Before the

SUBCOMMITTEE ON HIGHWAYS AND TRANSIT OF THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE UNITED STATES HOUSE OF REPRESENTATIVES

Statement of

THE AMERICAN TRUCKING ASSOCIATIONS, INC.

On

PUBLIC-PRIVATE PARTNERSHIPS: STATE AND USER PERSPECTIVES

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May 24, 2007

AMERICAN TRUCKING ASSOCIATIONS

Driving Trucking's Success

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INTRODUCTION

Chairman DeFazio, Congressman Duncan, members of the subcommittee, thank you very much for inviting the American Trucking Associations[1] to testify on this critical and timely topic.

Mr. Chairman, before I begin, I want to thank you and Chairman Jim Oberstar for the leadership you have shown in cautioning the states against rushing to judgment on the entire issue of public-private financing of our nation's highway program. It is vital that as you so eloquently state, "the public interest and the integrity of the national system" be protected.

The trucking industry is the linchpin in the nation's freight transportation system. The industry hauls 69 percent of the freight by volume and 84 percent by revenue. In addition, the trucking industry plays an important role in the movement of intermodal rail, air and water freight. Truck tonnage is projected to increase, reaching toward the 14 billion ton mark by 2017, and rising 31 percent over 12 years. Intermodal rail, meanwhile, will grow by 77 percent, yet it will account for only two percent of the total tonnage. Trucking revenue accounts for $623 billion of our nation's economy. The rest of the transportation modes combined account for $116 billion. By 2017, we expect to see 79 percent growth, and trucking revenue will exceed $1.1 trillion. This growth, of course, means a lot more trucks will be on the road. We estimate another 2.7 million more trucks will be needed to serve the nation's economy, a 40 percent increase.[2]

A seamless, reliable national network of highways is crucial to our industry's ability to deliver goods safely, rapidly and on schedule. Since deregulation and completion of the Interstate Highway System over the previous quarter century, the trucking industry has made continuous improvements that have allowed its customers to significantly reduce inventories and create manufacturing and supply chain efficiencies that have saved the U.S. economy billions of dollars, increased salaries, slowed consumer price increases and created innumerable jobs. Any disruption to the movement of freight on our nation's highway system will jeopardize these gains.

We strongly believe that while private financing of highway infrastructure may play a limited role in addressing future transportation needs, certain practices may generate unintended consequences whose costs will vastly exceed their short-term economic benefits. In particular, we are very concerned about attempts by some states to carve up the most important segments of the highway system for long-term lease to the highest bidder. Long-term concession agreements which turn control over highway assets to private parties are inconsistent with these objectives.

MEETING HIGHWAY INVESTMENT NEEDS

As has been well documented by other witnesses who have appeared before this committee during previous hearings, the highway system is woefully underfunded, many of our most

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[1] The American Trucking Associations is the largest national trade association for the trucking industry. Through a federation of other trucking groups, the industry-related conferences and its 50 affiliated state trucking associations, ATA represents more than 37,000 members covering every type of motor carrier in the United States.

[2] Global Insight, *U.S. Freight Transportation Forecast to…2017*, 2006.

critical highways are congested and large parts of our aging system must be rebuilt. The trucking industry, our customers and, ultimately, the American worker and consumer, will pay a steep price for the highway system's deficiencies. It is readily apparent that additional money must be found to address these needs, and that we must be smarter about how we invest these resources. ATA's members are willing to contribute additional funds in order to meet highway investment needs. However, before we can support a specific proposal, we must be satisfied that the additional money will be invested in highway projects which are most likely to meet the most pressing national needs; that federal regulations which hamstring efforts to improve the industry's safety and productivity are reformed; and that methods of user fee collection meet our criteria.

Highway user fees should:

- be reasonably uniform in application among classes of highway users;
- be based chiefly on readily verifiable measures of highway and vehicle use;
- not provide opportunities for evasion;
- be inexpensive and simple for government to administer, collect and enforce without imposing excessive administrative and record keeping burdens on highway users; and
- not create impediments to interstate commerce.

