Transportation

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A Pro-Growth Agenda for the 115th Congress

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Mobility is one of our most important needs, one we often take for granted until it is threatened or lost. Reliable movement of both persons and goods depends upon adequate transportation infrastructure investments and management. In the United States, transportation now accounts for nearly 10 percent of gross domestic product. Four million miles of highways enable 3 trillion vehicle-miles traveled every year, according to the Bureau of Transportation Statistics. Nearly 20,000 airports enable almost 10 million annual aircraft departures carrying over 685 million passengers. More than $12 trillion worth of goods are moved every year in the United States by road, rail, air, and water.

Transportation networks vary greatly in quality, financing, and management. For instance, roads are generally paid for out of user-tax or property-tax revenues, whereas freight rail is privately financed and operated. One important lesson is that the private sector is generally better than government in financing and operating high-quality transportation systems at lower costs. New technologies and management practices present serious challenges going forward, particularly to those networks that exist largely as government monopolies.

Even if privatization of existing networks is politically unattainable, the starting point for sound transportation policy is adherence to the user-pays/user-benefits principle. Transportation infrastructure and operations should be paid for by those who directly benefit from their use. Despite some spillover effects, the vast majority of benefits

accrue to the network users. Compared with general revenue funding of government-owned infrastructure and services, the user-pays principle offers the following advantages:

- **Transparency**. Unlike tax dollars that wind through convoluted bureaucracies, charges "follow" users.
- **Fairness**. Users pay and benefit directly from improvements generated from their payments; users who use the systems more pay more.
- **Signaling investment**. Operating revenues generally track use, and popular systems can be identified for targeted improvements.

Unfortunately, many federal transportation programs do not adhere to the user-pays principle. In those cases, the programs should be reformed to meet that principle. If such reform proves impossible or unfeasible, it suggests that the program has a high cost and low value and should be eliminated.

The history of economic regulation of transportation systems in the United States shows that competitive markets benefit consumers more than top-down planning and control. In the late 1970s and early 1980s, airlines, motor carriers, and freight rail were partially deregulated, leading to lower prices and improved service. Today, rules aimed at promoting safety dominate many discussions of transportation regulation. However, although safety regulation was well intended, many of the resulting measures provide few, if any, benefits at very high costs. In a number of cases, safety regulation has become a way to impose backdoor economic regulation, even though explicit economic regulation is now greatly constrained or prohibited by law. That factor should concern policy makers.

To better promote high-value, low-cost mobility, Congress should critically examine current practices and work to remove government barriers to competition and innovation in the transportation sector. The Federal Aviation Administration should be reformed to promote increased airline competition and encourage new innovations in aircraft systems, airspace management, and airport financing. The federal role in surface transportation should be rationalized to allow state and local flexibility while adhering to the user-pays principle.

MODERNIZE AMERICA'S AIR TRAVEL INFRASTRUCTURE IN THE FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION

The Airline Deregulation Act of 1978 eliminated much of the economic regulation of airlines. Since then, the airline industry has rationalized, airfares have fallen dramatically, and airline travel has been democratized. Unfortunately, airspace management was not reformed in a similar direction. Limits on airport user funding have reduced investment and competition at U.S. airports. The United States remains one of the few developed economies to have its air navigation service provider integrated into its aviation safety regulatory agency—in this case, the Air Traffic Organization (ATO) within the Federal Aviation Administration (FAA). That failure is reducing the efficiency of the National Airspace System and inhibiting the integration of new technologies, such as unmanned aircraft systems (UAS).

Just as mileage-based user fees offer benefits over general revenue funding in surface transportation, aviation user charges offer significant advantages over nonuser funding. Since 1991, Congress has allowed airports to collect per-head charges on passenger enplanements, known as passenger facility charges, to be spent on eligible airport-related projects under 49 U.S.C. § 40117. Currently, the maximum PFC is capped at $4.50 (49 U.S.C. § 40117[b][4]). This cap, which was last raised in 2000, has seen inflation erode its buying power by approximately half. Given the advantages of user charges over general revenue, Congress should strengthen the PFC by eliminating the cap, as had been proposed in the Restoring Local Control of Airports Act of 2016 (H.R. 5563, 114th Congress).

Nearly all developed economies have air navigation surface providers (air traffic managers) that are independent of their national aviation safety regulators. Going further, Canada corporatized its air navigation service provider in 1996, creating a private

Congress should:

- Eliminate the cap on passenger facility charges (PFCs).
- Corporatize air traffic control.
- Provide more stringent oversight of the FAA's ongoing attempt to integrate unmanned aircraft systems into the National Airspace System.

nonprofit, called NAV CANADA, to take over airspace management. That change has allowed for rapid modernization and led to inflation-adjusted user fees that are 30 percent lower than the aviation taxes they replaced. Unfortunately, the U.S. National Airspace System is managed by the FAA's Air Traffic Organization. The ongoing problems facing the air traffic modernization program known as NextGen are largely attributable to obsolete government structures.

The main obstacle preventing us from realizing those benefits is the fundamental conflict between the FAA's role as safety regulator and its role as air traffic control provider, which has led to an overcautious culture within the ATO and an inability to seek and retain top talent. That conflict is compounded by the fact that the ATO faces a number of political oversight constraints, leading it to treat politicians and bureaucrats as its customers, rather than the airports and aircraft crews that rely on its services. Procurement of needed new technologies has slowed to a glacial pace, inducing many observers to question whether the ATO is even capable of modernizing for the 21st century.

