The most obvious is the desire to begin earning revenue from tolling as soon as possible. For both tolled and non-tolled projects, financial rewards may be provided by the government for early project completion. Government agencies tend to move slower, more cautiously, and deliberately.

- **Fostering Innovation.** Many experts consider private companies to be more willing to innovate, using cutting-edge technologies and materials. Larger companies may also be able to draw from international experience to recommend processes that are unfamiliar to State and local governments.

<u>Potential Threats</u>

Threats to highway users should be avoided during PPP negotiations. Once a long-term agreement is signed, it may be difficult to revisit omissions.

- **Diversion of Funds.** Highway users are deeply concerned that windfall revenue acquired by a State or local government in exchange for the lease of a toll road may be invested in non-highway projects. For example, in New Jersey there has been discussion of leasing the New Jersey Turnpike and Garden State Parkway, in order to provide property tax relief, pay down State debt, and fund school construction. In Chicago, the payment for the Skyway was used to pay city debt and fund social programs. The fact that highway users had paid tolls for 47 years on the Skyway did not dissuade the city from diverting the funds to non-highway purposes.

- **Non-Compete Clauses.** As the name suggests, non-compete clauses are designed to prevent market competition from new roads and capacity improvements to nearby roads. The use of non-competes brings into doubt the claim that privately-operated roads are "free market" innovations. Non-competes effectively create monopoly-like restrictions to prevent competition. Also, highway users are concerned that the public may not be fully informed in advance about the details of non-compete clauses or the provisions may be confusing.

- **Toll Increases / Unfair Tolling Policies.** High tolls also lead to safety consequences on local streets, particularly if large trucks choose to divert to main streets to avoid the tolls. Toll increases should be limited to levels far below inflation to prevent unreasonable rate hikes that disproportionately harm the poor. In France, tolls on leased roads cannot increase faster than 70% of CPI. But in Chicago and Indiana, tolls can increase at 100% of CPI or GDP (whichever is higher). High tolls designed to exclude certain vehicles should not be permitted. For example, a road operator may attempt to raise tolls to effectively ban motorcycles or hazmats to reduce liability and increase safety performance. Extremely high tolls in areas with few alternate routes are another unfair method of increasing profits.

- **Highway Users Barred from Negotiations.** As discussed above, when highway users are not included in the contract negotiating process, there are financial incentives for both the government and private negotiators to give the motorists a less-than-fair deal. For example, without highway users' involvement, a government negotiator may agree to sharper toll escalation, longer lease terms, lower performance standards, etc., in exchange for more up-front cash.

- **Longevity of Agreements.** Lease agreements in Chicago, Virginia, and Indiana range from 75 to 99 years. Yet modern French leases range from 22 to 27 years. Extremely long leases yield much larger upfront payments, but cannot be revisited for three or four generations! In Europe, many leases have profit caps. Once the cap is reached, a road reverts back to public ownership.

- **Disruption of Interstate/National Highway System Continuity.** Most roads on the National Highway System, including the Interstate Highway System, are free of tolls. Where tolls exist, the burden is generally minor, and is typically kept as low as possible to reimburse construction costs, pay for maintenance, and raise funds for capital improvements. When a road is leased to private investors, the tolls are raised to maximize profit (or tolls are raised to a rate ceiling prescribed by the terms of the lease). This change makes leased toll roads more financially burdensome than free roads or public toll roads. If widely deployed, such a system would effectively replace the existing network with a patchwork of private toll roads with high rates, different operators, and potentially different toll collection methods. Some proponents of road leasing have an eye on a larger prize: converting the entire Interstate Highway System into a patchwork of privatized toll roads. While such a policy may be supported by those who wish to do away with the current fuel and truck tax funded federal-aid highway program, this has major implications for interstate commerce.

- **Accessibility.** In rural areas, private road operators have tremendous leverage over the value of private land adjacent to the road. Opening new entrances to the privatized road or closing existing entrances would naturally raise or lower land values. In addition, private road operators could manipulate the success of roadside businesses and would be incentivized to do so if the private operator commercialized property within his right-of-way.

- **Double Taxation.** On privately-operated roads, highway users may still be expected to pay fuel taxes. These should be refunded since the user fees were paid while driving on non-publicly maintained roads.

- **Undervaluation.** As discussed above, a lack of professional expertise in negotiating lease deals with private investors combined with a rush to complete deals quickly may cause properties to be undervalued, even if offers are competitively bid. Independent reviews, profit caps and shorter leases should help reduce risk of undervaluation.

Principles

Considering both the opportunities and risks inherent in public-private partnerships, we would consider support for PPP agreements that:

- **are executed primarily for the construction of new roads or capacity;**
- **involve substantially streamlined construction;**
- **do not restrict vehicular access to free parallel routes;**
- **if premium lanes are tolled and general lanes are not tolled, all vehicles have the choice to use either the premium or general lanes;**
- **have high safety, mobility, pavement, structural, and maintenance performance standards;**

- **direct all government-acquired lease revenue to highway projects;**
- **do not have non-compete clauses;**
- **protect all highway users from excessive toll increases; and**
- **have highway users' formally participate in agreement negotiations.**

Conclusion

Thank you for considering highway users' perspectives on public-private partnerships. We believe that PPPs provide innovative opportunities for building new roads and lanes. With public funding in short supply, PPPs may be used to advance new road projects that might otherwise be delayed or cancelled. However, we remain concerned that poor agreements, particularly involving long-term road leases, may present real threats to motorists. We also continue to be concerned by the unqualified support for PPPs from the Department of Transportation and greatly appreciate the oversight of the Department from the Committee on Transportation and Infrastructure.

We look forward to working further with the Subcommittee and Full Committee to support actions to ensure that highway-related PPPs serve the highway users' interests. We also are committed to strengthening the trust in the Highway Trust Fund and supporting continued, strong federal involvement and support for our nation's national highway network. PPPs may provide an additional tool to solve our highway needs, but in no way do they diminish the need for a strong federal-aid highway program.