Tolls Versus Fuel Taxes

ATA believes that fuel taxes meet all of the above criteria, while tolls fail on certain critical points. Because of important measures adopted by Congress and by state and federal taxation agencies, fuel tax evasion is relatively low compared to other highway user fees. Tolls, on the other hand, are often easily evaded, usually by motorists using alternative, less safe routes that were not built to handle high levels of traffic.

There are significant capital and operating costs associated with collecting tolls, while fuel taxes are relatively inexpensive to administer. An analysis of a sample of publicly available toll authority financial reports found that revenue collection costs ranged from 21.9% to 30.3% of revenue, compared with collection costs of one to two percent for state fuel taxes, and even lower costs for collecting federal fuel taxes.[3] Moving to electronic toll collection requires significant initial capital investments; therefore, cost recovery due to administrative savings may take many years.

Furthermore, as the number of toll facilities grow, so too do the number of points of collection, creating an administrative nightmare for trucking companies who operate throughout the country and are often required to establish accounts with multiple tolling authorities. A lack of transponder uniformity will also force carriers to purchase and install multiple units.

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[3] American Transportation Research Institute, *Defining the Legacy for Users: Understanding Strategies and Implications for Highway Funding*, May 2007.

Toll Road Privatization

In recent years, some state and local governments have come to the realization that their highway assets may have value beyond these facilities' traditional role of providing a means of conveyance for people and freight. Due to overtures from mostly foreign investment firms, mayors, governors and other elected officials have concluded that locked up in these assets is a significant source of potential revenue that can be used to achieve various policy goals. Public officials from Kansas to New Jersey have been approached by investors seeking to take over toll roads in exchange for a one-time concession fee that can be worth billions of dollars. Indeed, Governors Corzine of New Jersey and Rendell of Pennsylvania have recently expressed support for privatization of some of the most important highway freight corridors in the country.

While the discussions tend to center on financing concepts and the great public benefits from concession fee revenue, what often gets lost or ignored is the impact of these deals on the users of the toll facilities and on the general public. Chief among the concerns is the impact of toll road privatization on toll rates. Demand elasticity, the art and science of determining how high rates can increase before a significant number of users will abandon the toll road, is the private operator's chief method for deciding appropriate toll rates. Private toll road operators need not be concerned about the social impacts of toll rates on low-income workers, or on the costs to businesses that depend on the highway for transporting employees, customers, goods or services. Nor do private operators care about the extent of traffic diversion to lesser quality, usually less safe, roads. Their sole concern is to maximize the toll road's profitability within the confines of the lease agreement and the law.

Supporters of privatization point out that toll rates are unlikely to increase substantially because customers will choose to simply migrate to toll-free roads. In some cases, this may be true – a reasonable toll-free alternative may be available. On most major toll roads, however, the only alternative may be a two-lane road with traffic lights and a significant amount of local traffic or, in the case of a toll bridge or tunnel, no alternative at all. Complicating the situation is the common practice of including non-compete clauses in lease agreements, which prohibit or severely restrict improvements to competing roads.

Privatization boosters also point to caps on toll rate increases that have been a standard part of privatization agreements. However, the two major lease agreements that have been completed in the United States – the Indiana Toll Road and Chicago Skyway – have been accompanied by very large initial rate increases combined with caps on future increases that by some estimates could exceed six percent annually. Close examination of these deals reveals the extent of the problem and should serve as warnings about future privatization efforts.

Chicago Skyway

In January 2005, the City of Chicago agreed to a concession agreement in which Cintra-Macquarie would take control of the highway for 99 years in exchange for a lump-sum payment of $1.8 billion. Concession revenue is to be used primarily to pay off city debt.

Macquarie-Cintra used similar toll escalation caps for both the Indiana Toll Road and Skyway deals. However, the availability of free alternatives may hold rates down on the Skyway. On the other hand, because the Chicago area is already very congested, an acceptable loss of traffic to the owners of the Skyway due to toll rate increases may have a negative impact on mobility on the alternative routes. Again, however, profit, not regional mobility or the larger public interest, is the operator's primary concern. Therefore, by giving up control of this asset, the city has also given up the ability to incorporate it into a broader transportation strategy, and may have inadvertently created a disconnect between its broader, short-term financial goals and long-term transportation and land-use planning objectives.