A recent study from the Reason Foundation's Robert Poole recommends three actions to bring U.S. air traffic management into the 21st century:

- Separate the ATO from the FAA, with the FAA becoming exclusively an aviation safety regulator with arm's-length oversight of air traffic control;
- Set up a funding mechanism for this new air traffic manager using cost-based customer charges, rather than aviation user taxes subject to annual appropriations; and
- Create and appoint a board of stakeholders to govern this newly independent air traffic control organization. The board could be similar to NAV CANADA's governance structure, where airlines, airports, and air traffic controllers are represented.

In the forthcoming FAA reauthorization debates, Congress should adopt the ATC Corporation proposal of House Transportation and Infrastructure Committee Chair Bill Shuster (R-Penn.) that was contained in the Aviation Innovation, Reform, and Reauthorization Act of 2016 (H.R. 4441 in the 114th Congress). Not doing so risks forgoing the efficiency and safety benefits that other developed nations have already experienced. Air traffic control modernization will allow airspace users and managers to harness new navigation technologies and adopt superior management practices.

These reforms are critical to emerging aircraft technologies, such as unmanned aircraft systems. In the 2012 FAA reauthorization, Congress ordered the agency to "provide for the safe integration of civil unmanned aircraft systems into the national airspace system as soon as practicable, but not later than September 30, 2015" (Pub. L. No. 112-95, 126 Stat. 73). Unfortunately, the resulting FAA rulemakings to date have done little to complete this integration and have restricted many of the most promising functions and applications of small UAS.

UAS technology could provide large mobility benefits in the future. Although safety, tort liability, and privacy concerns remain, the United States risks falling behind other nations in integrating UAS into the civil airspace. Congress should increase its level of oversight over the FAA's UAS integration process and should examine how to remove current statutory and regulatory barriers.

The FAA's recent final rule on Operation and Certification of Small Unmanned Aircraft Systems imposes extreme limitations on the use of UAS under 55 pounds. Such restrictions include a requirement that UAS operators may operate only one UAS at a time, which prohibits coordinated automated operations and prohibitions on flying beyond the visual line of sight, flying over people, and flying after dark. Such restrictions essentially outlaw advanced surveying, large-scale infrastructure inspection, and parcel delivery, to name a few promising operations. The FAA has promised to review these restrictions in forthcoming rulemakings, but those promises should be accompanied by aggressive congressional oversight.

Further, Congress should exempt the smallest UAS from most FAA operations and certifications rules. In the last session of Congress, both the House and the Senate adopted "micro UAS" amendments that would exempt all UAS under 4.4 pounds from these stringent rules. Going forward, Congress should again adopt this proposal and strengthen it by extending micro UAS exemptions to manufacturer certification.

Another benefit of air traffic control corporatization—assuming it reduces the overcaution caused by the FAA's incentives as a safety regulator—could be a more rapid integration of UAS into the National Airspace System, which would allow for more innovative uses of the technology.

Expert: Marc Scribner

For Further Reading

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REFORM SURFACE TRANSPORTATION

Surface transportation policy has become less rational and more ideological in recent years. Environmentalists, ideologically motivated urban planners, and their political allies have succeeded in diverting resources from improving highways to mass transit, even as road congestion has dramatically increased—now imposing at least $180 billion annually in economic costs nationwide. The increased use of discretionary grants has further politicized the process and has enabled increased funding to high-cost, low-value projects. The current prohibition on states tolling their own Interstate segments restricts experimentation in revenue collection and financing that could usher in better funding and management practices. New and existing pilot programs that allow state-based funding alternatives to fuel taxes should be promoted and monitored.

In light of the September 2016 release of the *Federal Automated Vehicles Policy* by the National Highway Traffic Safety Administration (NHTSA), Congress should maintain tight oversight over the agency's policies regarding that technology. Many of the nonbinding recommendations are welcome and help fill a vacuum that previously threatened to produce a patchwork of conflicting state laws and regulations. In addition, NHTSA recommends that its Federal Motor Vehicle Safety Standard exemption authority should be expanded to allow more exempted vehicles for lengthier production periods.

However, NHTSA's guidance document also suffers from a number of flaws. Although NHTSA repeatedly and correctly states that the guidance contained in the document is nonbinding and voluntary, the agency also recommends that states mandate its vehicle safety performance and reporting guidelines as a condition of vehicle permitting. NHTSA cannot credibly say it is merely recommending voluntary, nonbinding actions and then turn around and tell other government agencies to mandate them. If NHTSA wishes to mandate automated vehicle performance safety assessments, it should go through the normal rulemaking process as required under the Administrative Procedure Act. Trying to coax state governments into mandating "nonbinding" federal policy does not inspire confidence that NHTSA is planning to play aboveboard.

Congress should:

- Provide oversight of state-based mileage-based user fee pilot programs authorized under the Surface Transportation System Funding Alternatives Program, Section 6020 of the Fixing America's Surface Transportation (FAST) Act of 2015.
- Streamline surface transportation programs by eliminating discretionary grant programs, such as Transportation Investment Generating Economic Recovery (TIGER).
- Hold hearings on NHTSA's treatment of automated vehicle technology to ensure that the agency is not pursuing counterproductive precautionary approaches that could threaten innovation and lead to additional preventable traffic crashes, injuries, and fatalities.

Expert: Marc Scribner

For Further Reading

Marc Scribner, "A Free Market Response to the Federal Automated Vehicles Policy," Competitive Enterprise Institute blog, September 20, 2016, https://cei.org/blog/free-market-response-federal-automated-vehicles-policy.

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