Toll rates will increase by 150% over the first 12 years of the lease and then are capped at about 6% (based on historical GDP/capita). Most Skyway users are Indiana residents, so there is little political impact from these increases and little recourse for users of the toll road other than to vote with their wallets and use an alternative route if possible. The toll rate increases are essentially a commuter tax, with the lessees and the city, not the payers of the tax, enjoying the benefits of the revenue. This points to another consequence of concessions: the government effectively surrenders its taxing authority to the private sector.

Indiana Toll Road

In 2006, the state of Indiana agreed to a 75 year lease with Cintra-Macquarie in exchange for a $3.85 billion concession fee. Under the agreement, toll rates for a 5-axle truck increase incrementally from $14.55 to $32.00 in 2010 (all figures assume the truck traverses the entire length of the highway). On June 30, 2010 the lessee can increase toll rates by 8.2%, the rate of inflation (CPI) or the annual rate of change in national GDP/Capita, compounded over the previous 4 years. Since 1960, the annual average rate of change in GDP/capita was 6.2%. From 2004 to 2005, the increase was 5.4%. Assuming a 5.5% annual average, the toll rate for a 5-axle truck may therefore increase by up to 23.9%, or to a rate of $39.64. Therefore, toll rates for a 5-axle truck may increase by about 172% over five years if the lessees decide to maximize toll rate increases.

The experience from toll rate increases on the Ohio Turnpike during the 1990s is instructive. When the Ohio Turnpike increased its truck toll rate to 17.6 cents/mile for 5-axle trucks, the result was massive diversion to alternate routes. The Ohio Department of Transportation found that a decade after the increase, growth in truck traffic on the turnpike was static, while truck traffic on parallel roads tripled. ODOT determined that these parallel routes had much higher accident rates. For example, U.S. 20, which saw a 267% increase in truck traffic, had a fatal accident rate that was 17 times higher than the Turnpike's rate. By 2010, the truck toll rate on the Indiana Toll Road is likely to be approximately 25 cents per mile, 42 percent higher than the Ohio Turnpike's toll rate at its peak. The two highways are essentially the same route, and have similar alternatives. Therefore, it is reasonable to expect a level of diversion on the Indiana Toll Road that is at least as great as was experienced in Ohio. This creates a significant safety concern for ATA and the industry.

The major difference between the states, of course, was that because the Ohio Turnpike Commission is a public authority, the Governor and Secretary of Transportation were able to make changes – including lowering truck toll rates and increasing speed limits – which attracted a substantial amount of truck traffic back to the turnpike. Because control of the Indiana Toll Road has shifted from public to private hands, addressing these types of issues will not be quite as easy, and the lessees will base all changes in their operations on the potential impacts on their profitability, and not on the impacts on the public welfare.

As bad as the situation may be under the 2010 toll rates, it may even get worse. Beginning on June 30, 2011, the lessees may use the same criteria identified for annual toll increases. Assuming an average annual 5.5% increase in GDP/Capita, the maximum potential toll rates for a 5-axle truck are:

- 5 years: 51.81
- 10 years: 67.71
- 20 years: 115.56

It has been suggested that these massive toll rate escalations are unrealistic because, as has been demonstrated on other facilities, including the Ohio Turnpike, raising the toll rate too high forces significant traffic off the highway. However, the lessee will set a toll rate to a level that maximizes profitability, not traffic. Indeed, a recent financial report by Macquarie revealed that while traffic on the Indiana Toll Road's barrier system actually declined by 1.6% between July 2006 and March 2007, and increased by just 0.2% on the ticket system, revenues shot up by a whopping 46.2% due to large toll rate increases.[4]

Lessees have no interest in and no responsibility for what happens off the toll road. In fact, if Indiana wants to build an Interstate-quality highway to address traffic problems caused by diverted toll road traffic, the state will have to compensate toll road owners for loss of revenue. This creates a perfect scenario for the lessee: a portion of the revenue lost due to diversion of traffic as a result of high tolls will simply come back as compensation from the state, and the lessee profits additionally by avoiding maintenance and expansion costs that it would otherwise have borne had that traffic not diverted. The combination of state construction costs and compensation to the lessee could very well exceed the state's concession fee over the course of a 75 year lease.

Finally, the projected toll rates, by the very nature of a concession with a for-profit company, will far exceed what is necessary to raise sufficient money for the operation, maintenance and improvement of the Indiana Toll Road. This means that toll road users will be forced to subsidize other state functions and enrich toll road investors, with little or no benefit to themselves.

Recommendations

Beyond the concerns over toll rates, there are also questions about whether private toll road operators will act in the public's best interest. It is impossible to predict changing circumstances

[4] Macquarie Infrastructure Group. *Management Information Report for the Quarter Ended 31 March 2007.* May 1, 2007 p. 7.

over the life of a lease, which tend to be long-term – up to 99 years in duration. Many of the facilities under consideration for private takeover are among the most critical links in our freight and military logistics chains. They are also important commuter and tourist arteries. Will the private operators act in the public interest, even if it cuts into their bottom line? Given that their responsibility is to their shareholders, this is unlikely. When other corporations act in a manner that is not perceived to be in the public's best interest, the free market tends to correct their behavior. In a situation where the corporation essentially has a monopoly, these market forces do not exist. When the free market fails, government must often step in to protect the public. ATA believes that when it comes to the long-term lease of critical highway infrastructure, it is necessary and appropriate for the federal government to take action to prevent the public from being gouged and to establish interstate commerce protections, as delegated to the federal government by the Constitution.

Securitization of Toll Facilities

An alternative to a private-sector concession is public-sector securitization, in which a public toll authority retains control of the facility, but makes lump-sum payments to the state with borrowed money that is backed by anticipated future toll revenue. Supporters suggest that this approach should allay some of the concerns associated with transferring control over an asset to a non-governmental entity. While this may be true, one fundamental problem still exists – the toll road user still pays a higher toll rate than is necessary to maintain, operate and improve the facility, and is thus forced to subsidize unrelated public expenditures. We do not believe that securitization is an acceptable alternative to privatization.

The Public Opposes Privatization

Public opinion surveys clearly demonstrate that voters oppose toll road leases. A recent survey of 800 likely voters in Pennsylvania found that 59% opposed leasing the Turnpike, while just 31% supported the concept.[5] The survey showed that respondents were not swayed by arguments in favor of a lease, such as the generation of significant revenue for state priorities or the prospect of more efficient and more customer-responsive management.

A separate survey found similar opposition to leasing the New Jersey Turnpike and Garden State Parkway. A poll of that state's voters found that 56% opposed the idea, while just 34% supported it.[6]

A statewide survey of Indiana voters shows that Hoosiers were unconvinced of the value of the Indiana Toll Road lease.[7] The survey, conducted several months after the lease agreement was finalized, revealed that 52% of respondents opposed the lease, while only 33% supported it. A survey of voters in northern Indiana who live in counties through which the toll road travels found even greater opposition by a margin of 66%-22%.

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[5] Susquehanna Polling and Research, April 12-17, 2007. Survey of 800 likely Pennsylvania voters (margin of error +/-3.4%).

[6] Quinnipiac University survey of 1,302 New Jersey voters (margin of error +/- 2.7%), February 20 – 25, 2007.

[7] The polling company, Inc. Survey of 500 likely voters statewide (margin of error +/- 4.4%) and survey of 400 likely voters in northern Indiana (margin of error +/- 4.45%), Nov. 10-16, 2006.

Tolling Existing Highways

ATA is strongly opposed to tolls on existing Interstate highways. While federal law generally prohibits this practice, Congress has, over the years, created a number of exceptions. Imposing tolls on existing lanes of the Interstate System would have a devastating effect on the trucking industry. Virginia, for example, recently considered a truck-only toll on I-81 of $0.37 per mile. The trucking industry is highly competitive and it will be extremely difficult for carriers to recover these costs.

Tolls also represent double taxation. Truckers currently pay a federal diesel fuel tax of 24.4 cents per gallon, a 12% excise tax on new tractors and trailers, an annual vehicle use tax of up to $550, and a tax on tires. They also pay various state highway user fees. While the industry supports a system of taxation based on highway use, charging tolls on top of these fees is inefficient, inequitable and unfair.

Mandatory tolls have other detrimental effects. They create two classes of drivers: those who can afford to pay a toll and those who cannot. And they cause diversion of traffic to other, often less safe roads.

The trucking industry is not alone in its opposition to tolls. The public, by a wide margin, opposes tolls on the existing Interstate system. In a national survey commissioned by ABC/*Time/Washington Post* and conducted in January 2005, 88% of responders opposed a toll to drive into city centers, and 68% opposed using tolls to control congestion. Other surveys have shown similar results.

Miscellaneous Funding Sources

We encourage Members to consider potential additional revenue sources identified in a new report by the American Transportation Research Institute.[8] Many of these funding sources could be considered “low-hanging fruit.”

Eliminate Government Vehicle Subsidies

Government fleets represent a very large hidden subsidy vis a vis their exemption from, or tax reimbursement of, fuel taxes. These fleets are large and consume well over 3 billion gallons of fuel annually. The simplistic argument is that government ought not charge itself taxes. Unfortunately, the more pressing, and unstated, issue is user-payment equity and unfair subsidies. It is well understood that publicly owned vehicles such as transit buses, snow-plows and road construction trucks transmit considerable axle-weight pressures. ATRI research shows that a significant percentage of these government vehicles do not pay state and/or federal fuel taxes. The effect is that pavement damage, infrastructure maintenance costs, and related revenue shortfalls caused by government fleet exemptions are borne by, and blamed on, the private-sector users.

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[8] American Transportation Research Institute, *Defining the Legacy for Users: Understanding Strategies and Implications for Highway Funding*, May 2007.

All IRS federal fuel tax exemptions must be eliminated in order to identify, attribute and collect the desired federal user fees. Alternatively, any subsidies must be borne by general funds, not by the Highway Trust Fund. The impact of exempting government fleets from state fuel taxes is also significant and important, but more politically challenging. The value to just the Federal HTF exceeds $1 billion per year. Eliminating state subsidies would generate hundreds of millions in additional dollars for highway investments.

Eliminate LUST Fund

Eliminate all state and local LUST funds. In nearly every instance that a state "leaking underground storage tank" remediation fund has been challenged in court as not being an appropriate use of HTF revenues, the court has required the removal of the LUST fund from the HTF. The Federal LUST fund receives about $70 million each year from gas and diesel fuel taxes.

Redirect HTF Interest to Transportation

Since 1998 interest generated by the HTF has been deposited in the General Fund. Redirecting the interest back into the HTF could add an average of $2 billion annually.[9]

Reduce Fuel Tax Evasion

While Congress, the states and the Internal Revenue Service have made solid progress toward reducing federal fuel tax evasion, opportunities exist to reduce revenue illegally withheld from the HTF. According to one analysis, as much as 25%, or $9 billion, of federal fuel tax revenue may be lost annually to evasion.[10] However, other estimates suggest the rate of evasion might be far lower.

CONCLUSIONS

Thank you for giving ATA the opportunity to comment on this very important topic. We firmly believe that an over reliance on private financing of highways is not in the best interest of highway users. While private financing may be appropriate under some very limited circumstances, fuel taxes will continue to be the primary financing mechanism for highway projects well into the future. We look forward to working with the Subcommittee to develop highway funding options that serve the best interests of highway users and the U.S. economy.

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[9] Cambridge Systematics. *Future Highway and Public Transportation Finance, Phase I: Current Outlook and Short-Term Solutions.* National Chamber Foundation, United States Chamber of Commerce. 2005

[10] FHWA. *Fuel Tax Evasion*. Office of Transportation Policy Studies. Jun 29. 2005d. Available at http://www.fhwa.dot.gov/policy/otps/fueltax.htm.